

DJS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 08.11.2001

OA 298/2001

Suresh Dass, Khalasi under Dy.CME (W), Northern Railway,
Jodhpur.

... Applicant

v/s

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Dy.Chief Engineer (Workshop), Northern Railway, Jodhpur.
4. Divisional Personnel Officer, Northern Railway, Jodhpur.
5. Divisional Mechanical Engineer (C&W), Northern Railway,
Jodhpur.
Asstt. Personnel Officer, DRM Office, Northern Railway,
Jodhpur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.N.K.Khandelwal

For the Respondents

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O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

The applicant was appointed as a Substitute Khalasi on 22.7.80 in Carriage & Wagon Department, Northern Railway, Jodhpur. He got involved in a criminal case u/s 302 IPC on the basis of dying declaration of his wife, who died on 14.11.84 because of burns caused by fire. The applicant remained ~~in~~ in Police custody w.e.f. 10.12.84 to 13.12.84 and was sent to



judicial custody where, as per his own averments, he remained till his acquittal on 18.9.86. After being acquitted, he claims to have represented to the department for taking him on duty, on 3.10.86. The applicant submits since no action had been taken by the respondents, he filed an OA before this Tribunal (No.200/88). During pendency of the aforesaid OA, the applicant was taken on duty and he joined on 20.8.88.

It has been stated by the applicant that he was screened for his regular appointment as Khalasi on 28.11.84 and was found fit to be placed on the panel. OA filed by the applicant was disposed of by the Tribunal, on 23.8.93, as having become infructuous. According to the applicant, after disposal of his OA he submitted representations to the respondents for his regularisation from the date when his next junior, one Shri Nisar Ahmed, was regularised. He also contends that he ~~had~~ met the Assistant Personnel Officer, Jodhpur, personally but he has been informed vide letter dated 26.4.2001 (Ann.A/1) that his request for wages and fixation of pay after giving weightage of past service as a Substitute Khalasi cannot be ~~acceded~~ ~~to~~ acceded to. Feeling aggrieved, he has filed this OA with the prayer that the impugned order (Ann.A/1) may be declared illegal and quashed and that the respondents be directed to count the service of the applicant on the post of Substitute Khalasi w.e.f. 22.9.80 to 19.8.88.

3. Heard the learned counsel for the applicant on admission. From the averments in the OA and the documents brought on record and after hearing the learned counsel for the applicant, we find that this OA is hopelessly barred by limitation u/s 21 of the Administrative Tribunals Act, 1985 (for short, the Act). It is admitted by the applicant that after being



acquitted by the criminal court he joined his duty on 20.8.88. Cause of action for counting previous service rendered by him would have arisen only on that date. Learned counsel for the applicant stated that the applicant made a number of representations but the reply was given only vide impugned order dated 26.4.2001. Thus, the learned counsel contended that the cause of action should be taken to have arisen only on 26.4.2001, when the applicant's representation was finally disposed of. We have perused the impugned letter and we find this is merely an intimation to the applicant in response to his representations dated 27.6.2000 and 28.6.2000 that he had already been replied to vide letter dated 4.7.2000 that he had ~~been~~ not reported for duty when the appointment was offered to him and because of that he is not entitled to any payment of arrears or a benefit of the past service for fixation of his pay.

3. In V.S.Raghavan v. Secretary, Ministry of Defence, (1987) 3 ATC 602 (CAT) (Mad), the Tribunal held that, "A departmental representation made seven years after accrual of the cause of action could not stop limitation." In the instant case, the cause of action apparently ~~did not~~ arose only on 20.8.88, when the applicant took his appointment. At that time, OA 200/88 filed by the applicant was pending, which was disposed of on 23.8.93. We have perused the order of the Tribunal and we find that the Bench had noted that for back wages the applicant shall make a fresh representation to the concerned authorities concerned which, if made, the respondents ~~shall~~ will decide according to rules.

(S)

Having regard to this order of the Tribunal, cause of action can be deemed to have arisen on 23.8.93, when the said order was passed. It is obvious that the applicant slept over his own right and did not move the appropriate legal forum for remedy, if he was aggrieved with the non-action on the part of the respondents.

4. Learned counsel for the applicant submitted that after the order of the Tribunal, the applicant had made number of representations. Hon'ble the Supreme Court in the case of U.T.Daman and Diu and Others v. R.D.Valand, 1996 (1) SCC (L&S) 205, held that; "The Tribunal fell in patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way." The applicant has not filed copy of any representation alongwith the OA which he claims to have made soon after the order of the Tribunal in OA 200/88. In any case, as held by Hon'ble the Apex Court, repeated representations do not revive a cause of action. In S.S. Rathore v. State of Madhya Pradesh, 1990 SCC (L&S) 50, Hon'ble the Supreme Court has held that submission of just a memorial or representation to the Head of the Establishment shall not be taken into consideration in the matter of fixing limitation. While touching on the aspect of appeal and representation, as provided u/s 20 of the Act, the Apex Court observed as under :-

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the



order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of ~~px~~ preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

5. It is thus clear that for the purpose of Section-20 and 21 of the Act, the representation, as a departmental remedy, has necessarily to be statutory remedy. In the instant case, it has not been disclosed by the learned counsel for the applicant that there was any statutory remedy~~px~~ provided for claiming the relief, which the applicant is seeking by filing this OA. Even in case of statutory remedy, the representation or appeal is required to be made within time and if the same is not disposed of within the time provided u/s 20 and 21 of the Act, the application has to be filed within the period prescribed therein. In the instant case, as we have stated above, no statutory remedy in the form of an appeal or representation has been provided. Applicant's case is that he has made number of representations but the legal position is clear ~~xxx~~ that such repeated representations do not provide a cause of action.

6. In the light of foregoing discussions, we find this ~~st~~ OA as hopelessly barred by limitation, which deserves



to be dismissed.

7. We, therefore, dismiss this OA in limine on the ground of limitation.


(A.P. NAGRATH)
MEMBER (A)


(JUSTICE B.S. RAIKOTE)
VICE CHAIRMAN



Part II and III destroyed
in my presence on 21-5-07
under the supervision of
section officer (1) as per
order dated 9-3-2007

NGM
Section officer (Record)

RFC

~~Carb~~
3/12/01

Carb and gel complete 08-08-06
Power sect 40 resp 700
Vide dt 500 to 505
for 12-1-2001

APR 2
with 8700
for R 1, 234 & 5, 6