

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No. 332/2013

with MA No.149/2013

RESERVED ON: 23.08.2016

Jodhpur, this the 8th day of September, 2016

CORAM:

HON'BLE MS. PRAVEEN MAHAJAN, ADMISTRATIVE MEMBER

Babu Lal Bishnoi s/o Shri Har Lal, aged 48 years, r/o village Khejarli Kalan, District Jodhpur, Ex-Casual Labour, 57 Forward Medical Stores Department, Near Military Hospital, Jodhpur

...Applicant

(By Advocate Mr. Vijay Mehta)

Vs.

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commanding Officer, 57 Forward Medical Stores Department, Near Military Hospital, Jodhpur

...Respondents

(By Advocate: Mr. Gaurav Thanvi and Mr. Parvez, proxy counsel for Mr. Rajendra Kataria)

ORDER

The applicant has filed this OA praying that Ann.A/1 may kindly be quashed and the respondents may be directed to reinstate the applicant with continuity of service and with all consequential benefits including back wages. The applicant is seeking further direction to regularise the services of the applicant from the date of his

appointment or from any other date as deemed fit by the Tribunal with consequential benefits.

2. Brief facts of the case are that after sponsoring name of the applicant by the Employment Exchange, the applicant was selected for the post of Mazdoor alongwith others and his pay was Rs. 750/- plus usual allowances. After undergoing medical examination, he was appointed as Mazdoor vide letter dated 18.7.1994. The applicant avers that the respondents have given artificial breaks by terminating and re-engaging all the Mazdoors appointed along with the applicant. Thereafter, the services of the applicant and others including Ram Chandra and Radha Kishan, Jagdish Chandra were terminated on 18.07.1995. According to the applicant, he and other similarly placed employees filed separate OAs before this Tribunal. The Hon'ble Rajasthan High Court vide its order dated 12.1.2001 (Ann.A/2) directed the respondents to reinstate the terminated employees and declared that the services of these labours were never terminated and they shall be treated as continuous in service and shall be entitled to all consequential benefits. The respondents challenged the order of the Hon'ble High Court before the Hon'ble Supreme Court, which was dismissed vide order dated 06.10.2004 (Ann.A/3). Pursuant to the order dated 04.04.2005 (Ann.A/4) passed in the Writ Petition filed by the applicant, vide order dated 25.6.2005 (Ann.A/5), the applicant was re-engaged. When the services of the other similarly placed employees were terminated vide order dated 28.10.2006, they raised an industrial dispute and the Labour Court vide award dated 20.9.2011

(Ann.A/6) held that their termination was made in violation of Section 25-F, G and H of the Industrial Disputes Act and directed the respondents to reinstate the employees with back wages. The Writ Petition against the said award was dismissed by the Hon'ble High Court vide order dated 24.2.2012 passed in Civil Writ Petition No. 12394/2011 (Ann.A/7). In the meanwhile, the services of the applicant were also terminated from 5.4.2007. It is stated by the applicant that after termination, he met respondent No.2 and requested for his continuance in service, till the cases filed by the similarly placed employees are finalized. The applicant states that respondent No.2 told the applicant that the said employees are bound to loose the cases since they did not continue to work for 240 days in view of the breaks given from time to time, therefore, the applicant should not approach the courts till finalization of the above cases. He submits that respondent No.2 prevented him (the applicant) from approaching the courts till final judgments are passed by different courts. The applicant had been waiting for the finalization of the cases filed by other employees. In May, 2013 he came to know that some similarly placed employees have been reinstated in compliance to the orders passed by the Labour Court and High Court and he approached the respondents. He was asked to submit representation which he did on 29.05.2013, but till date he has not been reinstated despite repeated assurances.

The applicant has averred that provisions of Industrial Disputes Act apply in the instant case. The services of the applicant have been

terminated by way of retrenchment which has been effected in utter violation of mandatory provisions contained in the Industrial Disputes Act. The applicant has also referred to the Ministry of Defence order dated 20.3.1982 and stated that the Model Standing Orders have been made applicable to the casual labours and they govern their service conditions (Ann.A/10).

3. In reply to the OA, the respondents, by way of preliminary objections, stated that the service of the applicant was terminated in the year 2007 and this dispute was raised after a lapse of 5 years. They have further stated that the applicant has attracted the provisions of Industrial Disputes Act, 1947 which cannot be raised before this Tribunal. This Tribunal is not the proper forum to check the violation of the ID Act, therefore, the OA is not maintainable.

The respondents have further submitted that initially 9 persons including the applicant were appointed on the post of casual mazdoor on 17.6.1994 for a period of 89 days, but due to typing error, the said persons were wrongly appointed in regular pay scale. When the said mistake came to the knowledge of the respondents, the services of the applicant and others were terminated on 22.8.1994 w.e.f. 16.8.1994. They were re-appointed on the post of casual mazdoor w.e.f. 17.08.1994 on daily rates. The services of the applicant and other persons were terminated due to non-availability of work with the respondent department. The dispute was raised before the Hon'ble High Court by Ram Chandra and Radha Kishan only. In pursuance to the order of the Hon'ble Supreme Court, the applicant was re-

appointed on 25.6.2005 on the post of casual labour for the period of availability of work. The respondents have not disputed termination of Ram Chandra and Radha Kishan raising dispute before the Labour Court. The respondents have further submitted that in the order dated 24.02.2012 of the Hon'ble High Court, the applicant was not a party. After termination of services of the applicant, the applicant never approached the respondents and he himself remained silent for a long time accepting the order of termination. Shri Ram Chandra and Radha Kishan fought for their rights in the court, but not the applicant. Both the above persons were reinstated as per the direction of the Labour Court and High Court, but the applicant had not raised any dispute before the appropriate forum. He was never restrained by the respondents for raising any dispute. The respondents have denied the fact that the applicant approached respondent No.2 after termination of his services. The applicant has not completed continuous 6 months service under the respondents, therefore, he is not entitled to get any relief from this Tribunal. The services of the applicant were rightly terminated on 04.04.2007. Thereafter, he himself remained silent for almost 6 years. The respondents have implemented the order of the Labour Court and High Court and services of other persons were regularised. The applicant is not entitled to any such relief on the ground of jurisdiction and delay and laches.

4. The applicant has filed rejoinder to the reply filed by the respondents and reiterated the averments made in the OA.

5. The applicant has filed Misc. Application No. 149/2013 for condonation of delay. The applicant has stated that along with him, Shri Ram Chandra and Radha Kishan were appointed after due selection and services of above named persons were terminated on 18.7.1995. Upon challenge, the termination was quashed by the Hon'ble High Court and upheld by the Hon'ble Supreme Court. Again services of these persons were terminated on 28.10.2006 which was challenged before the Labour Court. The Writ Petition against the order of the Labour Court was dismissed by the Hon'ble high Court vide order dated 24.2.2012. The appeal filed before the Division Bench was also dismissed. The services of the applicant were also terminated from 5.4.2007. Soon after termination, he met respondent No.2 and the applicant was assured that in case said employees succeed, the applicant shall be given the same treatment keeping in view the said judgments, as such the respondent No.2 prevented the applicant from approaching the court till final judgments were passed by the Courts. In the month of May, 2013, when he came to know that Sh. Ram Chandra and Radha Kishan have been reinstated, he again approached the respondent No.2 to take him on duty and filed a representation. The applicant avers that he did not file the OA earlier only due to assurances of respondent No.2, therefore, the OA is within limitation. However, as a matter of abundant caution, he has filed this Misc. Application for condonation of delay.

6. In reply to Misc. Application, the respondents have submitted that the delay is not of a small period. It is apparent that the applicant

was not vigilant and was sleeping over his rights. When he came to know of orders in regard to other employees who had agitated for their rights within limitation, applicant started representing and seeking similar advantage, but his case is not tenable being totally barred by limitation. In order to take advantage of the decision rendered in the cases of others, he has very conveniently put the entire burden on respondent No.2. In fact the applicant chose to keep mum and did not raise any dispute within the stipulated period and waited for decision of other employees. The respondents have also referred to the case of Basawaraj and Ors. vs. The Special Land Acquisition Officer reported in 2014 SC 746 and Brijesh Kumar and Ors. vs. State of Haryana and Ors. reported in (2014) 4 SCALE 50.

7. Heard learned counsels on both sides and perused the record.

8. So far as the issue of jurisdiction is concerned, this Tribunal has already dealt with this issue in OA No.226/2008, decided on 09.09.2009 and OA No. 342/2013 decided on 12th April, 2016. Therefore, the objection regarding jurisdiction of the Tribunal raised by the respondents is not acceptable.

9. On the issue of limitation, the learned counsel for the applicant stated that the applicant was prevented by the respondents in the garb of the finalization of the issue filed before the Court by similarly placed employees, which the applicant had no reason to disbelieve. When other similarly situated persons were reinstated, then the applicant approached the respondents, but he has not been given similar treatment. There is absolutely, no fault on the part of the applicant and

the OA may be treated within limitation period, and, the applicant may be given the same benefits as has been given to other similarly placed employees. In support of his contention, the learned counsel for the applicant has relied upon various judgments of different courts on the point of limitation, jurisdiction and reinstatement, which are –

Limitation:

- i. Laxman Das v. UOI & Ors. reported in (1988) 6 ATC 609
- ii. All India Loco Running Staff Association Northern Railway, Jodhpur and Ors. v. The UOI and Anr., reported in 1985 (1) WLN 137
- iii. Inter Pal Yadav and Ors. v. UOI, reported in 1985 (2) SLR 248
- iv. Shri Dharampal and Ors. v. UOI & ors. reported in (1988) 6 ATC 396
- v. The State of Madhya Pradesh v. Syed Qarmarali, reported in 1967 SLR 228
- vi. M.R.Gupta v. UOI and ors., reported in AIR 1996 SC 669
- vii. Kamal Kishore Joshi vs. State of Raj. and ors. reported in 2005 (4) SCT 503

Jurisdiction of CAT

- i. OA No.342/2013 decided on 12.4.2016 – CAT, Jodhpur Bench
- ii. The Telecom District Manager and Ors. v. Keshab Deb, reported in JT 2008 (7) 257
- iii. OA No.226/2008 decided on 9.9.2009 – CAT- Jodhpur Bench.
- iv. Management, Indian Institute of Horticultural Research (ICAR) v. Smt. K.Shashikala reported in 2005 Lab I.C. 1661

Reinstatement

- i. Jasmer Singh v. State of Haryana and another, reported in 2015 LAB I.C. 4217
- ii. Harjinder Singh v. Punjab State Warehousing Corpn. Reported in [2010 (124) FLR 700].
- iii. Oriental Bank of Commerce v. The Presiding Officer, CGIT and Anr. reported in 1992 (1) WLC 464
- iv. Central Bank of India vs. S.Satyam and Ors. reported in (1996) 5 SCC 419.
- v. Aravali Kshetriya Gramin Bank, Sawai Madhour through its Chairman and Anr. vs. The Presiding Officer, CGIT, Jaipur reported in 2002 (1) WLC 296
- vi. Mineral Exploration Corpn. Employees' Union v. Mineral Exploration Corpn. Ltd. and Anr. reported in JT 2006 (7) SC 151

- vii. OA No.505/2011 decided on 15.5.2014 – CAT-Jodhpur Bench
- viii. DBCWP No.5175/2014 decided on 20th February, 2015.

10. Per contra, counsel for the respondents has contended that the persons who have fought for their rights have been reinstated. Since the applicant slept over his rights for a long period, therefore, similar benefits cannot be given as per the law laid down in a catena of judgments of the Hon'ble Apex Court. He has referred to the case of Basawaraj and Ors. (cited supra) wherein in para 15 it has been observed that:-

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature".

The learned counsel for the respondents also referred to the case of Brijesh Kumar and Ors. (cited supra) wherein the Hon'ble Apex court has refused to condone the delay of 10 years by observing that distinction will have to be drawn between delay and inordinate delay i.e. cases where there is want of bonafide inaction, or negligence. The Hon'ble Apex Court observed that a person cannot take benefit merely because, some other person, has taken relief.

Benefit or relief can only be given to a diligent person. Seeking benefit because relief has been granted by the court in same type of case, cannot be a ground for condoning the delay and laches.

11. I have considered the rival contentions of the parties, and the authorities cited by both the sides. The judgment relied upon by the learned counsel for the applicant on the issue of jurisdiction are referred and applied. Other judgments cited by him are not applicable to the facts and circumstance of the present case.

12. In the present case, I am not convinced with the explanation given by the applicant that the delay took place because the respondents asked him to await the decision of the court in cases filed by his counterparts and prevented him from approaching the court. The delay is significant, almost 6 years, which could not be explained satisfactorily by the applicant. There is no justifiable or convincing explanation offered, except putting the entire onus on respondent No.2 for not agitating his case on time. If the applicant had been vigilant, he could have approached the appropriate forum for redressal of his grievance at the relevant point of time. He slept over his rights and woke up like *Rip Van Winkle* after 6 years. He has filed the present OA on 8.8.2013, challenging the order dated 4.4.2007. I further find support from para 12 of the judgment in *Basawaraj & Anr. (supra)*, where the Hon'ble Apex Court observed as that:-

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never

an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

13. If the ratio, as laid down in the case of Basawaraj case (supra), is applied to the present case, then this is not a case whereby direction can be issued for condonation of delay, for which no plausible explanation has been offered by the applicant. The applicant merely sat as a mute spectator – waiting for the events to unfurl, either way, rather than immediately approaching the right forum for relieving his distress.

14. In view of the above, I am unable to accede to the request of the applicant for condonation of delay. The Misc. Application for condonation of delay is dismissed. Consequently, the OA is also dismissed as barred by limitation. No costs.


(PRAVEEN MAHAJAN)
Administrative Member

R/

Die
Richtung
stark
Wend