

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 633/93
~~**T.A.NO.**~~

DATE OF DECISION 21.10.1997

Khodubha Kalubha Petitioner

Mr. M. M. Xavier Advocate for the Petitioner [s]

Versus

Union of India & Ors, Respondent

Mr. R. M. Vin Advocate for the Respondent [s]

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The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble Mr. T. N. Bhat : 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 ?

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Khodubha Kalubha
Plot No.219,
Karmachari Nagar,
Near Village Pulsar,
Bhavnagar.

: Applicant

Legal Heirs

1. Mrs. Ranjanba, widow
2. Miss Togitaben, minor daughter
3. Master Yuv Rajsing, minor son

(Advocate: Mr. M. M. Xavier)

Versus

1. Union of India through:
Its General Manager,
Western Railway,
Churchgate, Bombay-400 020.
2. The Divisional Railway
Manager, Western Railway,
Bhavnagar Division,
Bhavnagar Para-364 003.
3. Carriage & Wagon Superintendent,
Western Railway,
Bhavnagar Terminus-364 001.

: Respondents

(Advocate: Mr. R. M. Vin)

JUDGMENT

O.A. 633/93

Date: 21.10.97

Per: Hon'ble Mr. V. Radhakrishnan : Member (A)

The applicant states that he was initially appointed as casual labour under Inspector of works, Bhavnagar on 24.2.1975 and he was engaged thereafter on different dates as per Annexure-2. He was appointed thereafter in Mechanical Department under CTR, Bhavnagar on 22.6.1981. He was sent for Medical examination and after passing the same he was appointed as Substitute Khalasi under CTR,

Bhavnagar and there he has worked for different periods (Annexure A-2) . The applicant claims that he had acquired temporary status after working for 120 days even though with breaks. The applicant was arrested for committing offence under Section 302,504 & 324 of IPC on 3.9.1982. The respondents discontinued the services of the applicant vide letter dated 20.9.1982. The applicant was convicted to imprisonment by the Sessions Judge, Bhavnagar but he was acquitted in the appeal in the High Court in May, 1987. The applicant approached the respondents in May, 1987 and also submitted representation in July, 1987 to reinstate him in service stating that his juniors were being engaged. The applicant states that he received a letter dated 9.7.1993 from the respondents stating that "The case of Shri Khodubha K. Ex-Substitute, Bhavnagar was put up to the competent authority who has passed the order that decision conveyed vide dated 8.2.1991 held good. This is for your information please". The applicant alleges that he has not received the earlier letter dated 8.2.1991. The applicant claims that the impugned order of termination even though couched in the innocuous terms and the same is not so and in fact is stigmatic as a punishment. He claims that termination is against the Rules contained in the Indian Railway Establishment Manual, Indian Railway Establishment Code, provisions of I.D.Act and in violation of principles of natural

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justice. Accordingly, he claims for the following reliefs:-

- (a) Your lordships be pleased to quash and set aside the impugned order dated 9.7.93 (Annexure A-1) or any other order passed by the respondents in this connection and direct the respondents to reinstate the applicant.
- (b) Your lordships be pleased to hold that the applicant continues in service with all consequential benefits.
- (c) Your lordship be pleased to direct the respondents to treat the period in custody as deemed suspension and regularise the said period until reinstatement and pay full back wages.
- (d) Your lordship be pleased to grant any other relief that may be considered to be just and proper in the circumstances of the case."

2. The respondents have filed reply. They have taken a preliminary objection regarding delay and laches. The applicant was not allowed to join duty in 1987 and the application is filed in 1993 and it is time barred. They have admitted that the applicant employed as substitute w.e.f. 20.6.1981. They have denied that the applicant was granted any temporary status. They have also stated that the applicant was not a temporary railway servant. He was only a casual labour. The applicant was arrested on 4.9.82. He was in custody of more than 48 hours, hence his services were discontinued w.e.f. 20.9.82. The respondents have denied receiving any letter from the applicant dated 1987. He had applied only by letter dated 26.4.1989 which was replied to vide letter dated 9.7.1993. Moreover, they have stated

hat the High Court of Gujarat had acquitted him only giving benefit of doubt.

3. The applicant has filed rejoinder wherein he reiterated most of the arguments in the O.A. He challenged the contention of the respondents that the applicant's case was reconsidered after the judgment of the Gujarat High Court. He also denies the reference of letter dated 8.2.1991 from the respondents. He states that once being acquitted by the Gujarat High Court, the applicant deserved to be reengaged.


4. The learned counsel for the applicant has given written arguments mostly reiterating the points raised in the O.A. However, he has stated that the applicant is governed by the Indian Railway Establishment Manual deals with employees in temporary service. He claims that the applicant had attained temporary status and he could be discharged only after following the prescribed procedure and taking action against him under the Railway Servants (Discipline and Appeal) Rules, 1968. The applicant has also been placed under suspension which was not done. Therefore, he claims wages for the period from the date of deemed suspension i.e. 3.9.92 until he died on 25.12.94.

5. The respondents have filed written arguments. They have stated that vide letter dated 8.2.91 the applicant was informed that he cannot be reengaged. The applicant filed this O.A. in October,

1993 relating to his termination of service in 1982 and it is clearly time barred. The applicant had not acquired temporary status. He was only daily wage earner and he was paid wages for days on which he had worked. They have also stated that in terms of judgment of Himanshukumar vs. State of Bihar 1997 (4) SCC 391 that there is nothing like termination or applicability of Industrial Disputes Act in case of casual labourer who is not a regular public servant and article 311 of the Constitution of India does not apply because casual labour is not * in regular civil service of the union. They have stated that the applicant was not acquitted honourably. He had only been given benefit of doubt. In so far as the backwages are concerned, it is not payable on grounds of "No work-No Pay" and due to the time bar he could not claim wages for the back period.

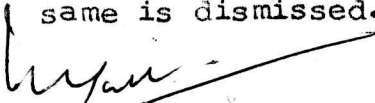
6. We have perused the written arguments for both the parties and gone through the documents submitted. The preliminary objection raised by the respondents is regarding delay in filing the O.A. The applicant was discontinued his service on 20.9.82 as per the written statement but has not produced any copy of the same. However, it is the fact that the applicant was in Jail custody for the period from 4.9.82 to 31.3.83. In 1987 he was acquitted by the Gujarat High Court. Even though the applicant claims that he moved the Railway authorities, he


has not produced any letter written by him or any acknowledgement received from the respondents or any reply to his letters. However, the applicant claims that the first intimation that his termination of service was received vide letter dated 9.7.93. We are unable to accept the contention of the applicant. The applicant is obviously time barred. The Hon'ble Supreme Court has recently held in judgment disposing of Special Civil Application No.s10469 to 10470/96 and also Civil Appeal Nos.11547 to 11550/96 that considerable delay in filing the application before the Tribunal cannot be condoned without sufficient reason and liable to be rejected on grounds of delay and laches. It has also been held by the Hon'ble Supreme Court in the case of P.K.Ramachandran vs. State of Kerala & Anr. (JT 1997 (8) SC 189 that condonation of delay of 565 days without reasonable or satisfactory explanation cannot be made. In this case the applicant was terminated from service in 1982. He has also not taken any action after being acquitted by the High Court in May, 1982. Even though he made representation in April, 1989, he was replied by the respondents in February, 1991. Even though the applicant claims that he represented again his repeated representations do not extend the time limit. Therefore, the O.A. suffers from laches and delay and it deserved to be rejected on this ground alone.



7. So far as the merits of the case is concerned, there is no case for the applicant as stated below.

8. We notice that the respondents have admitted that after medical examination the applicant was engaged as substitute. In para 1512 of Indian Railway Establishment Manual Vol, I (Revised Edition 1989) it is stated that substitute should be afforded all rights and privileges as admissible to temporary railway servants from time to time on completion of six months continuous service. We however, find from the details submitted by the applicant (Annexure A-2) that he had not completed continuous service of 120 days. In view of this where the applicant has not obtained the status of temporary he continued to be casual labour. Accordingly, we do not find any merit in the arguments of Mr. Xavier, learned counsel for the applicant that the applicant should be given all the benefits of temporary Government servant. Accordingly, the IREM / Railway Servants (Discipline & Appeal) Rules, 1968 do not apply to the applicant. On being arrested and kept under retention, his services were discontinued by the respondents. Being a casual labour, he could not claim any notice to be given to him to discharge him from service. Accordingly, we find no merit in the O.A. and the same is dismissed. No costs.


(T.N. Bhat)
Member (J)


(V. Radhakrishnan)
Member (A)