

म.स.म. (प्रक्रिया) नियमावसी के नियम 22 के अन्तर्गत जि: शुल्क प्राप्त

OA 361/05 282

2/6

1/7 8

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR.**

O. A. Nos. 346/2005, 347/2005, 360/2005 and 361/2005  
Date of order: 26.04.2006

**CORAM:**

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER**

**O.A. No. 346/2005**

Om Prakash S/o Shri Bhanwar Lal, aged 47 year, Resident of J-225, Near Power House, Pratap Nagar, Jodhpur, presently working as Easkar, 32 wing, Air Force, Jodhpur.

....Applicant.

**VERSUS**

1. Union of India through the Secretary to Ministry of Defense, Government of India, Raksha Bhawan, New Delhi.
2. The Air Commanding Officer, Air Force, 32 Wing Air Force, C/o 56 A.P.O.
3. Commanding Officer, 57, F.M.S.D. (forward Medical Stores Depot.), C/o 56 A.P.O.

....Respondents.

**O.A. No. 347/2005**

COMPARED &  
CHECKED  
3/

1. Devi Lal S/o Akheraj, Aged 47 year, Resident of Plot No. 78, in the back side of Sati Maa Mandir, Indra Colony, air Force Road, Jodhpur, presently working as Labour, 4(1), B.O.U., Banar, Jodhpur.
2. Mohan Lal S/o Sanker Lal Aged 48 year, Resident of House No. F-50, Near Ambedkar Park, U.I.T. Colony, Pratap Nagar, Jodhpur, presently working as Labour, 4(1), B.O.U., Banar, Jodhpur.

...Applicants.

**VERSUS**

1. Union of India through the Secretary to Ministry of Defense, Government of India, Raksha Bhawan, New Delhi.
2. The Commanding Officer, 57, F.M.S.D., (forward Medical Stores Depot.), C/o 56 A.P.O.
3. Commanding Officer, 4(1), B.O.U., Banar, Jodhpur, C/o 56 A.P.O.

....Respondents.

**O.A. No. 360/2005**

1. Madan Lal S/o Malu Ram, Aged 42 years, Resident of Civil Air Force Road, Pabupura, Jodhpur, presently working as Mazdoor, 19 F.A.D., Banar, Jodhpur.

2. Hot Chand S/o Bhanwar Dass Ji, aged 42 years, Resident of Kalal Colony, Nagori Gate, Gali No. 9, Jodhpur, presently working as Mazdoor, 19 F.A.D., Banar, Jodhpur.
3. Teja Ram S/o Bhagirath, aged 42 years, Resident of in the Back side of Sati Mata Mandir, Indra Colony, air Force Road, Jodhpur, presently working as Mazdoor, 19, F.A.D., Banar, Jodhpur.

**...Applicants.**

**VERSUS**

1. Union of India through the Secretary to Ministry of Defense, Government of India, Raksha Bhawan, New Delhi.
2. The Commanding Officer, 57, F.M.S.D., (Forward Medical Stores Depot.), C/o 56 A.P.O.
3. Commanding Officer, 19, F.A.D. Banar, Jodhpur c/o 56 A.P.O.

**.....Respondents.**

**O.A. No. 361/2005**

Narayan Ram S/o Shri Uda Ram, aged 46 years, Resident of Ucharda Sikargarh Road, Jodhpur, presently working as Mazdoor at M.H. (Military Hospital), Jodhpur.

**...Applicant.**

**VERSUS**

1. Union of India through the Secretary to Ministry of Defense, Government of India, Raksha Bhawan, New Delhi.
2. The Commanding Officer, 57, F.M.S.D., (forward Medical Stores Depot.), C/o 56 A.P.O.
3. Commandant, H.M. (Military Hospital), Jodhpur.

**.....Respondents.**

Mr. Hemant Shrimali, counsel for applicants in all O.As.

Mr. M. Godara, proxy counsel for Mr. Vinit Mathur, counsel for respondents in all O.As.

**ORDER**

Shri Om Prakash, Shri Devi Lal & Anr; Shri Madan Lal & Ors. and Shri Narayan Ram have filed their separate Original Application Nos. 346/2005, 347/2005, 360/2005 and 361/2005, respectively, under Section 19 of the Administrative Tribunals Act, 1985, and have prayed that an order/direction may kindly be issued against the respondents to regularize services of the applicant(s) from the date of initial



appointment i.e. from 1983/1984 in compliance of the direction given by the Hon'ble Tribunal on 16.09.1993 in OA No. 314/92 and same may be communicated to the applicant or in alternative, applicant representation may kindly be decided on merits or pass any appointment order which Hon'ble Tribunal thinks fit in the interest of justice."

2. In all the above four cases, the common question of law is involved and therefore, it is considered expedient to decide them through a common order. With the consent of learned counsel for both the parties, the cases were taken up for final disposal at the stage of admission. I have accordingly heard the arguments advanced at the bar by the learned counsel representing the contesting parties and I have carefully perused the pleadings as well as records of cases.

3. The abridged facts of these cases are that the applicants were casual labourers in F.M.S.D. since 1983/1984 but they were not regularized as per the policy in vogue. They approached this Bench of the Tribunal by filing an Original Application No. 314/92 which came to be decided on 16.09.1993 and the following direction was given:-

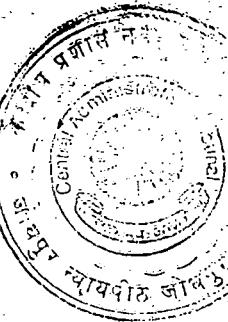
"We, therefore, dispose of this OA by giving a direction to the respondents to take steps for regularization of the applicants in view of the OM dated 22.3.82 as also in view of Clause 15 of the Standing Orders which deals with the regularization, within a period of six months from the date of this order. We further direct that in view of the interim order passed by this Tribunal on 20.10.92, the respondents will not give breaks without following the due procedure of law during this period. There will be no order as to costs."

4. In pursuance with the aforesaid directions, all the applicants were given permanent postings on regular appointment to various units through movement order at Annexure R/1. All of them joined their duties immediately on 15<sup>th</sup> July 1994 and since then they are continuously working as regular employees. Simultaneously, the

applicant preferred their individual representations in December 2004, for regularisation of their services. The applicants also filed their respective OAs and the same were allowed to be withdrawn with liberty to file fresh as indicated at Annexure A/6 of 26.10.2005. Thereafter, these Original Applications have been preferred on multiple grounds mentioned in para 5 and its sub-paras.

5. The respondents have filed the detailed reply to the Original Applications and have taken certain preliminary objections regarding their maintainability. They have also refuted the factual position and have submitted that the services of the applicants were regularized from 15.07.1994, which is evident from the very movement orders. The Original Applications are suffer from delay and latches. The grounds indicated in OAs have been generally denied.

6. Both the learned counsel for the parties have reiterated the facts and grounds mentioned in their respective pleadings as notices above. Learned counsel for the respondents has emphasised the preliminary objection and contended that the Original Applications are not maintainable since the cause of action to the applicants have arisen somewhere in 1994 and the Original Applications are highly belated and not maintainable since no application for condonation of delay have been preferred. He has also contended that even the execution of order cannot be done through the OA and that too after such a long delay. The learned counsel for the applicants has made to traverse through page 33 of the paper book (O.A. No. 346/2005) whereby a rejoinder to the reply has been filed and certain narrates have been made regarding the objections to the point of limitation. It has been mentioned that the factum of regularisation of the applicant



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J/S

came to be known only when the respondents filed the reply to the O.A. No. 95/2005 and the applicant's case was that as per very circular they ought to have regularized from the date entering into service and the relief sought is for regularization of services which is a recurring cause of action, hence, delay would not become obstruction.

7. I have considered the rival submissions put forth on behalf of both the parties. Before advertiring to the facts, I consider it expedient to adjudicate upon the preliminary objections. As far as factual aspect of the matter is concerned, I find from Annexure R/1 that the applicants were issued with the movement order for joining permanent duties on regular appointment vide letter dated 12 July 1994, which was given effect to from 15<sup>th</sup> July 1994. The movement order itself makes it clear that the regular appointment was given to them and they have acted on this and assumed their respective duties. They have also accepted the pay and allowance which were payable to them after joining in the regular posts. The representation Annexure A/5 does indicate that the applicants were ignorant of the aforesaid regularization and asked the respondents-department to regularize them or else if already regularized, to intimate the date of regularization. This is the communication dated 7.12.04 (OA No. 346/2005) thereafter there has been complete pin-drop silence and it is only the OA No. 95/2005 was filed before this Bench of the Tribunal just after a decade. During the intervening period, there is no explanation for any delay. In any case, the initial cause of action has arisen to the applicants on 15.07.1994, when the applicants were given posting on regular posts. Thus, the O.A. ought to have been filed by 15.01.1995 as per the provisions envisaged in section 21 of A T Act 1985. This O.A. has been filed on 8.12.2005, so there is a clear-cut



delay of about more than 10 years. No doubt, the learned counsel for the applicant has tried to persuade me that there was a cogent reason for delay; however, I find firstly that there is no explanation of delay from 1994 till 2004. Secondly, no application for condonation of delay has been filed. I am not persuaded with the submission of the learned counsel for the applicants that the applicants came to know regarding their regular appointment only after filing of OAs in 2005. Evidently, they were issued the movement order, which contained specific words to this effect, and they have been enjoying the regular employee's status since 15.7.1994.

Filing of a representation at the sweet will of an individual (i.e. in 2004 here) would not give rise to fresh cause of action. The same can not extend the limitation and would not give fresh cause of action to the applicant in view of the settled the proposition of the law which has been laid down by the Apex Court through its Constitution Bench judgement which came to be delivered by 7 Hon'ble Judges of the Supreme Court in the case of **S S Rathore v. UOI** reported in AIR 1990 SC 10, wherein their Lordships have held in unequivocal terms that the repeated representations would not extend the period of limitation and the benefit of limitation can be given only where any statutory remedy has been availed of. In the instant case, no such remedy has been availed of. In this view of the matter, the OA is badly hit by the limitation and the same has to be construed as highly belated.

8. As regards the objection from the side of the respondents that the order of the Tribunal cannot be got executed through an OA is concerned, I find that the prayer in the OA is not been happily worded and the cases have been filed on the premises that the applicants have

not been regularised. Leaving open the question regarding execution of order of the Tribunal through an OA, it is true that even the execution petition has to be filed within one year of the date of order passed by the Tribunal as per the verdict of Apex Court in case of **Hukum Raj Khinveraj vs. UOI** 1997(3) Supreme 555 = AIR 1997 SC 2100. The same having not been so filed, the OA is hit by law of limitation, on this count also

9. Now, I would examine the effect of delay in filing of the OA before the Central Administrative Tribunal. It has been categorically held by the Hon'ble Apex Court in case of **Ramesh Chandra Sharma vs. Udhamp Singh Kamal and Others** ATJ 2000(1) SC 178, wherein their Lordships have held that until and unless the delay in filing of the OA is condoned by the Tribunal, the O.A. cannot be adjudicated on merits.

In that case, their Lordships were dealing with the case of promotion wherein the Tribunal entertained the case on merits without condoning the delay in filing of the OA. The order of the Tribunal was set aside holding that the Tribunal cannot examine the case on merits unless the delay is condoned. In the instant case, since no application for condonation of delay has been filed, the question of condoning the delay does not arise and therefore these O.As cannot be entertained on merits.

10. In the premises, all the Original Applications suffers from delay and latches and the same stands dismissed, accordingly, without going into the merits. However, there shall be no order as to costs.

(JK KAUSHIK)  
JUDICIAL MEMBER

Kumawat

CERTIFIED TRUE COPY  
Date: 28/7/2023

Central Administrative Tribunal  
Delhi - 110001  
Jodhan Singh, J.A.

Complaint made  
in O/S 3 sub/05  
first  
9/5

Part II and III destroyed  
in my presence on 04.4.14  
under the supervision of  
section officer (J) as per  
order dated 31.11.14.....

Section officer (Record)

W/M