

Removal

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

M.A. No. 368 OF 1991 in
O.A. No. 387 OF 1991
~~MAX NO~~

DATE OF DECISION 31.03.1992.

Shri Ambalal Shankarbhai Gohil Petitioner

Shri V.S.Mehta Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri N.S.Shevde Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R.Venkatesan : Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Shri Ambalal Shankarbhai Gbhil,
Village Ajupura,
Taluka Anand,
GUJARAT STATE.

...Applicant

(Advocate : Mr.V.S.Mehta)

Versus

1. Union of India,
through General Manager,
Western Railway,
Churchgate,
BOMBAY - 20.
2. Senior Divisional Engineer (N),
Baroda Division,
Western Railway. *Post of ADP Manager Baroda*
3. Divisional Railway Manager,
Baroda Division,
Western Railway. *Post of ADP Manager Baroda* ...Respondents.

(Advocate : Mr.N.S.Shevde)

JUDGMENT

M.A. NO. 368 OF 1991
in
O.A. NO. 387 OF 1991.

Date : 31-03-1992.

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

The applicant has filed this application under Section-19, of the Administrative Tribunals Act, 1985, seeking the relief that the order mentioned in the letter Annexure-A/ dated 6th December, 1990, by the Senior Divisional Engineer (N), Baroda of Western Railway, be quashed and set aside and the applicant be reinstated in service with all consequential benefits. The applicant has filed M.A./368/91, praying that if the Tribunal considers that there is delay in filing Original Application, the delay be condoned.

2. It is the case of the applicant that he joined service of the Western Railway in its Engineering Department in Baroda Division as a gangman at Anand on 24th April, 1964, in regular open line, but in 1965, he was transferred to Permanent Way Inspector (I), Anand, and then in 1969. It is averred by the applicant in his application that due to sickness of his father he was compelled to remain on unauthorised absence on 6th September, 1969. It is alleged that the applicant was on active Military Duty under the Eastern Command and served in Bangladesh. He performed duty from 28th November, 1971 to 31st January, 1972, under Eastern Command field area in Genpur and on 31st January, 1972, he was repatriated to the Railway Administration and sent back to Anand to resume duty at Anand. It is his case that on his return from the Territorial Army, he reported for duty to Permanent Way Inspector (II), Anand, but the latter refused to take him on duty despite the fact that he showed him the duty pass and the certificates, directing him to resume duty. The applicant, thereafter, saw the officers incharge in the establishment Section but no officer gave any response. Thereafter, according to him he sent the application by Registered A.D. post to the Divisional Superintendent, Western Railway, Baroda, stating all facts and requested him to take him on duty and then he made representations through the office bearers of the Railway Trade Union but all proved futile. The applicant has produced at Annexure-A/1, the certificate from Major Officer Commanding, and Annexure-A/2, is the relieving certificate dated 31st January, 1972.

3. The learned advocate for the applicant submitted that the Senior Divisional Engineer (N), Baroda Division of Western Railway, by the impugned letter Annexure-A, dated 6th December, 1990, intimated the applicant that he was removed from service from 6th January, 1971, for unauthorised absence from 17th September, 1969 and hence his request could not be considered. It is important to note that this letter Annexure-A, was a reply given to the complaint made by the applicant as per his application dated 24th March, 1990.

4. The learned advocate for the applicant submitted that the order of removing Annexure-A, is null and void and violative of Article-311 (2), of the Constitution of India. It is important to note that the applicant had to file the application under Section-19 of the Administrative Tribunal Act, 1985, within a period prescribed under Section-21, of the Administrative Tribunals Act. More over, it is well settled by the Hon'ble Supreme Court of India in Rathore's case that repeated representations do not save limitation. It is also now well settled that a party aggrieved by void or invalid order has to file the application within the period of limitation. Thus, the applicant having not taken any action after he was not allowed to resume duty after he was relieved on 31st January, 1972, vide Annexure-A/2, ought to have taken proceedings according to law within limitation. The representation Annexure-A/4, A/6, and previous representations referred to by the applicant in his application can not save limitation. The application

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is hopelessly barred by limitation. The attempt was made by the learned advocate of the applicant to treat Annexure-A, letter dated 6th December, 1990, as the order of removal of the applicant from his service. But this is a reply to the complaint made by the applicant dated 24th March, 1990 in which it is mentioned that he was removed from service with effect from 6th January, 1971. The applicant in his application has alleged that ~~the~~ was drafted under Rule-33, of Territorial Army Rules for Territorial Army, in its Engineering Unit and was directly taken to Territorial Army Head Quarter at Kota and he performed ~~Military~~ Duty under the Eastern Command from 28th November, 1971 to 31st January, 1972, and he was relieved on 31st January, 1972, by the Officer Commanding who gave Relieving Certificate, produced at Annexure-A/2. The case of the applicant pleaded in the application is that when he went to report for duty to P.W.I. (II), Anand, with a Relieving Certificate, the latter refused to take him on duty. The applicant therefore, ought to have taken legal steps against the respondents for ~~not~~ taking him on duty within the period of limitation then applicable. The applicant does not seem to have cared about his alleged right till he filed this application in October, 1991. The applicant in his application for condonation of delay also has only stated that he came to know for the first time after 6th December, 1990, when he was informed about the removal from service from 6th January, 1971.

Ans

5. Having heard the learned advocate for the applicant we find no substance in the submissions of the learned advocate for the applicant that the delay in filing this application should be condoned nor we find any substance in not this application. The application is / filed within the period under Section-21 of the Administrative Tribunals Act, 1985. There is gross negligence and in action on the part of the applicant in not taking legal proceedings against the respondents after 31st January, 1972, when according to the applicant, he was not allowed to resume the duty.

6. In view of all these facts, the application M.A./368/88, for condonation of delay as well as the O.A./387/91, deserve to be dismissed summararily. The same are therefore, dismissed.


(R. Venkatesan)
Member (A)


(R.C. Bhatt)
Member (J)

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