

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DXXIX
AHMEDABAD BENCH

(2)

M.A. 494 and 1988
O.A No. 684 1988
TXXXX.

DATE OF DECISION 5-7-1991

Harji Chana, Petitioner

Mr. C.D. Parmar Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. B.R. Kyada Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. M.M. Singh : Administrative Member

The Hon'ble Mr. R.C. Bhatt : Judicial Member

JUDGMENT

(3)

Harji Chana,
Jam- Khambhalia,
(Advocate: Mr. C.D. Parmar)

.... Applicant.

VERSUS

1. Union of India
Through:
The General Manager,
Western Railway,
Church Gate,
Bombay- 400 002.
2. Chief Executive Engineer (Const.)
Western Railway,
Railway Station,
Ahmedabad.
3. Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.
4. Permanent Way Inspector,
Western Railway,
Khambhalia.

.... Respondents.

(Advocate: Mr. B.R. Kyada)

JUDGEMENT

M.A./494/88

AND

O.A./684/88

Date: 5-7-1991

Per: Mr. R.C. Bhatt : Judicial Member

1. This application is filed under section 19 of the Administrative Tribunals Act, 1985, by casual labourer, who was serving in Western Railway, challenging the oral order of termination of his services by the respondents Railways, and seeking the relief that the impugned order be declared as illegal, invalid and in violation of the provisions of I.D. Act and Indian Railways Establishment manual and that he should be reinstated in services.

2. This original application was admitted subject to

"LIMITATION". Therefore, the applicant has first to satisfy us on the point of limitation under Section 21 of Administrative Tribunals Act, 1985, before we proceed to decide the case on merits. Thus, main hurdle in the way of the applicant is the question of limitation. He has filed M.A./494/88 for condonation of delay under Section 21 (3) of Administrative Tribunals Act, 1985. The O.A. application is filed by the applicant on 15th June, 1988. It is alleged in the O.A. application in para 3 and 4, that the respondents had made oral order of retrenchment on 31st May, 1984, while in para 5 of the application, he has stated that the final order was passed on 31st May, 1985 and thereafter, applicant made representations to P.W.I. (c) Jam Khamhalia. In para 6 of the application, the applicant has made averments about the facts in brief in which in para 6 (a), he has mentioned that he was initially appointed as a casual labourer M.B. on 29th Sept. 1982, at P.W.I. Khamhalia Engineering and than P.W.I. (c) Morvi and last till his retrenchment on 10th Sept. 1985, at Morvi. The applicant in M.A./494/88 has alleged that the impugned order of termination was dated 31st May, 1984 and has prayed that the delay of 590 days in filing the O.A. be condoned because he is a poor person and that he had to look after his parents who were not of good health and he was prevented from filing this O.A./ in time because of sickness of his parents. The other reason for not filing this application within limitation given by him was draught situation prevailing in the part of the state where he was residing.

3. The learned advocate for the applicant submitted that the question of limitation will not arise in this case, because the oral order of termination of the applicant's services is ab initio void in as much as it was in violation of Section 25-F of the I.D. Act and also in violation of Indian Railways Establishment Manual. He has relied on the decisions in

O.A./277/86 (Shri Jiva Ranmal V/s Union of India) decided by this Tribunal on 26th July, 1989, Rita Sarkar V/s Union of India & Ors. reported in (1) (1991) CSJ (CAT) 12 (SN), Suryakant Raghunath Darole V/s Divisional Railway Manager, Bombay ATR 1988 (1) C.A.T. 158, Narotam Chopra V/s Presiding officer, Labour Court & Ors. 1988 (Supp.) (2) Supreme Court cases page 97, Madhu Dhola & Ors V/s Union of India and Ors. (Ahmedabad) reported in ATR 1989 (1) (CAT) 115. The learned advocate for the applicant relying on these decisions, submitted that when the order of termination is rendered ab initio void, a declaration should follow, that the work man continued to be in service and hence to be reinstated with full backwages.

4. The learned advocate for the respondents submitted that the present application is clearly barred under Section 21 of the Administrative Tribunals Act, 1985. He submitted that the application for condonation of delay should be dismissed. The respondents have taken several contentions in reply to the application for condonation of delay. It is contended by the respondents in reply that the question regarding sufficient cause must be decided by reference to all the facts advanced by the applicant and the applicant has to explain the delay. It is contended that there is no sufficient reason to condone the delay and the application should be dismissed.

5. Now before we consider the submission of the learned advocate of the applicant, that the oral order of termination of applicants' is ab initio void, it is necessary to examine which is the date of oral termination according to applicant. The applicant has mentioned three different dates of his termination in his application as much as in para 3 and 4, he has given the date of 31st May, 1984, in para 5, 31st May, 1985 and in para 6 last

retrenchment on 10th Sept. 1985. Thus, the applicant himself is not sure or certain about the date of termination. The service card produced by the applicant at A-1 shows his employment upto 31st May, 1984, While in application the applicant has given two other dates of termination namely 31st May, 1985 and also 10th Sept. 1985. Therefore, when it is not possible to know from the application, which was the real date of his termination, it is not necessary to go into the inquiry that order of termination was ab initio void or not. This application was filed as back as in 1988 still till to-day the applicant has not even cared to give real date of his termination.

6. The applicant has prayed that the delay of 590 days in making this application be condoned. Learned Advocate for respondents submitted that in absence of specific date of alleged oral termination, the applicant cannot say that there was any sufficient cause for condonation of delay. He submitted that the grounds mentioned in the application M.A./494/88 are very vague and none of the grounds mentioned therein amounts to sufficient cause.

7. We have heard the learned advocates of the parties, we have perused, the record and have considered also the decisions cited by applicant's learned advocate. However, as observed above, when the applicant has given three different dates of oral termination in his applications and being not sure of the specific date of his termination, there is no question of holding the oral order ab initio void and the delay of 590 days in filing this application cannot be condoned under Section 21 (3) of the Administrative Tribunals Act, apart from the fact that the grounds of delay mentioned in M.A./494/1988, namely sickness of the parents of the applicant and draught condition are very vague and not supported

by any reliable evidence. The applicant having failed to give the specific date of his termination in O.A., the M.A. 494/88 deserves to be dismissed. As M.A. 494/88 is dismissed, it is not necessary to enter into the merits of O.A./494/88 and the same shall have to be dismissed.

O R D E R

M.A./494/88 is dismissed and hence O.A./684/88 also shall stand dismissed. No order as to cost.

R.C. Bhatt
(R.C. Bhatt)
Judicial Member

M. M. Singh
(M.M. Singh)
Administrative Member