CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No.17 of 1996

Present: Hon'ble Dr. B.C. Sarma, Administrative Member

Hon'ble Mr. Paritosh Dutta, Judicial Member

ARUN KARMAKAR

VS

UNION OF INDIA & ORS

For the Applicant : Mr. Balai Chatterjee, counsel

For the Respondents : Mr. P. K. Arora, counsel

Heard on 20.6.1996 : : Date of order: 26.6.96

O R D E R

B.C. Sarma, AM

The applicant contends that he was appointed as Bunglow Peon and ~~was~~ served under A.D.R.M.(O) and the said appointment was on a regular basis in the time scale of pay, only with the stipulation that before completion of three years' continuous service and screening thereto, he would remain temporary. It was also stipulated in the appointment order that he was liable to be discharged from service at any time if his present officer or his succerssor does not like to retain him for any reason whatsoever. The applicant had completed about 290 days of service and thus acquired temporary status, but, for the reasons not stated in the impugned order, his services were terminated by an order dated 27.8.90. Accordingly, his engagement was discontinued and he ceased to be in the roll of substitute Bunglow Peon with effect from 27.8.90. The applicant contends that his disengagement, though in 1990, is a continuous act of denial of appointment and the authorities concerned have also committed a discrimination because of the fact that even after the removal of the applicant, one Chittaranjan Pal and another Shambhu Ram have been working as substitutes Bunglow Peon. The respondents have also engaged some other Bunglow Peons after his disengagement. Being agrieved thereby, the instant application has been filed with the prayer that a direction be issued on the respondents to reengage him in the service from the date on which the vacancy was illegally and wrongfully

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filled up as Bunglow Peon of the A.D.R.M(O) and also for inclusion of the name of the applicant in the panel as Substitute.

2. When the admission hearing of the application was taken up Mr. Arora, learned counsel for the respondents strongly opposes the admission of the application. Mr. Arora submits that the application is hopelessly time barred since the cause of action had arisen as early as in 1990 and the instant application has been filed only now. Mr. Arora also submitted that in this matter the applicant does not have any right and in any case he cannot be allowed to come at such a distant date. In this connection Mr. Arora invited our attention to a decision of the Full Bench ~~decision~~ of the Ahmedabad Bench of this Tribunal in the case of Dhiru Mohan v. Union of India & others, reported in Full Bench Judgments of CAT, Vol.II p.498, wherein it has been held that the Administrative Tribunals Act is a special law and provides for specific limitation. Limitation is applicable to an application assailing an alleged void order. Section 21 makes no distinction between an application impugning an irregular or illegal or a void order. The period of limitation prescribed in Section 21 of the said Act is applicable to an application challenging the void order. Mr. Arora, therefore, submits that since the applicant has challenged the impugned order as a void order in view of its alleged unconstitutionality on the basis of the above decision of the Full Bench it should ~~will~~ be held that the application is barred by limitation. He, therefore, prays for dismissal of the application in limine at the admission stage itself since such an application does not deserve to be admitted for hearing.

3. During hearing Mr. Chatterjee, learned counsel for the applicant cited a number of decisions and subsequently he also furnished a list of decisions on which he relies. We have perused all the judgments and our observations are as follows:

i) (1991) 16 ATC 18 - Ram Bilas Paswan v. U.O.I. & Ors.(CLW)

In this case the Calcutta Bench of this Tribunal held that termination giving retrospective effect is illegal and uncommunicated order of removal giving retrospective effect cannot be given effect from the date of issuance of the order. We, however, find that this decision is not applicable to the facts of the instant case.

ii) (1990) 12 ATC 162 - D. Lakshminarayana & others v. Divisional Personnel Officer, Bangalore Division, Southern Railway & others

In this case the services of the applicants and respondents No.3 and 4 were terminated simultaneously and the respondents though junior, were reengaged without reengaging the applicants. It was held that the cause of action to challenge the respondents' reengagement accrued to the applicants on the date of the former's reengagement and not on the date when their services had been terminated. It was also held that the claim of the applicants is one of continuing wrong. But on a careful perusal of the judgment it shows that the facts are not applicable in the instant case.

iii) 1995(1) ATJ 365 - Tapas Ghosh v. U.O.I.& Ors.

In this case the cause of action in respect of appointment arose in 1989 and the application claiming appointment was filed in 1993 and the plea of limitation was raised. The plea was rejected as the applicant had been treated arbitrarily by the authorities and he had a fundamental right to be treated equally alongwith others in which the reason for delay was duscussed subsequently. In this case we are of the view that the ratio of the judgment is also not applicable to the instant applicant.

iv) (1988) 6 ATC 380 - Ram Nath Chadha v. U.O.I.

In this case the challenge to the impugned order was based on ~~unconstitutional~~ discrimination, which is unconstitutional. It was held that the discriminatory order is void and limitation is not applicable. We are, however, of the view that this decision is not applicable in the instant case in view of the discussions which are being made in the succeeding paragraphs

v) AIR 1990 SC 2059 - Lt. Governor of Delhi & others v. Const. Dharampal and others.

In this case there was participation of Police in agitation and also termination of service. Some Constables were reinducted in view of public controversy and in deference to views expressed in Parliament. It was held that other similarly situated constables would also be entitled to reinstatement and other consequential benefits, even after more than 15 years. In view of the facts peculiar to the instant application, the above ratio of the judgment is not applicable in the instant case.

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vi) (1991) 17 ATC 26 - D.N. Pandey v. U.O.I.

In this case the application was filed in this Tribunal after 30 years for interruption in service which took place in 1956-57 and the application was entertained. This was a case for determination whether the earlier period of service from 17.1.1955 to 8.3.1956 rendered by the applicant with the respondents is to be considered as a qualifying service for the purpose of pay and pension of the applicant who retired on 31.3.1988. The ratio of the judgment is, therefore, not applicable in the instant case.

vii) (1987)2 ATC 444 - Gopal Anant Musalgaonkar v. U.O.I.& ors.

In this case 18 years' delay in filing petition, on facts, held, explained and hence the petition was not to be dismissed on the ground of laches or delay. However, in this instant case we find that there has been no convincing explanation of delay in filing the application. Therefore, the ratio of the judgment is not applicable in the instant case.

4. We have carefully considered the arguments of the learned counsel for both the parties and perused the records before us. At the outset we would like to observe that the applicant was appointed as an emergency substitute Bunglow Peon temporarily. In the appointment order dated 22.11.89, which is at annexure-A to the application, there was a stipulation that the engagement of the applicant does not confer upon him any claim or right for regular absorption before completion of three years continuous satisfactory service and screening thereto. His service is liable to be terminated at any time if his present officer or successor does not like to retain him for any reason whatsoever. The applicant was engaged by the order dated 22.11.89 and his engagement was discontinued after about nine months on the ground that his services are no longer necessary by the administration. The appl—icant duly received the notice of termination. There is no whisper to the effect that after receiving the order of disengagement as a Substitute Bunglow Peon, he had ever made a representation to the authorities concerned. The applicant has not produced before us any copy of such representation.

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It is also not the applicant's case that he went on representing against such disengagement. In that case even, repeated representations does not extend the period of limitation. The applicant was disengaged about six years ago and he has chosen now to come before this Tribunal raising his grievance for the discontinuance of his service as a Substitute Benglow Peon.

5. The only ground on which the applicant relies in filing the application and submitting that it is not barred by limitation is the plea that there has been discrimination in the matter of subsequent engagements of other persons particularly two persons which have been mentioned in para 4.5 of the application. The circumstances under which those two persons were engaged are not before us. It is not at all the applicant's case that these two persons along with the applicant were disengaged and the other two persons although junior to him, as contended by him, have been reengaged by the respondents. Simply because the applicant contends that the impugned action of the respondents is discriminatory does not make it so. The burden of proof that the impugned action is discriminatory and violative of the Arts. 14 and 16 of the Constitution is squarely on the shoulder of the applicant and he has not been able to demonstrate that in the impugned action there was an allegation of discrimination and hence void.

6. Section 21 of the A.T. Act, 1985 is very clear. The A.T. Act is a complete code in itself and the said Section deals with limitation. Sub-Section (1) of Section 21 runs as follows:

> "(1) A Tribunal shall not admit an application, -
>
> (a) 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;
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> (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

It will, therefore, appear from the above that this Tribunal shall not admit an application except under any circumstance as mentioned in sub-section (1) of Section 21, but it may admit an application within a period of one year as specified in clause (a) or clause (b) or Sub-

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section (1) as the case may be. Sub-Section (3) of Section 21 further states as follows:

> "(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

We have already mentioned that the applicant had miserably failed to convince us about such unusually long delay in filing the application. From the very conduct of the applicant after his disengagement we are satisfied that he was never aggrieved at the relevant time and, thus, he has abandoned his claim for reengagement, if at all he had at that time. As laid down by the Hon'ble Apex Court in the case of Ratan Chandra Samanta and others v. U.O.I & others, reported in 1993 IJR 251, delay itself deprives a person of the remedy available under the law. On the basis of the above law laid down by the Hon'ble Apex Court we have no hesitation but to hold that by making inordinate delay in filing the application the applicant himself gives up his right. We would also like to observe that the applicant before this Tribunal cannot chose his own suitable time to come despite a lapse of several years. If that happens the very purpose of section 21 of the Act will be rendered nugatory and such a situation cannot be permitted to happen. For redressal of grievance specially in administration it is extremely important that the aggrieved person should approach the Tribunal in time as laid down in the Administrative Tribunal Act. In view of this we are inclined to agree with Mr. Arora and relying on the Full Bench decision in Dhirn Mohan case, we hold that the application is hopelessly barred by limitation and it deserves to be dismissed at the stage of admission itself.

7. In view of the above we are of the ~~view~~ opinion that the application is hopelessly barred by limitation. The applicant himself is responsible for inordinate delay and laches in filing the application and he has thus deprived himself of his own right in the matter, if any. Consequently the application is dismissed at the stage of admission itself without passing any order as to costs.

Paritosh Dutta

(Paritosh Dutta)
MEMBER (J)

(B.C. Sarma)
MEMBER (A)

26/6/96.