

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(13)

M.A.73/98 & M.A.782/98 in

O.A.NO./96/91T.A.NO.DATE OF DECISION 11-1-2000Devjibhai Kanjibhai Jivabhai PetitionerMr.M.M.Xavier Advocate for the Petitioner [s]
VersusUnion of India & ors. RespondentMr.R.M.Vin Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.RAMAKRISHNAN

VICE CHAIRMAN

The Hon'ble Mr. A.S.SANGHAVI

MEMBER (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? ✓
- 2, To be referred to the Reporter or not ? ✓
- 3, Whether their Lordships wish to see the fair copy of the Judgment ? ✓
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Devjibhai Kanjibhai Jivabhai,
Add: Neaar Akhlol Mandir,
Indera Nagar, Vartej,
Bhavnagar.

Applicant

Advocate Mr.M.M.Xavier

Versus

1. Union of India, Through :
Its General Manager,
Churchgate, Bombay, notice to
Is to be served through DRM,
W.R. Bhavnagar division,
Bhavnagar.
2. Bridge Inspector,
W.Rly. Junagadh.
3. Permanent Way Inspector,
W.Rly., Dhola Junction.
4. Brijeshkumar Harishanker,
casual labourer CIOW-BVP.
5. Dinaker Bachubhai, Substitute,
Gangman, under Asstt. Engineer,
W.Rly. Bhavnagar Botad.

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6. Mohmedmiya Abumiya., casual labourer
under Asstt. Engineer, W.Rly.,
Bhavnagar division,
Junagadh.

Respondents

Advocate Mr.R.M.Vin

J U D G M E N T
IN
M.A.73/98 & M.A. 782/98
IN
O.A.NO.96/91

Dt. 11/1/2000

Per Hon'ble Mr.A.S.Sanghavi : Member [J]

The applicant who claims to have worked as a casual labourer between the period from 23.1.81 to 20.12.81 and 28.2.86 to 25.9.86 as Khalasi in BVP unit has moved this O.A. for direction to the respondents to prepare and finalize the seniority list of casual labourers in terms of the circular issued by the respondents and also to engage the applicant on the basis of the seniority list and on

preparation of such list also to consider him for regular absorption. According to the applicant, he had worked for 224 days in piece-meal way and was discontinued due to non availability of work. He was engaged on daily wages and was paid at the rate of 1/30th of minimum of scale plus D A when he was engaged. He was discontinued on completion of work w.e.f. 20.12.81 and was again re-engaged w.e.f. 28.2.86 and on completion of work, was discontinued w.e.f. 25.9.86. He has not been re-engaged ever since. Pursuant to the scheme framed by the Railways for re-engagement of the old faces, the applicant had submitted the application dated 1.5.85 to register his name in the register to be prepared for the casual labourers but he has not received any intimation from any source. He had thereafter again submitted the application dated 20.10.89 and attended the office of the DRM, BVP. for interview and he was interviewed along with others but has not been re-engaged by the railway authorities. He had thereafter submitted representations on dated 8.12.89, 17.1.90 and

approached the various authorities but has not received any favorable reply. The applicant has alleged that no seniority list as envisaged in the policy is prepared by the BVP Unit though the relevant papers are available and they are in a position to notify the division wise seniority list for casual labourers who have worked in the past. He belongs to the ST and the respondents have not made any efforts to prepare the list of the casual labourers before satisfying the reserve quota. He has thereafter amended the O.A. and incorporated the allegation that juniors to him are given the employment by the respondents but his case is not considered. He has also alleged that the respondents have decided to fill up large number of vacancies by direct recruitment without absorption of the old faces. It is also alleged that the BVP unit had prepared the list of casual labourers vide the letter dated 17/19-6-91 whereas the names of the casual labourers who had not even applied before 31.3.87 were included and this list was finalized after issuing the letter dated 27.4.94. Though he had applied in terms of the letter dated 3.1.94, he was

not considered and his name was not included in the list. It is also asserted by amending the O.A that in view of the G.M.'s letter dated 20.11.92 and final list notified on dated 27.4.94, and casual labourers similarly situated having been re-engaged in the year 1994 to 1996, the cause of action arose from those days and therefore, this O.A. is within the limitation.

2. The respondents have resisted this O.A. and in their reply, have contended that there is a ban to engage casual labourers/substitutes, who have worked prior to 1.1.81 and who have worked after 1.1.81, they cannot be engaged without prior personal approval of the General Manager. It is also contended by the respondents that the application having been preferred after more than 6 years of the last engagement of the applicant is clearly barred by limitation and on the ground of delay and latches itself, the application deserves to be rejected. It is admitted by the respondents that the applicant had worked under Inspector of Works, Junagadh w.e.f. 23.1.81 to 20.12.81 and again under PWI, Dhola

w.e.f. 21.2.86 to 20.10.86 but have contended that this does not entitle the applicant to be regularized in service and does not entitle him to claim re-engagement. It is also contended that the applicant had left the work on his own and therefore, no question of his re-engagement is arise and they have prayed that the O.A. be dismissed with costs.

3. We have heard learned advocates of both the parties at length. It is an admitted position on the part of the respondents also that the applicant had worked as casual labourer on open line in the year 1981 as well as for some time in 1986. However, for the re-engagement of the old faces, the policy framed by the railway authorities envisaged that the casual labourers ought to have worked prior to 1.1.81. Furthermore, it is an admitted position on the part of the applicant that after 20.10.86 he has not been re-engaged and that in the year 1985, he had given the application for registering his name in the register to be prepared for the old faces. Now if the say of the applicant is believed that he had given

the application for being registered his name in the year 1985 , then it is quite obvious that the rejection of that application or non action on the application on the part of the respondents, the cause of action for filing this O.A. had arisen. The applicant could have waited for six months after his first application for registration of his name in the year 1985 and finding that no reply being received or that his name was not registered in the register, he could have moved the O.A. before this Tribunal for redressal of his grievance. Even after his re-engagement in the year 1986 for a period of only few months ,he had not taken any steps to get his name registered in the live register. He had not taken any steps after 20.10.86 to get himself re-engaged in the service. This O.A. is moved by him on dated 14.2.91 which is clearly moved more than 4 and 1/2 year of his last engagement as a casual labourer. Section 21 of the A.T.Act bars of such applications which are not presented within a year of accruing of the cause of action and as such this application is clearly barred by limitation. The cause of action for filing this

petition had arisen several years ago and this application is belatedly moved by the applicant and no explanation is forthcoming from the applicant as to why this application is not filed in time and the delay in filing this application has also not been explained. Mr.Xavier, learned advocate appearing for the applicant has submitted that the first seniority list was published in the year 1994 by the respondents and therefore, this application cannot be said to be barred by limitation. According to Mr.Xavier , no live register is used to be maintained by the BVP unit of the respondents and no register was kept by the respondents and therefore, no question of limitation arises. According to him, for the first time, the seniority list of the casual labourer of the BVP Para unit is published on dated 27.4.94 and since the name of the applicant is also not included therein , the cause of action for the applicant remains recurring one and hence, the application cannot be said to be barred by limitation or cannot be rejected on the ground of delay and laches.

4. We are unable to appreciate the submission made by Mr.Xavier, learned advocate for the applicant. So far the list of casual labourers/substitutes of BVP para unit referred to by Mr.Xavier is concerned, the same published on dated 27.4.94 is a supplementary list and not the original one. Furthermore, any event that takes after the filing of an application gives rise to a fresh cause of action from the date of taking place of that event. So far as this application is concerned, the same has been filed in the year 1991 on the premises that the name of the applicant has not been registered in the live register of ex casual laborer, even though the applicant had applied for the same in the year 1985 and subsequently. The averments made in the application itself suggests that such register was being maintained by the BVP division and yellow cards were issued to the labourers who had worked under the division,. In para 4.5. of the application itself, the applicant has mentioned that the DRM BVP Para had issued the notification on dated 23.4.85 and the same was published in a local

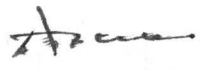
daily "Saurasthra Samachar " calling upon the casual labourers who had worked prior to 14.7.81 to present themselves for being registered for future engagement. According to the applicant, he had therefore submitted application dated 1.5.85 with a copy to the Bridge Inspector, Junagadh and had requested to register his name in the register. He has however, stated therein that he had learnt on inquiry that no steps were taken pursuant to his latter dated 23.4.85.


5. This averment in the application it self suggests that the cause of action for filing this O.A. or any other litigation for registering his name in the register had accrued to the applicant on or after 23.4.85 and the limitation for filing O.A. before this Tribunal had started to run w.e.f. 20.10.85 i.e. six months after the application given by him on dated 23.4.85. He could have preferred this O.A. before 23.10.86 i.e. within one year of the commencement of the cause of action. Having failed to do so, and

having waited till 14.2.91 with no apparent reason, the application is clearly barred by limitation. It is also barred by delay and latches.

6. In view of the above discussion, we have no other alternative but to reject the O.A. as the same is barred by limitation as well as delay and latches. The O.A. is therefore, rejected with no order as to costs.

7. In view of the disposal of the O.A. , M.A.73/98 & M.A.782/98 do not survive and stand disposed of.


[A.S.Sanghavi]
Member [J]


[V.Ramakrishnan]
Vice Chairman

S.Solanki