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CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH
JODHPUR (RAJASTHAN)

ORIGINAL APPLICATION NO. 300 of 2007

Date of Order : 22nd Day of November, 2007.

Shri Goverdhan Lal Gayri

.....Applicant.

By Advocate – Shri S.P.Sharma.

Versus

The Union of India and others

.....Respondents.

CORAM:

HON'BLE MR. JUSTICE A.K. YOG, JUDICIAL MEMBER

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER



Whether Reporters of local papers may be allowed to see the judgement. *No^m*

To be referred to the Reporter or not? *Yes^{an}*

Whether their Lordships wish to see the fair copy of the Judgement? *No^m*

Whether it needs to be circulated to other Benches of the Tribunal? *Yes^{an}*

Tarsem Lal
(Tarsem Lal)
Admv. Member

A.K. Yog
(Justice A.K. Yog)
Judl. Member

jrm

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JODHPUR (RAJASTHAN)

Original Application No. 300 of 2007

CORAM:

HON'BLE MR. JUSTICE A.K. YOG, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Date of Order : 22nd Day of November, 2007.

Shri Goverdhan Lal Gayri S/o Shri Ram Lal Gayri aged about 33 years,
resident of Seemal, Tehsil nathdwara, District Rajsamand (GD SMC Sub
P.O. Semal Khemnor).

.....Applicant.

By Advocate – Shri S.P. Sharma.

Versus

1. The Union of India through Secretary, Ministry of
Communication, Postal Department, Dak Bhawan, New Delhi.

2. The Additional Superintendent of Post, Chetak Circle, Udaipur.

3. The Inspector, Postal Department, Mandir Road, Nathdwara.

.....Respondents.

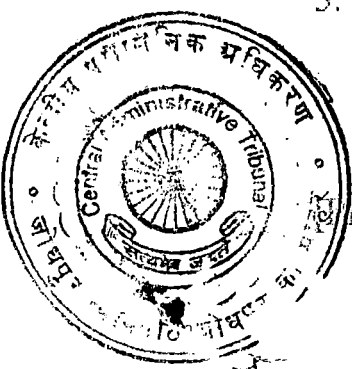
ORDER

MR JUSTICE A.K. YOG, JUDICIAL MEMBER]

This O.A. is for declaration and an appropriate
mandamus/direction to the respondent/s to permit and enable the applicant
to continue in service. There is no 'termination order' as such in writing and
hence, the applicant is not expected or required to file it. Noting by the
Registry dated 21.11.2007 is ignored.

Let O.A. be registered. Ordersheet, as required under Chapter IV
Rule 12 to 18 of Central Administrative Tribunal, Rules of Practice, 1993,
be placed on record.

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We have heard the learned counsel for the applicant, at length.

Goverdhan Lal Gayri, applicant in the above O.A. (called the applicant), was working as GDSMC in Postal Department on being appointed without seeking approval of competent authority. He was, thus, never appointed. He was seized from services by means of the the order dated 6.1.2003.

Being aggrieved, the applicant challenged said removal/termination order dated 6.1.2003 by filing O.A. No. 16/2005 along with M.A. No. 3/2005 (praying for condonation of delay) before this Tribunal (Jodhpur Bench) which were after hearing the parties, dismissed by Division Bench of Hon'ble Mr. J.K. Kaushik, Judicial Member and Hon'ble Mr. J.P. Shukla, Administrative Member, by passing speaking order dated 15.9.2006; Annexure A-2 to the O.A. wherein, it is recorded that the Interim order passed in O.A. No. 16/2005, was vacated forthwith. For convenience, relevant self-explanatory para Nos. 6 and 8 of the aforesaid order dated 15.9.2006 Annexure A-2 to O.A., are reproduced.



"6. We have considered the rival submissions and as far as factual aspect of the matter is concerned, there is hardly any dispute. Before advertng to the merits of this case, we consider it appropriate to deal with the Misc. Application for condonation of delay. The submitted position of the matter is that the impugned order came to be issued on 05.01.2003 and as per Section 21 of the Administrative Tribunals Act, 1985, the Original Application ought to have been filed by 05.01.2004. However, the matter had been agitated before the Hon'ble High Court of Rajasthan at Jodhpur and there the S.B. Civil Writ Petition No. 357/2003 was dismissed as withdrawn with liberty to file an original application before the Central Administrative Tribunal within a specified period of ten days from 19.09.2003, meaning thereby that Original

be.

Application was required to be filed before 29.09.2003 but the same has been filed only on 07.01.2005. Thus, there is a delay of about one year and three months. The explanation forthcoming is amazing and deceptive. The application for condonation of delay does not specify that there has been delay in filing the Original Application and there is no prayer even for condoning the delay. The reasons adduced are the applicant was continued in service despite the order of termination and therefore the Original Application is within limitation. It is really surprising that such reasons could be said to be good and sufficient reason for condoning the delay. We are not at all satisfied that there is any satisfactory explanation or any good and sufficient reason for condoning the delay in filing of this O.A. and the Misc. Application No. 03/2005 is hereby rejected.



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8. In the premises, the Original Application shall have to be dismissed being not within the limitation without going into the merits and we do order accordingly but without no order as to costs. The interim order already issued in this case stands vacated forthwith."

Interestingly, perusal of para 6 of the aforequoted order of the Tribunal, shows that the applicant showed no eagerness to approach the Tribunal and failed to justify the inordinate delay on his part. He is per-se guilty of 'hide and seek'. One cannot miss the unescapable inference from admitted facts on record, that the applicant deliberately did not act promptly and managed to continue in service under 'interim order' of High Court/Tribunal. The applicant nowhere pleads / suggests that at any relevant stage, the respondents ever decided or resorted to reinstate the applicant. In absence of requisite pleadings/material on record, it is not possible to infer / 'waiver' / 'Acquiescence' or 'Estoppel'. Apart from anything, the applicant is required to plead and prove that the respondent / competent authorities 'reinstated' and/or re-employed the applicant or at any stage, decided not to enforce termination order dated 6.1.2003 or withdraw it or otherwise allowed the

for.

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applicant to continue in service – after concerned respondent – authority acquired de facto knowledge of Tribunal order dated 15.9.2006 (Annex.A/2 to O.A.) and interim order being discharged. Unmistakably, respondent, did not interfere and some time passed, under wrong impression of existence or continuance of interim order of Court/Tribunal.

Essential facts – necessary to be pleaded and proved to attract 'Doctrine of Estoppel' – are :-

- (1) There is positive 'representation' and/or assurance ^{or not opposed to law} giving rise to 'expectation';



That the person claiming protection of this Doctrine (based on it) has acted on such representation;

That said person has, while relying upon representation / assurance of the other person, changed his position to his prejudice / disadvantage; and

- (4) later, such 'representation/assurance' – is withdrawn ^{causing injury} to the person acting on such representation.

The applicant cannot succeed on 'vague' or incomplete pleadings.

He has to stand on his own pleadings to establish at least prima facie case of Estoppel / Acquiescence.

In the instant case, we find no pleadings to the above effect. Moreover, it is to be seen that the applicant admittedly, 'worked' under interim order passed by Rajasthan High Court. ^{or} ~~was~~ in Writ Petition No. 357/2003 and later – after a break of one year and three months (approx.)

or

under ^{an} ~~Tribunal~~ interim order passed by the Tribunal in O.A.No. 16/2005. Respondents did not change their stand ^{an and at all stages an} / contested 'claim' of the applicant -- ~~On~~ ^{an} ~~the Tribunal~~ till O.A. was dismissed on 15.9.2006 (Annex.A/2).

Apart from the above, when O.A. No. 16/2005 was dismissed and interim order vacated by the Tribunal vide its order dated 15.9.2006 (Annex.A/2 to O.A.), the applicant had no 'moral' or 'legal' justification to continue to discharge 'duties' and draw salary, if any. Working of the applicant after 15.9.2006 is wholly 'un-authorised', incompetent, illegal and in fact 'Non-est'.

Relevant pleadings on the basis of which 'reliefs' are claimed in the present O.A., are contained in paras 4.1 to 4.7 of the O.A. which are reproduced for ready reference -



"4.1 That the applicant was appointed on the post of GDSMC on 6.6.2001 and thereafter, he is continuously without any kind of break discharging his duties under the respondents. It is relevant to mention here that though no formal order of appointment was issued in favour of the applicant but a charge report dated 5.6.2001 is there whereby the applicant has taken over the charge of GDSMC at Semal office. A copy of the charge report dated 5.6.2001 is submitted herewith and marked as Annexure A/1.

4.2 That before proceeding further, it is relevant to submit here that while working under the respondents vide order dated 6.1.2003, the services of the applicant were terminated on the ground that he was engaged without approval of the competent authority. The applicant being aggrieved of the order dated 6.1.2003 preferred a Writ Petition before the Hon'ble Raj. High Court being S.B.Civil Writ Petition No. 357/2003 wherein the Hon'ble High Court was pleased to grant stay in favour of the applicant / petitioner and thereafter, the writ petition was withdrawn for want of jurisdiction for agitating his grievances before the

appropriate forum.

4.3 That the applicant filed an Original Application before this Hon'ble Tribunal being Original Application No. 16/2005 assailing the validity of the order dated 6.1.2003 and this Hon'ble Tribunal was pleased to grant stay in favour of the applicant. It is pertinent to mention here that though the Original Application was preferred by the applicant after expiry of the time granted by the Hon'ble Raj. High Court but still he was continue and he was not terminated from the service by the respondents.

4.4 That the Original Application No. 16/2005 preferred by the applicant came to be rejected on the ground of delay and laches by this Hon'ble Tribunal vide order dated 15.9.2006. A copy of the order dated 15.9.2005 is submitted herewith and marked as Annexure A/2.

4.5 That despite the fact of dismissal of his original application by this Hon'ble Tribunal neither any adverse order was passed nor the order dated 16.1.2003 was given effect by the respondents and the applicant calmly and to the satisfaction of the respondent authorities. During this period, the applicant has also been issued with the appreciation letter for carrying the business of 17 lacs vide appreciation letter dated 29.12.2006 i.e. by the respondent No. 2. A copy of the appreciation letter dated 29.12.2006 is submitted herewith and marked as Annexure A/3.



4.6 That not only the applicant was appreciated once but his work and performance was is being appreciated regularly by the departmental authorities would be evident from the annual inspection report of 2007 dated 11.10.2007 wherein also as per the inspecting officer report, the work of the applicant has been found satisfactory. A copy of the inquiry report dated 11.10.2007 shall be kept readily available for kind perusal of this Hon'ble Tribunal at the time of hearing of the matter.

4.7 That the applicant was discharging his duties without any interference and adverse order against him till 16.11.2007 but on 16.11.2007, the respondent No. 3 came to GDSPO Semal (Khenor) where the applicant is working and he told the applicant that his services shall stand terminated with immediate effect and on asking about such order, the applicant was told that no order is required to be passed and tomorrow onwards, he need not to come for duty and after this, he locked the post office and took the keys along with him, therefore, in these circumstances, the applicant being

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aggrieved of such illegal, arbitrary action of the respondents which is totally in gross violation of principle of natural justice, prefers this Original Application before this Hon'ble Tribunal."

The pleadings in the present O.A., contain no averment to the effect that respondents withdrew order dated 6.1.2003 at any stage or fresh order/s of appointment/re-appointment was issued creating new rights in favour of the applicant to hold the post in question within the knowledge of 'appointing authority'. So being having knowledge of the Tribunal order dated 15.9.2006 and conscious of the said fact the applicant was continued on his post. Applicant fails to establish 'Waiver'/'Estoppel' against the respondents.



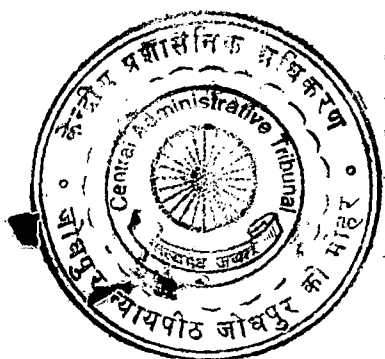
Working under interim order ^{an} ~~does not~~ ^a created no fresh rights, much less a right enforceable in Court ^{as} ~~can~~ ^{which} be said to be created or 'crystalised' in favour of the applicant. Working under interim order is always subject to final decision. There is no case of the applicant that order of the Tribunal dated 15.9.2006 in O.A. No. 16/2005 was challenged before higher forum. Said order dated 15.9.2006 is intact and in its wake, applicant cannot be permitted to maintain this O.A.

The applicant admits that Writ Petition No. 357/2005 was dismissed by High Court vide order dated 19.9.2003 with liberty to file O.A. within ten days (upto 29.9.2003). O.A. No. 16/2005 was filed on 7.1.2005 i.e. after one year and three months. Tribunal, while dismissing said O.A. No. 16/2003 as time barred vide its order dated 15.9.2006, Annex. A/2 to

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O.A., noted that the applicant had failed to explain the long delay. Till that stage – applicant did not plead Estoppel/Waiver and the the present O.A. has been filed on the pleadings, inter alia amongst others, that applicant has been working continuously through-out till date and, therefore, it implies that the applicant was not treated 'terminated' on the basis of order dated 6.1.2003 (referred above) and allowed to continue in service.

The applicant has placed reliance upon 'appreciation' letter dated 29.12.2006, to show that the applicant was continued to work in spite of Writ Petition and O.A. being dismissed on 15.9.2006 and even when there was no 'interim order' of Court. This 'appreciation' letter/certificate purports to be issued at Nathdwara, by Pravar Adheekshak – Dak Ghar – Udaipur Mandal, Udaipur. English translation of said Certificate (filed as part of Annex. A/3) reads --



"It is Certified that Shri Goverdhan Lal Branch Post Master Seemal (Khamnor) has obtained first position in the fair held on 29.12.2006 at Nathdwara Sub Post Office by making a total collection of Rs. 17 Lakh in business transaction under Postal Life Insurance / Rural Postal Life Insurance.

His services has been commendable."

Certificate dated 29.12.2006 (Annex.A/3), cannot be equated and treated at par with an 'action' to grant or extend 'new employment or reinstatement' or to give justifiable basis to infer that the respondent/s being alive of Tribunal order dated 15.9.2006, (and being conscious that termination order dated 6.1.2003 was intact) permitted the applicant to discharge duties as of independent right accruing in favour of the

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applicant. There is no evidence/basis to constitute or infer 'Waiver'/'Estoppel' or 'Acquiescence'. Annex. A/3 and/or inspection report dated 11.10.2007 (referred in para 4.6 of the O.A.) cannot take place of the pleadings and therefore not sufficient to satisfy 'the requirement of pleading' to constitute waiver/estoppel/acquiescence.

Applicant was required to specifically plead and prove that the concerned competent authority (including appointing authority), after acquiring de-facto knowledge of O.A. being dismissed and interim order discharged on 15.9.2006, allowed the applicant to work ignoring termination order dated 6.1.2003, or otherwise decided not to rely upon or enforce said order dated 6.1.2003 and thus, created fresh rights in favour of the applicant so long as termination order dated 6.1.2003 stands, the applicant cannot succeed in this O.A. on the basis of the pleadings on record, as they stand.



It is not unusual, that 'judgement and orders' of Court/Tribunal, do take time to reach concerned authorities/sub-ordinate officers in official hierarchy. 'Orders' are, even if received, kept closed in files – moving at the sweet will of 'Ministerial Staff' and even if placed before concerned authority.

Further, it is to be seen that the Tribunal in para 3 of its order dated 15.9.2006 (Annex.A/2 to this O.A.), has noted -

by

" 3. 06.01.2003 came to be passed by which the persons who had been engaged without the approval of the competent authority, were ordered to be terminated from service with immediate effect. "

From the above, it is clear that applicant was never legally and validly appointed. There was no 'appointment' as such and his engagement was ~~on~~ ^{Q1} ~~est~~ ^{Q1} void ab-initio. Further, continuance of the applicant in service who was never legally appointed, is by no means in 'public interest'. In the facts and circumstances of the present case, plea of 'Estoppel' / 'Waiver' - based on 'Doctrine of Equity', has no legs to stand and simply not attached.

Reference may be made to the case of - I.T.C., Bhadrachalam Paper Board and Another Vs. Mandal Revenue Officer and Others reported in (1996) 6

634.



Shri S.P. Sharma, Advocate, insists to record that he requested for time to file 'additional affidavit' to bring on record 'Annual Inspection-Report dated 11.10.2007' to show that applicant has been working 'satisfactorily' in the Department as referred in para 4.6 of the O.A. At the first instance, we are of the opinion that filing of additional affidavit to bring said report on record - will not improve the case of the applicant and shall serve no purpose of the applicant. Reasons given with respect to 'Certificate Annex. A/3 to the O.A.' also apply to said 'report' also. Secondly, we find that this belated request is only to get the case adjourned at the fag end of hearing and it is nothing but an attempt to prevent us to decide the O.A. finally and thus linger the litigation. We do not approve of such endeavour as it will ^{be encourage as} ~~give rise to~~ a bad 'practice'/precedence.

The present O.A., in our opinion, is nothing but gross abuse of process of law and Court warranting penal costs. We, however, refrain ^{from} ~~to~~ ^{impose} costs considering that applicant is already out of job and also that the respondents have not been yet called upon to put in appearance.



Certified copy of this order be sent within two weeks of date of order by speed post A.D.- to the respondent No. 3 for information.

The O.A. is dismissed summarily at admission stage.

No costs.

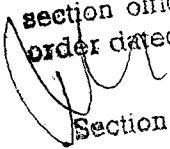
^{As}
Tarsem Lal
(Tarsem Lal)
Adm. Member

^{As}
A.K. Yog
(A.K. Yog)
Judl. Member

NO. 277 to Rep No. 3 by speed post AD
DL-10.12.7

Approved copy
Vise No 284
DT 19/12/02

Part II and III destroyed
in my presence on 05-6-14
under the supervision of
section officer () as per
order dated 26-3-14.


Section officer (Record)