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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No. 510/2011

Date of decision: 1st January, 2013

CORAM

HON'BLE MR. B.K. SINHA, ADMINISTRATIVE MEMBER

Vazir Khan S/o Shri Ajim Khan
Age 55 years, B/c Muslim, R/o Village
Guda Akaeraj P.O. Kesuli Via-Nadol, Distt.
Pali, At present residing at : Village-Ramasiya,
Post-Hemawas Distt. Pali

.....Applicant

(By Advocate Mr. Mahipal Rajpurohit)

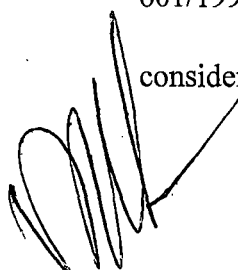
Vs.

1. Union of India through the General Manager
North Western Railway, Jaipur
2. The Divisional Railway Manager,
North Western Railway, Ajmer Division, Ajmer.
3. The Senior Divisional Personnel Officer,
North Western Railway, Ajmer Division, Ajmer.

.....Respondents

(By Advocate Mr. V.K. Vyas)

ORDER

1. The instant OA is directed against the order dated 3.12.2002 disallowing the representation of the applicant submitted as per the directives of this Tribunal in OA No. 601/1996 vide order dated 24.1.2002. The OA is further directed against non-consideration of the representation dated 16.07.2011 by the applicant.
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2. The applicant has prayed for the following relief(s):-

- “(a) That the present OA may kindly be allowed and accepted with costs.*
- (b) That by an appropriate order or direction, the respondent authorities may kindly be directed to comply with the previous orders of Headquarter Office of the respondent department, Hon’ble CAT Chandigarh and Hon’ble High Court of Punjab and Haryana, and there by directed to reinstated / reemployed the present applicant with all consequential benefits along with regularization of his services.*
- (c) That other appropriate relief, which this Hon’ble Tribunal found just and proper as per the facts and circumstances of the present case, may also kindly be allowed in favour of the present applicant.”*

3. The case of the applicant is that he had been appointed as a Casual Labour on 6.1.1976. and was removed from service on 30.6.1996 without having assigned any reasons by an oral order after having served for 20 and half years (totaling 7475 days). The applicant moved an application dated 22.8.1996 to the Divisional Railway Manager, Ajmer (Respondent No.2) for his adjustment against some other post on sick/leave absence post which was not redressed by the competent authority. The applicant then filed OA No. 601/1996 before the Ahmedabad Bench of the Tribunal which was disposed of with a direction to the respondents to consider and decide the representation moved by the applicant for his engagement as Hot Weather Waterman vide the order dated 24.1.2002 [A/2]. The representation filed by the applicant was rejected by the respondent No. 3 vide its letter dated 16.12.2002 [A/3] stating that since Water Coolers etc. have been installed at the Railway Stations for providing drinking water, therefore, there is no such requirement of casual workers as Hot Weather Watermen . The applicant submits that recently he has received information regarding reengagement of such employees in the respondent department. It was learnt on further enquiry that a recommendation has been made by the Station Superintendent, Palanpur for reinstatement of the applicant. Petition under Right to Information Act brought it to light that similarly situated fellow

employees were not only be reinstated by the respondent department but had also been given the benefit of Class IV status. The applicant has submitted documentary evidence vide Annexures A/4, A/5 and A/6 respectively along with his OA establishing that similarly placed persons who have worked earlier as Hot Weather Watermen/Women had been considered and regularized under Paragraphs 2005 and 2006 of the Indian Railway Establishment Manual, Vol. II and other Instructions issued in this respect from time to time. Armed with this information, the applicant submitted a representation praying for similar treatment which has not been disposed of till this date. [A/6]. The applicant submits that he has already served for 7475 days and was due for regularization. His case has been recommended by the Station Superintendent, Palanpur. The applicant has referred to the case of one Dhanna S/o Poona, figured at Sl. No. 1 in the enclosed list with the date 3.2.1989 who had served 4895 days at the time of preparation of the list i.e. 30.06.1987. The applicant further submits that the Headquarters of the North Western Railway had already issued directions for regularization of such persons and in denying regularization to the applicant hostile discrimination was being practiced against him in as much as his services have not been regularized.

4. The respondents, on their part, have submitted that there was no record available to corroborate that the applicant had served as Hot Weather Waterman since 1976. The records are available in respect of Vazir S/o Shri Ahmed and not in respect of the present applicant who is Vazir Khan S/o Shri Azim Khan. Vazir S/o Shri Ahmed had been engaged as Hot Weather Watermen during the years 1989, 1992 and 1993 but he had never completed 120 days of service in any one year. Even if it were to be accepted that the applicant had indeed served in the Railways still the cause of action had arisen in 1996 and the OA is thus hopelessly time barred by 16 years. The direction of Ahmedabad Bench of this Tribunal, on the other hand, had been to only consider the post of Hot Weather Watermen which has since been discontinued on account of installation of

coolers at the Railway Stations. The learned counsel for the respondents vehemently argued that the documents produced by the applicant are fraudulent and deceitful. He would like to reconcile with the Railway Records and prove the actual situation before this Tribunal. Time was allowed to the respondents on two different occasions for consulting with the department on the issue of availability of records. However, the learned counsel for the applicant has submitted that the documents submitted by the respondents in the rejoinder are the same as have been submitted by the applicant and therefore, his case stands fully supported by the respondents as well.

5. The learned counsel for the respondents in his reply to the Rejoinder application, has submitted that the Department had published a list of Casual employees on their roll vide letter dated 9.8.1991 inviting objections to inform omissions in the list placed at Annex.R/1. The name of the applicant Vazir Khan S/o Shri Azim Khan is not there in the list. This indicates that the applicant is an imposter and is trying to fraudulently claiming appointment by taking advantage of leniency of the respondents-organisation and the coincidence of names.

Facts in Issue.

6. Having heard the learned counsels for the respective parties and having carefully considered the documents adduced by them, the following facts in issue emerge :

- 1- *Whether the claim of the applicant is barred by Limitation?*
- 2- *Whether the applicant was a genuine Casual Labour of the Respondent-Railways as claimed by him or is a imposter trying to fraudulently get an appointment ?*
3. *Whether there has been any discrimination practiced against the applicant.*
4. *If the answer to the above questions is in positive, what 'relief' can this Tribunal grant to him ?*

Whether the claim of the applicant is barred by Limitation?

7. In so far as the First Issue regarding Limitation is concerned, the admitted position is that the representation of the applicant had been rejected way back in the year

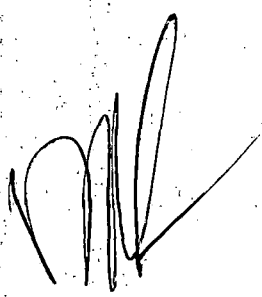
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1996. Thereupon, he approached Ahmedabad Bench of this Tribunal and upon its directions on 24.1.2002, he had submitted application which was disallowed vide letter dated 16.12.2002. Thereafter, the applicant has approached this Court vide the instant OA on 18.11.2011. Thus, apparently, the applicant was required to explain the big gap of 9 years that too on day-to-day basis. I also find that no application for condonation of delay has been preferred. However, the applicant has admitted that he did not take any action for amelioration of his grievance till he heard that some of the similarly placed employees had been reinstated. In the facts under paragraph (v) he has stated as under:

“That recently the present applicant received the information about the re-engagement/reinstatement of his fellow employees by the respondent department, hence he contacted his counsel in Jodhpur and directed the latter to proceed further. The counsel for the petitioner after going through the documents of the present applicant came to know that a recommendation was made by the Station Superintendent, Palanpur for the reinstatement of the present applicant. Hence on the aforesaid information, the counsel for the applicant dispatched various letters to the concerning authorities of the respondent department under the Right to Information Act.”

8. Thus, the position is admitted that the applicant before us had slept-over the matter from 2002 onwards and was only activated when he received the news of appointment of similarly placed employees. This argument, in my opinion, is not at all sustainable. The Hon'ble Supreme Court has held in 1995 Supreme Court Cases (L&S) 1273 [Before JS Verma and K Venkatswami JJ], MR Gupta vrs Union of India;

“4. The Tribunal has upheld the respondents' objection based on the ground of limitation. It has been held that the appellant had been expressly told by the order dated 12.08.1985 and by another letter dated 07.03.1987 that his pay had been correctly fixed so that he should have assailed that order at that time “which was one time action”. The Tribunal held that the raising of this matter after lapse of 11 years since the initial pay fixation in 1978 was hopelessly barred by time.



Accordingly, the application was dismissed as time barred without going into the merits of the appellant's claim for proper pay fixation.

5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cession of a continuing wrong if on merits his claim is justified. Similarly, any other consequently relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 01.08.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of the redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the enquiry of redemption is extinguished. It is settled that the right of redemption is of this kind (see *Thota China Subba Rao vs. Mattapalli Raju*).

7. Learned counsel for the respondents placed strong reliance on the decision of this Court in *S.S.Rathore vs. State of M.P.* That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case."

9. In the aforesaid judgment Hon'ble the Supreme Court has opined that a continuing wrong suffered by the appellant would give rise to a recurring cause of action

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and hence, the limitation would not apply. This alone, however, is not sufficient for condonation of delay. Were it to be so construed the law of limitation would be rendered effete and would lose its sting.

10. In the instant case, it appears that the rejection of the application represented a onetime cause of action. The applicant has failed to challenge the same within good time, therefore, he is covered by Paragraph 6 and 7 of the case of M.R. Gupta, referred to above as his right to agitate the issue stand extinguished and he cannot re-agitate the issue after a lapse of 9 long years. It ultimately boils down to the facts of the individual case.

In my opinion the applicant has simply slept over the matter for 7 years and has not agitated the same at the appropriate forum. It is not held that the case of the applicant is totally devoid of merit which this Tribunal is yet to go into. However, suffices it to say that the applicant falls at the first hurdle- that of limitation. The explanation of the applicant that he has appeared before this Tribunal when he learnt of different treatment being meted out to similarly placed persons is in my mind not good enough to make the applicant cross the hurdle of limitation. He could have recourse to instrumentality of RTI or other similar mechanism to ferret the truth out. He must pay for his own inactivity. One has to remember that the courts are not a forum for walk-in-interviews where in one walks in and walks out. Here some formalities have to be observed.

Whether the applicant was a genuine Casual Labour of the Respondent-Railways as claimed by him or is a imposter trying to fraudulently get an appointment ?

Whether there has been any discrimination practiced against the applicant

11. Issues 2 and 3 need not be discussed in light of the clear and categorical findings.
12. In consideration of the above facts, the O.A. is disallowed.
13. No order as to costs.



(B.K. SINHA)
Administrative Member