

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 527/90

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DATE OF DECISION 7.12.90

K Karuppan _____ Applicant (s)

Mr PK Madhusoodhanan _____ Advocate for the Applicant (s)

Versus

The Union of India rep. by the General Manager, Southern Rly. Respondent (s)
Madras and 3 others.

Mrs Sumathi Dandapani _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Mr NV Krishnan, Administrative Member

The question is whether this application is barred by limitation.

2 The applicant has prayed that the respondents be directed to grant him such benefits as have been given to his co-workers on the basis of the judgment of the Supreme Court dated 4.2.87 in the Writ Petition No.19/86, 498/86 and 37/87, since reported in AIR 1987 SC-777, Catering Cleaners of Southern Railway Vs. Union of India. The applicant has filed MP 489/90 for condonation of delay. This has been resisted by the respondents.

3 We have perused the records and heard the counsel.

4 The applicant states in the M.P that he came to know

about the judgment of the Supreme Court in the Writ Petition No.19/86, in which he claims to be a party, ~~only~~ after recovering from a serious illness, due to which he could not attend duties from 15.12.86 to 15.6.88. In fact, this illness is his main ground. He claims to have been ill from 15.12.86 to 15.6.88 and hence, he was not either on duty during that period or aware of the aforesaid judgment of the Supreme Court which had been delivered in the meanwhile.

5 After becoming fit, he sent the Annexure-V representation dated 15.6.88 to the Catering Inspector, Southern Railway, Ernakulam, requesting him to post him in the Catering Department. It is specifically mentioned in this representation that due to anxiety, ~~hysteria~~ and depression, he failed to inform that authority in advance, ~~and~~ the treatment he was undergoing.

When no reply was forthcoming, he took up the matter through the Southern Railway Mazdoor Union which sent a representation dated 3.5.89 (Annexure VII) to the second respondent seeking that the applicant's case be considered and orders of work issued to him.

6 We are not impressed by his claim that he was ill. The medical certificate produced by him at Annexure IV is dated 15.12.86 (i.e., the very date on which he fell ill) and the medical officer states with foresight and precision that the period of absence from duty of exactly $1\frac{1}{2}$ years w.e.f. 15.12.86 would be necessary for the restoration of his health, as he

was then suffering from ~~chronic~~ ^{ur} aneixty nephosis and depression. Exactly, after 1½ years on 15.6.88, the applicant states he recovered from his illness.

We are of the view that this medical certificate cannot be relied upon. It has been obtained merely to cover the period of absence from duty. That apart, if he really got his certificate on 15.12.88 he should have sent it to the Catering Inspector. This was not done as is clear from the admission in the Annexure V representation that intimation of his illness and treatment was not sent earlier. Hence, the application has not explained satisfactorily the reason for delay.

7 The applicant contended that he was a party to the Writ Petition No.19/86 before the Supreme Court. We were prepared to take a more lenient attitude, if this fact was established by the applicant, so that he could be given the benefit of that judgment, despite the delay. The applicant did not produce any proof in this regard. In a reply filed on 29.11.90 he states that despite earnest efforts he could not obtain " an order or copy of the Writ Petition 19/86" though he says it was possible for him to obtain a copy of the list produced before the Supreme Court in that Writ Petition vide Annexure IX. Annexure IX does not, on the face of it, show that this is a document filed in the aforesaid Writ Petition or that it is relevant.

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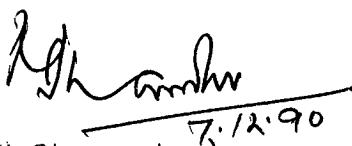
8 In fact, a perusal of the Supreme Court's Judgment shows that, in the context of the interim direction passed therein, the Additional Solicitor General, who appeared on behalf of the Railway Administration, undertook on 4.12.86 to deposit the arrears in respect of minimum wages due from August, 1986 upto-date with the Deputy Labour Commissioner, Madras. The Court also directed the learned counsel for the employees to file a list of the employees entitled to be paid wages. The applicant has not stated that his name was included in these lists.

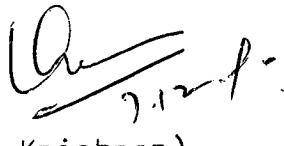
9 Further, in the concluding portion of the judgment, the Supreme Court gave the following directions:

" The work of cleaning catering establishments and pantry cars will be done departmentally by employing these workmen who were previously employed by the contractor on the same wages and conditions of work as are applicable to those engaged in similar work by the Western Railway. If there is any dispute whether an individual workman was or was not employed by the contractor such dispute shall be decided by the Deputy Labour Commissioner, Madras. Any further directions may be sought, if necessary, from the Madras High Court".

This was another source for the applicant to get a confirmation that he was also a party in that case.

10 In the circumstances we are of the view that the application which seeks to rely on the Supreme Court's judgment dated 4.2.87 in OP 19/86 for relief is barred by limitation. Hence, it is rejected.


7.12.90
(N Dharmadan)
Judicial Member


7.12.90
(NV Krishnan)
Administrative Member