

C.L. Regularized
(70) (Ind)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXX~~

AHMEDABAD BENCH

O.A. No. 330 of 198₈
~~XXXXXXXXXX~~
O.A. No. 444 of 1988
O.A. No. 451 of 1988

DATE OF DECISION 22-07-1991

Shri Ali Hassan _____ Petitioner

Shri Govind Rupdas
Shri Devshi Kaba

Shri C.D. Parmar _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. _____ Respondent

Shri B.R. Kyada _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh

: Administrative Member

The Hon'ble Mr. S. Santana Krishnan

: Judicial Member



J U D G M E N T

O.A. No. 330 OF 1988

In the matter of
Shri Ali Hasan,
Mohmedian, Aged about 23 years,
District : Jamnagar,
TO : OKHA.

: APPLICANT :

Versus

Union of India,
Working and Representing
Western Railway Through :

1. The General Manager,
Western Railway,
Churchgate,
MUMBAI 400 020.
2. Chief Executive Engineer (Const.)
Western Railway,
Railway Station,
Ahmedabad.
3. Executive Engineer (Const.)
Western Railway,
Lathi Ground,
Rajkot 360 001.
4. Executive Engineer (Const.)
Western Railway,
Gandhinagar.

: ADDY MEMO :

... ..



Union of India
Working and Representing
Western Railway Through :

: APPLICANT :

1. The General Manager,
Western Railway,
Churchgate,
BOMBAY - 400 020
2. Chief Executive Engineer, (Const.)
Western Railway,
Railway Station,
AHMEDABAD.
3. Executive Engineer (Const.)
Western Railway,
Kothi Compound,
RAJKOT - 360 001.
4. Executive Engineer (Const.)
Western Railway,
JAMNAGAR.

: RESPONDENTS

C.A. No. 451 CF 1988

In the matter of
SHRI DEVSHI KABA
Hindu Aged about 27 years
Add: Near Janta Society Fly. Lus.
JAM NAGAR

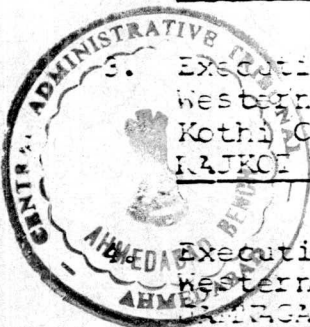
: APPLICANT

Versus

Union of India
Owing and representing
Western Railway

1. The General Manager,
Western Railway, through
Church Gate,
BOMBAY - 400 020
2. Chief Executive Engineer (C)
Western Railway,
Railway Station,
AHMEDABAD.
3. Executive Engineer (CONST)
Western Railway,
Kothi Compound,
RAJKOT - 360 001.
4. Executive Engineer (Const.)
Western Railway,
RAJKOT.

: RESPONDENTS



J U D G E M E N T

O.A. No. 330 OF 1988

O.A. No. 444 OF 1988

O.A. No. 451 OF 1988

Date : 22-07-1991

Per : Hon'ble Mr. S.S. Santhanam Krishnan : Judicial Member

The applicants in the above three cases have come forward with this application under Section 19 of the Administrative Tribunals Act, 1985.

2. As the contentions in all the three applications are more or less the same and the reliefs sought for are also similar, they are taken together for disposal under this common Judgement.

3. The grievances of the applicant in the three applications are that they are working as casual labourers from the year 1983, and they are in continuous service for over two years. The respondents have chosen to terminate their services without complying with the provisions of the Industrial Disputes Act. The other casual labourers whose services were terminated got an order in their favour in O.A./331/86 on 16.2.1987. Though the applicants in the above three applications were served with an order of retrenchment as early in the year 1985, they are not able to approach the Tribunal due to draught and they having to look after their family, aged parents and also due to their poor health. Their family are in a very poor condition and due to these circumstances the delay. They have also chosen to file separate applications to condone the delay, wherein the reasons given are more or less similar.



The respondents in their reply contend that the application is barred by limitation and as such the applicants in the three applications cannot claim any relief. They also contend that the applicants in all the three cases were engaged

purely for the purpose of completion of VOP work of Phase-II, and after the completion of the above work they cease to be casual labourers under the respondents. In OA/330/88, the applicant was paid Rs.650.20 as retrenchment compensation under Section-25-F, of the Industrial Disputes Act, and he has also accepted the same. Their services were terminated after complying with the provisions of the Industrial Disputes Act.

5. The applicant filed the rejoinder wherein they raise only some legal objections.

6. Heard Shri C.D.Parmar learned counsel for the applicant in all the three cases and Mr.B.R.Iyada, learned counsel for the respondents in all the three cases.

7. The main question that has to be considered in all the three cases is the question of limitation. In OA/330/88, the applicant filed WA/452/88 for condoning the delay of 545 days. In all the three cases the reasons given for the delay are more or less the same. The applicant in all the three applications claim that they are poor having aged parents and they will have to maintain their father and mother who are not in a good health. Due to the reasons of sickness and poor conditions they have not filed the application in time. It is admitted that they came to know that the other applicants placed in similar position went before the High Court filed petition and got a stay order. Even a perusal of the applications for condonation of delay clearly show that the reasons given cannot be true. All the three applicants cannot have aged father and mother being sick.

All the three applicants claimed that they are in poor conditions and hence unable to file application in time. The application was filed subject to question of limitation as is seen from the order dated 3.11.88.

Regarding OA/444/88, WA/15/88, was filed with similar



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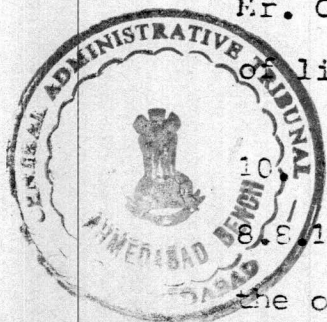
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allegations. The delay is 715 days. As per the order dated 14.5.1988, delay is condoned but on that day the counsel for the respondents did not appear and in fact a sick note was filed. In OA/451/88, also MA/557/87, was filed with same allegations to condone the delay of 428 days. By an order dated 14.6.1988, delay is condoned though the advocate have again filed a sick note on that day.

8. The learned counsel for the applicant Mr.C.D.Parmar brought to our notice a decision reported in 1990(3) SLR, page 508, (Ranjit Ghosh Chowdhury and others versus Union of India and Ors.). In this case before the admission both parties were heard and order was passed. Hence it is pointed out that the plea of limitation cannot be subsequently raised as both the parties were heard and matter is decided even at the time of admission. Reliance was also placed on a decision reported in All India Services Law Journal(111), 1991 (1), P.362, (Shri Bankim Choudhury and others versus Union of India and Ors.) wherein it is pointed out that as the order itself is void, the plea that the delay cannot be condoned due to limitation is without any substance.

9. Bearing these principles in mind if we analyse the three application before us in all the three applications the question of limitation was not heard and finally decided. Whereas ¹ in OA/331/86 the same was filed subject to question of limitation, in the other two cases orders were passed without hearing the respondents. Therefore, the contention of Mr. C.D. Parmar, counsel for the applicant that the question of limitation cannot be considered now is without any substance.

10. In OA/330/88, the notice of termination is dated 8.8.1985. In OA/444/88, the applicant has not chosen to produce the order of termination. In OA/451/88, the order of termination is dated 9.8.1985. The present three applications admittedly

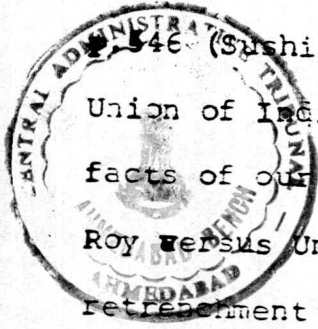


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are not filed within time. A perusal of the applications filed in all the three cases shows that the applicants are aware that the ^{other} ~~order~~ applicants moved the High Court and got an order of stay. The applicants have come forward with their applications because the other workers filed similar applications and succeeded earlier. The allegations in the three applications before us (viz), all are poor, having aged parents with bad health are all ^{unwanted} ~~unwanted~~ for the purpose of this case. Hence we find no difficulty in holding that all the three applicants are clearly barred by ~~the~~ limitation.

11. Even otherwise the applicants are fully aware that the other workers placed in a similar position moved the Gujarat High Court and obtained an order in their favour in OA/331/86. The applicants ought to have impleaded ^{✓ Selva} them as parties in OA/331/86. They having failed to do so, their present claim is also barred by the principles of constructive res-judicate.

12. Even turning to the facts of the above three cases it is not the case of the applicants that their seniority is over looked as per the provisions of Rule-77 of the Industrial Disputes Act, Central Rules, 1947. The applicant in OA/331/86, got their relief mainly on this ground. In AIR 1988 (1), Central Administrative Tribunal, P.158, (Surya Kant Raghunath Darole and others versus The Divisional Railway Manager, Central Railway, Bombay) deals with the case of retrenchment order without paying compensation at the time of retrenchment. The decision relied on and reported in 1987 All India Administrative Tribunal Law Times, (Sushilkumar Mahaprasad Tiwari and another, Versus Union of India and Others.), is not applicable to the facts of our case. ATR 1987 (1) CAT. 145 (Sushan Chandra Roy versus Union of India and others) deals a case of retrenchment without giving notice either under Railway Establishment Manual or under Section 25 (F) of the,



Signature

Industrial Disputes Act.

13. In OA/330/88, the respondents have stated in their reply that the applicant has received the compensation under Section 25(F) of the Industrial Disputes Act, This is not disputed by the applicant in his rejoinder specifically. He only claims that he has not received the full amount but he is unable to say how. In OA/444/88, the applicant have not even produced the notice of retrenchment, and hence the question whether the notice is valid or not cannot be considered. His service record produced as Annexure A-1, show that he had worked only upto 20.9.1984. Hence he cannot claim any relief against the respondents. The applicant in OA/451/88 produced an order dated 9.8.1985, wherein it is stated that one month notice is given. The applicant has not even stated in the application whether he received the compensation or not. Hence the applicant in all the three cases failed to establish that the respondents failed to issue them proper notices as provided under Section 25 (F) of the Industrial Disputes Act. Further it is not the case of any of the applicants that any question of seniority arises in their cases.

14. Even otherwise if the applicants are given any relief in their favour now it will effect all the persons who are found suitable and promoted. Hence the applicants in all the three cases cannot claim any relief against the respondents.

15. In view of the above discussion we find no merits in all the three applications and as such all the three applications are liable to be dismissed and they are accordingly dismissed. No order as to costs.



Prepared by 1 05/08/91

Compared by

TRUE COPY

Sc/-

(S. Sankar Krishna)
Judicial Member

(K. B. SANE)

Section Officer (J)

Central Administrative Tribunal
Ahmedabad Bench

Sc/-

(M. M. Singh)

Administrative Member