

IB 1/B

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No. 228 of 2002

And

M.A. No. 121 of 2002

Date of Order: 09.11.2004

**CORAM : HON'BLE MR.J.K.KAUSHIK, MEMBER (JUDL.) &
HON'BLE MR. G.R. PATWARDHAN, MEMBER (ADM.)**

Sukh Dev Nehra S/o Shri Bagta Ram, by caste Jat, R/o Village Nahro Ka Tala, Post Nokhra, Via Ravatsar, Tehsil Gudamalani, District Barmer.

Last employed on the post of Postal Assistant Superintendent of Post Office, Balotra.

..... Applicant

(Mr. R.K. Soni : counsel for the applicant).

VERSUS

1. Union of India through, The Secretary, Ministry of Communication, Department of Posts, Government of India, New Delhi.
2. The Post Master General, Western Region, Jodhpur.
3. The Superintendent of Post Office, Barmer.

(Mr. Vinit Mathur: counsel for the respondents).

.... Respondents

ORDER (ORAL)
[Per Mr. J.K. Kaushik, Member (J)]

Shri Sukh Dev Nehra has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has sought the following relief:-

- " (i) *the impugned order dated 19.6.2002 (Annex.A/1) may kindly be quashed and set aside with all consequential benefits and the applicant may kindly be ordered to be reinstated in service with all*

Dr.



I/10 14

consequential benefits on the post of Postal Assistant. The applicant's termination order dated 29th April, 1994, Annex. A/1-A may kindly be quashed, set aside and declared void ab initio with all consequential benefits to the applicants.

(ii) the respondents may be directed to grant to the applicant all the consequential benefits of his reinstatement including the payment of arrears of salary and assignment the seniority."

2. We have heard the learned counsel for both the parties on the Original Application as well as on the Misc. Application at a considerable length and have carefully perused the records of this case.

3. The abridged facts as borne out from the pleadings of the parties are that the applicant successfully completed the requisite training and came to be appointed to the post of Postal Assistant as per communication dated 31st December 1993. On 07.04.1994, a FIR No. 117/1994 was lodged against him on the report of respondent No. 3. Subsequently, the applicant has been acquitted by the Learned Additional Chief Judicial Magistrate, Barmer vide judgement dated 27.09.2000 in Criminal Case No. 251/2000 (State Vs. Sukh Ram). The applicant remained in service during the period from 5th January 1994 to 14th March, 1994. The applicant made a representation dated 17.01.2001 requesting the respondents to reinstate on the post of Postal Assistant but of no avail. The same was followed by a notice for demand of justice through his counsel on 17.01.2002. The applicant preferred an Original Application



2

127/2002 before this Bench of the Tribunal who was pleased to dispose of the same vide order dated 16.05.2002 directing the respondents that the representation dated 17.01.2001 of the applicant shall be disposed of by the Competent Authority within specified time. The matter was followed by another representation dated 3rd June 2002 but the respondents have refused to reinstate the applicant vide impugned order dated 19.06.2002 at Annexure A/1. The written termination order dated 29.04.1994 was received by the applicant alongwith the reply to the aforesaid O.A. The same has been challenged by amending this O.A. as Annexure A/1-A. The termination order of the applicant is not termination simpliciter under Rule 5 (1) of the CCS (Temporary Services) Rules, 1965 but is a stigmatic order passed as punishment without conducting any enquiry or giving any opportunity of hearing to the applicant. The Original Application is filed on diverse grounds enumerated in para 5 and its sub-para's wherein the action of the respondents has been said to be violative of Article 14, 16 and 311 of the Constitution of India. Besides that the applicant's service were terminated only on the ground of initiation of criminal case in which he has already been acquitted.

4. As regards the variances in the facts, it has been averred that cause of action arose to the applicant way back in the year 1994 for which the applicant has approached this Hon'ble



21

1/2
16

Tribunal in the year 2002 and the present O.A. is barred by limitation and suffers from gross delay and latches alone. The termination the applicant is having no connection with the criminal case. The services of the applicant were ordered to be terminated vide order dated 29th April 1994 being in temporary service and in lieu of one month's notice, pay and allowances of one month were ordered to be paid. The said order was served by registered post on 3rd May 1994 but could not be delivered to the applicant due to the reason that the applicant left his residence without leaving address. The representation of the applicant has been disposed of and rejected through a speaking order by the Competent Authority. There is nothing on the record to suggest that during 4-5 years the applicant has made any representation in the matter. The grounds mentioned in the Original Application have been generally denied.



5. The learned counsel for the applicant has reiterated the facts and grounds enunciated in the pleadings of the applicant. The learned counsel for the applicant has submitted that the applicant was not allowed to work in the Department of respondents' w.e.f. 15.03.1994 despite the fact that he was regularly appointed. He bonafidely believed that until and unless he is acquitted in the criminal case he cannot be reinstated in the service. He had filed O.A. No. 127/2002 before this Bench of the Tribunal who was pleased to direct the

22

I/A *17*

respondents to examine and decide his representation dated 17.01.2001 and the representation has been decided vide Annexure A/1. Thereafter the present Original Application has been filed within the limitation. He has submitted that since the applicant is challenging the termination with an abandoned caution – Misc. Application No. 121 of 2002 has been filed for condonation of delay in filing the Original Application No.228/2002. It is averred that the applicant did not act negligently in challenging his termination order and the technicalities/procedural irregularities like delay should not obstruct the substantial justice since the applicant has a meritorious case



6. Per contra, the learned counsel for the respondents has reiterated the facts and grounds raised in the reply filed on behalf of respondents to the Original Application as well as Misc. Application. As regards the reply to the Misc. Application, it has been submitted that the termination order came to be issued on 29th April 1994 under Rule 5 of the CCS (Temporary Service) Rules, 1965 and has no connection with the criminal case. Therefore waiting for acquittal in the criminal case would be no ground for condonation of the delay. The applicant has for the first time approached in the year 2002 and this Tribunal was pleased to give a direction to decide his representation and with the decision on his representation the applicant is trying to bring

2

2/11/18

the O.A. within the period of limitation. Therefore, there is absolutely no ground for condonation of the delay and the Original Application is liable to be dismissed on this count alone. As regards the factual aspect of the matter, the details of the defence are as mentioned in the reply to the Original Application are as noticed above.

7. We have considered the rival submissions put forth on behalf of the parties. As far as the factual aspect of the matter is concerned, it is true that the applicant remained in employment upto 14.03.1994. For the first time, he has made a representation on 17.01.2001 at Annexure A/9 wherein he has submitted that the applicant was appointed on the post of Postal Assistant and department initiated a case against him in the criminal Court in which he has been acquitted, therefore, he may be reinstated in service. This was followed by a notice for demand of justice on 17.01.2002 and the said representation as well as notice of demand of justice nowhere indicate that he has said even a word against his termination and his total case is regarding reinstatement/re-appointment in service. It is only in one of the subsequent representation dated 03.06.2002 there he has said that he may be reinstated in service by considering him in continuous employment.



8. We find from the order dated 16.05.2002, which was passed by this Bench of the Tribunal in earlier O.A. No.

2/

127/2002 (Sukh Dev Vs. UOI & Ors.) at Annexure A/11, that the direction was given at the stage of admission itself to the respondents to consider the representation of the applicant dated 17.01.2001 only. We have also observed that the representation dated 17.01.2001 does not contain any challenge to the termination order of the applicant, the termination of the applicant has not been challenged. We also do not find anything on the record to indicate as to what action the applicant has taken when his services came to be terminated in the year 1994 or as per his version he was not allowed to resume his duties. For this period the explanation forthcoming is only that the applicant waited for his acquittal in the criminal case which does not appeal to the reason; there is not even a single representation in this regard. The Misc. Application for condonation of delay also does not indicate any explanation to this. In this view of the matter, there is no explanation for condonation of delay in respect of the termination of the applicant which took place in the year 1994 and admittedly there is a delay of over 8 long years. Since there is no good and sufficient reason for condoning such a long delay, the Misc. Application No. 121/2002 for condonation of delay cannot be sustained and the same has to be only rejected and is hereby rejected, accordingly.



IPB 20

9. Now as regards the claim of the applicant for reinstatement in service, is concerned, the perusal of Annexure A/1-A indicates that the services of the applicant came to be terminated under Rule 5 of CCS (Temporary Services) Rule, 1965 and the challenge of termination itself is beyond the period of limitation as indicated above, there is no question of grant of any other relief as a result of his acquittal which has admittedly no nexus with the termination of the applicant. In this view of the matter no fault can be fastened with the action of the respondents in turning down and rejecting his representation.

10. Before parting with this case, we may also observe that the applicant has made a positive assertion in the pleadings that he was given the appointment on regular basis and his appointment was not on temporary basis. It seems to be his presumption as normally a candidate is appointed on probation in Group 'C' posts. It is difficult to accept the version of the applicant that he waited for his acquittal in criminal case before claiming his reinstatement in service. The version of the applicant that he was not allowed to resume his duties also gets falsified from the subsequent events since the applicant has not even made any protest against his not-taking him on duty and non-payment of the salary for very long period. In this view of the matter, it is equally difficult to believe that the applicant had no knowledge regarding his termination order. It seems that the



2

I/A 21

applicant has not come out with clean hands and has not made the clean breast of the facts of the case. Had he been aggrieved from his termination order and waited for his acquittal, nothing prevented him to challenge his termination order through his representation dated 17.01.2001 but such course of action has not been found expedient to him. In this view of the matter, the applicant has absolutely no case for our interference. We also make it clear that filing of a case before this Bench of the Tribunal at a belated stage would not cure the defect of the limitation which initially existed in very approaching this Bench of the Tribunal.



11. In the result, the Original Application has absolutely no merit or substance and the same is also hit by limitation, hence, the same stands dismissed. Keeping in view of the facts and circumstances of this case, the applicant is saddled with a cost of Rs. 1,000/- (Rupees One Thousand) to be paid by the applicant to the respondents within a period of two months from the date of receipt of a copy of this order.


(G.R. PATWARDHAN)
 Adm. Member


(J.K. KAUSHIK)
 Judl. Member

Kumawat

10/1/05
R/c copy with cost Bill

4/1/05
M

R/c copy with cost Bill