

(3)

Shri Jiwa Mala
Via Dwarka
To Okha-Port.
(Advocate: Mr.C.D.Parmar)

: Applicant

Versus

Union of India
Through:

1. The General Manager,
Western Railway,
Churchgate,
Bombay.
2. Chief Executive Engineer(Const.)
Western Railway,
Railway Station,
Ahmedabad.
3. Executive Engineer(Const.)
Western Railway,
Kothi Compound,
Rajkot.
4. Executive Engineer(Const.)
Western Railway,
Jamnagar.

: Respondents

(Advocate: Mr.B.R.Kyada)

JUDGMENT

M.A./496/88

1nd

OA/687/88

Date: 17-7-91

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. This Original Application is filed by the casual labourer serving in the western railway challenging the oral termination order dated 13.9.1984 made jointly by the respondents 3 & 4. It is alleged by the applicant that he was initially appointed as a casual labour M.B. on 5th October, 1983 at PWI (C) II Dwarka and then PWI (C) at Rajkot and last till his retrenchment PWI(C) Dwarka. It is alleged by the applicant that such type of oral termination order was declared null and void by this Tribunal in O.A./331/86 decided on 16.2.1987. He has prayed that the impugned order of termination dated 13th September, 1984 be quashed and set aside being in violation of Section 25 G, H and Section 25 B and Section 25F of I.D.Act and



Indian Establishment Manual and that the respondents be directed to reinstate the applicant with full backwages and continuity of service. The respondents have filed reply ^{ing} contend~~u~~ that the application is barred under Section 21 of the Administrative Tribunals Act, 1985. The respondents have denied the averments made by the applicant in para-3 to 6 of the application and denied that the applicant was retrenched by oral order as alleged. It is contended by respondents that the applicant was engaged as a casual labour on daily wages w.e.f. 5th October, 1983 for the completion of the VOP Project Phase - II to work that the said project was for specific period and the applicant and others were engaged for specific time project with understanding that on the completion of the said/work their services would be terminated without any notice or compensation. It is contended that the said project work was completed in the year 1984 and no labour strength was required by the Organisation more as there was no work and as per the service agreement the applicant was likely to be terminated without any notice or compensation but on the humanitarian ground the respondents tried to search work for the applicant in another unit, and at that time the demand was received from Divisional Manager, Rajkot for labourers for maintenance work at Rajkot Division and accordingly the applicant along with others and with their consent were directed to work at Rajkot Division under Permanent Way Inspector, Surendranagar vide office order No.PWI(C) DWK's letter dated 20th September, 1984. The respondents denied that the applicant was orally retrenched by the Executive Engineer, Jamnagar/Rajkot. It is contended that in order to avoid retrenchment the applicant was directed to work to Rajkot Division after his oral consent but the applicant did not resume duty at Surendranagar and absconded from duty after 13th September, 1984. It is contended that the applicant has not come with correct facts and it does not lie ~~mix~~ in his mouth that he was retrenched orally. It is contended that the applicant

has suppressed material fact and on that ground also the application be dismissed. It is denied that the respondents have violated the provisions of I.D. Act as alleged.

2. The applicant has filed affidavit in rejoinder contending that the respondents have terminated his services without following the provisions of I.D. Act. He has controverted the averments made by respondents in their reply.

3. The applicant has filed MA/496/86 in this Original application for condonation of delay under Section 21(3) of the Administrative Tribunals Act, 1985 in which he has mentioned that the Original Application was filed against the order of retrenchment passed by respondent No. 3 & 4 on 10.9.1985. It is stated by him in this application that he is a poor person having aged parents and his parents did not keep good health hence there was delay in filing this application. He has stated that he had made representations twice to PWI (C), Jamnagar after the order passed on 10th September, 1985. He has stated that there is delay of 590 days in filing this application and the same be condoned.

4. The respondents have filed reply contending that the application is barred under Section 21 of the Administrative Tribunals Act, 1985, there is no sufficient cause for condoning the delay in filing this application. It is contended that applicant has to prove that there was no negligence on his part and has to explain all the delay in filing the application. It is contended that the applicant has not established any sufficient cause for condoning delay in making this application and hence the application be dismissed.

5. The Original Application was admitted subject to limitation by this Tribunal on 24th October, 1988. Therefore, the applicant has first to cross the

hurdle of the question of limitation. As per Section 21 of the Administrative Tribunals Act, 1985, the Tribunal shall not admit an application in a case where a final order such as is mentioned in clause (a) of sub-Section (2) of Section 20 has been made in connection with the grievance, unless the application is made within one year from the date on which such final order has been made. The applicant has alleged in the application that the oral order of retrenchment was dated 13th September, 1984. The Administrative Tribunal was established on 1st November, 1985. As per Section 21(2) of the Administrative Tribunals Act, 1985 where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a) of Section 21 or as the case may be, clause (b) of Sub-Section (1) or within the period of six months which expires later. The applicant, therefore, ought to have filed this original application within one year from 1st November, 1985 when this Tribunal came into existence, i.e. by 1st November, 1986 but the application is filed as late as on 16.6.1988. So the applicant has to explain delay for a period of from 1st November, 1986 to 16.6.1988 i.e. the delay of 18 months and 15 days. The applicant has mentioned in his application that there is delay of 590 days in filing this application but the same be condoned for the reasons mentioned in his application and treating the same as sufficient reason.

6. The learned advocate for the respondents submitted that the respondents had not made any oral order of retrenchment dated 13th September, 1984 as alleged by the

by the applicant. He submitted that the service record shows that from 5th October, 1983 to 20th September, 1984 M.B. was transferred to Rajkot Division as per the letter No. VOP/Jam mentioned in it dated 13th September, 1984. It is submitted that endorsement at the back of the service card Annexure A/1 shows that the applicant was directed to work at Rajkot Division but the applicant did not resume duty, after 13th September, 1984 on his own accord. He, has therefore, submitted that the applicant has no cause of action to file this application at all. He also pointed out that as per para 2508 of Indian Railway Establishment Manual when it is necessary to depute casual labour on duty away from their headquarters, daily allowance has to be paid to them at rates mentioned in para 2508. He submitted that the applicant was not transferred but as the work of the project was over he was given work ~~at~~ another unit of Rajkot Division but the applicant did not join that division. He submitted that the applicant has not produced any evidence to show that he had gone to join at Rajkot Division and that he was not taken there. The learned advocate for the respondents also pointed out that in MA/496/88 filed for condonation of delay the applicant has referred to his order of retrenchment dated 8th September, 1985. He submitted that there was not retrenchment at all of the applicant either on 13th September, 1984 or on the day of 8th September, 1985 as mentioned in the Misc. Application. He submitted that if 8th September, 1985 was the date of alleged oral retrenchment, the basis of challenge of oral retrenchment on 13th September 1984 mentioned in O.A. falls that and no cause of action dated 13th Sept. 1984 arises at all.

7. The learned advocate for the applicant submitted that in the instant case, as the respondents have acted in violation of the provisions of the I.D. Act and also the provisions of the Railway Establishment Manual, and that there is no question of limitation. In support of his submission, he has relied on the decisions in *Madhu Dhola & Ors. v. Union of India & Ors.* ATR

(A)

1989 (1) C.A.T. 115 in which it is mentioned that a casual labour who has attained temporary status has to be given a notice before discharge. The next decision cited by him was Banim Choudhury and others Vs. Union of India & Ors. All India Services Law Journal III- 1991 (1) page 362, In which it is held that when manifestly illegal order has been passed by the concerned authority the Tribunal shall not incline to allow it to remain in the field on the technical ground of limitation and therefore, the delay was condoned. In the instant case, we do not find force in the contention of the learned advocate for the applicant that there was any illegal order passed by the respondents. The next decision relied upon by the applicant's learned advocate was Surya Kant Raghunath Darola and others vs. Divisional Railway Manager, Central Railway, Bombay ATR 1988 (1) C.A.T. 158, in which it was held that termination without compliance of Section 25 F of the I.D. Act is illegal and bad. The learned advocate for the applicant also relied on the decision in Bhavansinh Babubha vs. Union of India reported in (1988) 8 A.T.C. 745 in which it was held that when there is any unlawful retrenchment, the employees, are entitled to reinstatement and backwages. It was a case under I.D. Act. The above decision does not help the applicant at all because here the applicant has failed to prove that there was an oral termination dated 13th September 1984 as mentioned in O.A./496/88.

8. Apart from the fact that the applicant has failed to prove that he was orally retrenched on 13-9-1984 as alleged in O.A. his M.A. does not refer to that date but shows the date of alleged oral termination on 8.9.85 which itself destroys the cause of action of applicant being on 13-9-84. The M.A. is misconceived because it shows different date. The applicant has to prove sufficient cause for delay in making the original application even if M.A. is taken into consideration. The two grounds on which the applicant wants condonation of delay are that his parents were not keeping good health and that he is a poor man. No details

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are given as to when his parents fell sick. Moreover, the fact that the applicant is a poor person is by itself hardly a ground for condonation of delay of 590 days. It is for the applicant to establish sufficient cause for condonation of delay in making this application as envisaged in Section 21 (3) of the Administrative Tribunals Act, 1985. The applicant has failed to satisfy us that he had sufficient cause for not making the application within one year after this Tribunal was established. The result is that M.A./496/88 shall have to be dismissed and it will not be necessary for us to decide application on the merits of the application and we hold that as the Original Application 687/88 is barred under Section 21 of the Administrative Tribunals Act, 1985, the same is not admitted. Hence the following order:

9.

O R D E R

M.A./496/88 is dismissed. As M.A. is dismissed O.A./687/88 is also dismissed. No orders as to costs.

R.C. Bhatt

(R.C. Bhatt)
Judicial Member

M. M. Singh

(M.M. Singh)
Administrative Member

(7/7/93)