

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 243/91

~~XXXXXX~~

189

DATE OF DECISION 10.8.92

V.Sasidharan Nair

Applicant (s)

Mr.G.Sasidharan Chempazhanthiyil

Advocate for the Applicant (s)

Versus

Assistant Programme Adviser,

National Service Scheme, Respondent (s)

Regional Centre, Vazhuthacaud,

Trivandrum and two others.

Mr.Mathews J.Nedumpara, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, 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

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application the applicant who was originally appointed as a Daily Wager on 19.6.1972 and was regularised as a Class IV staff from 10.12.79 has prayed that the respondents be directed to regularise him with effect from 19.6.72 with all consequential benefits including arrears of salary. He has also prayed for the extension of the benefit given by the Supreme Court in the judgment in Dhirendra Chamoli and others vs. State of U.P. in writ petitions No.4821 and 4817 of 1983. He has also challenged the impugned seniority list of Group D staff at Annexure-VII placing respondent No.3 above the applicant and also the impugned order dated 10th November 1987 at Annexure -VI rejecting his representation. The brief facts of the case are as follows.

2. Having been sponsored by the Employment Exchange and through a selection process the applicant was appointed as a

Daily Wage Peon on 19.6.1972 in the erstwhile Fitness Corps(NFC) ,Kerala, Trivandrum. His appointment was extended from time to time and he had been working continuously since then. When the NFC was wound up^{and replaced by National Service Scheme (N.S.S.)} the applicant was absorbed^{him} in a Class IV post on a Daily Wage basis on 21st December 1972 at Annexure-III. The applicant's grievance is that in spite of his appointment to Class IV post he was not being paid monthly salary of Class IV staff (minimum of Rs.175/- including D.A of Rs.100/-) but only at the rate of Rs.4/- per day for 23/24 days a month excluding weekly off days. This position continued upto 10.12.79 when he was absorbed in a regular Class IV post and his initial pay was fixed at Rs.196/- in the scale of Rs.196-232 without taking into account his previous casual service of seven years. He has quoted from the judgment of the Hon'ble Supreme Court in Dhirendra Chamoli's case in which directions were given to pay to the casual Class IV employees "the same salary and conditions of service as are being received by Class IV employees except regularisation which cannot be done since there are no sanctioned posts". The Supreme Court further observed that so long as these casual employees "are performing the same duties, they must receive the same salary and conditions of service as Class IV employees". Accordingly, the applicant represented on the basis of the aforesaid judgment of the Supreme Court on 25.2.87 and 29.7.87^{representations} which were rejected by the impugned order at Annexure-AVI. He represented again on 26.10.89 but he did not receive any reply. On 1.1.1990 the respondents issued the draft impugned seniority list of Group D staff

in the NSS Organisation as on 1.1.90 in which he was shown below the third respondent even though he was appointed in the grade on 1.8.72 whereas the applicant has been working since 19.6.72. Whereas respondent 3 was shown as permanent, the applicant was shown as quasi-permanent. The applicant again represented in February, April and June 1990 but he has not received any reply. The applicant has cited the Supreme Court ruling in AIR 1990 SC 1607 arguing that since he was appointed by following the procedure laid down in the rules and continued without interruption till his regularisation on 10.12.79, his previous service from 1972 should count for all purposes.

3. In the counter affidavit the respondents have stated that since the National Fitness Corps was itself a temporary Scheme, the applicant was engaged on a daily wage basis on a purely temporary and provisional basis from 19.6.72 to 30.6.72. The NFC was replaced by National Service Scheme (NSS) with effect from 1.7.72 and since there was a ban on the appointment to the post of Peon and only the ex-servicemen could be appointed to meet any contingency, the applicant was continued to be engaged under the N.S.S. on a provisional basis. He was never sponsored by the Employment Exchange and his engagement under the N.S.S. was not in conformity with the Recruitment Rules or procedure. For regular appointment names were called from the Employment Exchange and the applicant was selected for regular appointment from amongst the sponsored candidates with effect from 10.12.79. They have conceded that the applicant was engaged on a daily wage basis from 19.6.72 to 9.12.79 and paid daily wages at the rates prescribed for the CPWD. Since the applicant had been regularised even before the decision

of the Supreme Court, the question of granting him the benefit in terms of the judgment of the Supreme Court does not arise. Half of this casual service will count for pension.

4. In the rejoinder the applicant has conceded that his name was not sponsored by the Employment Exchange in 1972 but only in 1974 when he was selected, but the regularisation was kept pending till 1979. The applicant has referred to a decision of this Tribunal in OAK 10/88 in support of his claim.

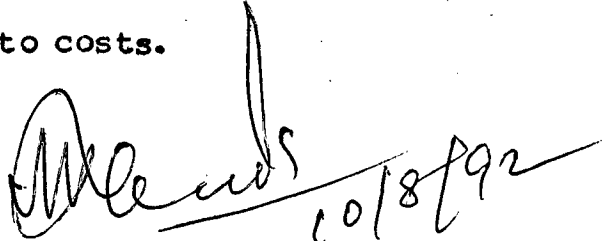
(X) 5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant has already been absorbed with effect from 10.12.79. He is now claiming antedating the date of regularisation from 10.12.79 to 19.6.72. We feel that having received regularisation in 1979, he cannot come up at this stage more than a decade later, to claim earlier regularisation. [He has been representing time and again and the last communication rejecting his representation was issued on 10.11.87 at Annexure-V.] This O.A. was filed on 15.2.91. It is established law that repeated representations do not give extended lease of life to time-barred cases. Accordingly, we see no justification for granting this relief. As regards the benefit of the ruling of the Supreme Court in Dhirendra Chamoli's case, since the applicant had already been regularised from 1979 and paid regular salary and increments thereafter, the question of applying the directions of the Hon'ble Supreme Court in that case to the applicant does not arise. It is true that in accordance with that ruling the applicant could have been entitled to receive higher wages during 1972 to 1979, but even after the ruling was

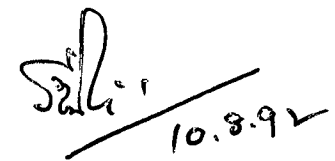
given he did not approach the Tribunal until February 1991. In Bhoop Singh vs. Union of India and others, 1992(2) SLJ 102, the Supreme Court held that the plea that similarly placed persons got the benefit through a Court does not entitle a time-barred claim to be allowed unless the delay is explained. The Supreme Court held in that case that Article 14 is an equitable principle and relief claimed must be found on equity and inordinate and unexplained delay by itself is a ground for refusing the relief irrespective of the merits of a claim. From his representation dated 4/5.4.1990 at Annexure-VIII, it appears that the applicant had represented for getting the benefit of the Supreme Court judgment on 25.2.87 and 21.9.87. But he never moved the Tribunal thereafter to get the benefit of that judgment till this application was filed in February 1991. In A.P.Jain vs. Union of India and others, (1991) 16 ATC 249, it was held that the limitation starts from the date of representation on the basis of a favourable judgment in a case in which one was not a party. On that basis also, this application is hopelessly time-barred to get the benefit of the Supreme Court judgment in Dhirendra Chamoli's case.

6. As regards the relief claimed against the seniority given to him lower than that of respondent No.3 vide the impugned order at Annexure -VII, since respondent No.3 was regularly appointed in the grade on 1.8.72 and the applicant on 10.12.79 and the applicant's ^{stale} claim for antedating the date of his regularisation is time-barred, the applicant cannot claim seniority over

respondent No.3.

7. In the facts and circumstances we see no force in the application and dismiss the same without any order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

n.i.i

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 243/91 189

DATE OF DECISION 26.2.93

V.Sasidharan Nair Applicant (s)

Mr.G.Sasidharan Chempazhanthiyil Advocate for the Applicant (s)

Versus

Assistant Programme Adviser,
National Service Scheme,
Regional Centre, Vazhuthacaud,
Trivandrum and two others. Respondent (s)

Mr.Mathews J.Nedumpara, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application the applicant who was originally appointed as a Daily Wager on 19.6.1972 and was regularised as a Class IV staff from 10.12.79 has prayed that the respondents be directed to regularise him with effect from 19.6.72 with all consequential benefits including arrears of salary. He has also prayed for the extension of the benefit given by the Supreme Court in the judgment in Dhirendra Chamoli and others vs. State of U.P. in writ petitions No.4821 and 4817 of 1983. He has also challenged the impugned seniority list of Group D staff at Annexure-VII placing respondent No.3 above the applicant and also the impugned order dated 10th November 1987 at Annexure-VI rejecting his representation. The brief facts of the case are as follows.

2. Having been sponsored by the Employment Exchange and through a selection process, the applicant was appointed as a

Daily Wage Peon on 19.6.1972 in the erstwhile Fitness Corps (NFC), Kerala, Trivandrum. His appointment was extended from time to time and he had been working continuously since then. When the NFC was wound up and replaced by National Service Scheme (N.S.S.) the applicant was absorbed there in a Class IV post on a Daily Wage basis on 21st December 1972 at Annexure-III. The applicant's grievance is that in spite of his appointment to Class IV post he was not being paid monthly salary of Class IV staff (minimum of Rs.175/- including D.A of Rs.100/-) but only at the rate of Rs.4/- per day for 23/24 days a month excluding weekly off days. This position continued upto 10.12.79 when he was absorbed in a regular Class IV post and his initial pay was fixed at Rs.196/- in the scale of Rs.196-232 without taking into account his previous casual service of seven years. He has quoted from the judgment of the Hon'ble Supreme Court in Dhirendra Chamoli's case in which directions were given to pay to the casual Class IV employees "the same salary and conditions of service as are being received by Class IV employees except regularisation which cannot be done since there are no sanctioned posts". The Supreme Court further observed that so long as these casual employees "are performing the same duties, they must receive the same salary and conditions of service as Class IV employees". Accordingly, the applicant represented on the basis of the aforesaid judgment of the Supreme Court on 25.2.87 and 29.7.87 which representations were rejected by the impugned order at Annexure-AVI. He represented again on 26.10.89 but he did not receive any reply. On 1.1.1990 the respondents issued the draft impugned seniority list of Group D staff in the N.S.S. Organisation as on 1.1.90 in which he was shown below the third respondent even though he was appointed

in the grade on 1.8.72 whereas the applicant has been working since 19.6.72 . Whereas respondent 3 was shown as permanent, the applicant was shown as quasi-permanent. The applicant again represented in February, April and June 1990 but he has not received any reply. The applicant has cited the Supreme Court ruling in AIR 1990 SC 1607 arguing that since he was appointed by following the procedure laid down in the rules and continued without interruption till his regularisation on 10.12.79, his previous service from 1972 should count for all purposes.

3. In the counter affidavit the respondents have stated that since the National Fitness Corps was itself a temporary Scheme, the applicant was engaged on a daily wage basis on a purely temporary and provisional basis from 19.6.72 to 30.6.72. The NFC was replaced by ^{the} National Service Scheme (NSS) with effect from 1.7.72 and since there was a ban on the appointment to the post of Peon and only the ex-servicemen could be appointed to meet any contingency, the applicant was continued to be engaged under the N.S.S. on a provisional basis. He was never sponsored by the Employment Exchange and his engagement under the N.S.S. was not in conformity with the Recruitment Rules or procedure. For regular appointment names were called from the Employment Exchange and the applicant was selected for regular appointment from amongst the sponsored candidates with effect from 10.12.79. They have conceded that the applicant was engaged on a daily wage basis from 19.6.72 to 9.12.79 and paid daily wages at the rates prescribed for the CPWD. Since the applicant had been regularised even before the decision of the Supreme Court, the question of granting him the benefit in terms of the judgment of the Supreme Court does not arise. Half of his casual service will count for pension.

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1974 when he was selected, but the regularisation was kept pending till 1979. The applicant has referred to a decision of this Tribunal in OAK 10/88 in support of his claim.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. This O.A. had been rejected by our judgment dated 10.8.92 which was recalled on Review Application No.120/92 and the case was heard again. The applicant has already been absorbed with effect from 10.12.79. He is now claiming antedating ^{at} the date of regularisation from 10.12.79 to 19.6.72. We feel that having received regularisation in 1979, he cannot come up at this stage, more than a decade later, to claim earlier regularisation. He has been representing time and again and the last communication rejecting his representation was issued on 18th June, 1990, a copy of which was appended with the applicant's Review Application No.120/92. The text of this communication reads as follows:-

" I am to refer to your representation dated 5.4.1990 and to inform that your representation has been forwarded to the Department for necessary action. The Department has informed this office that under the existing instructions the service rendered by Casual employees do not count for pay, pension etc."

His earlier representation was ^{also} rejected by the impugned order dated 10th November, 1987 at Annexure-VI with the O.A. on the following lines:-

"Shri V.S.Nair is informed that his representation dated 21.9.1987 has again been considered by the department. The department informed this office that the same has not been acceded to."

This O.A. was filed on 15.2.91. It is established law that repeated representations do not give extended lease of life to time-barred cases. Accordingly, we see no justification for granting this relief. As regards the benefit of the ruling of the Supreme Court in Dhirendra Chamoli's case, since the applicant had already been regularised from 1979 and paid regular salary and increments thereafter, the question of

applying the directions of the Hon'ble Supreme Court in that case to the applicant does not arise. It is true that in accordance with that ruling, the applicant could have been entitled to receive higher wages during 1972 to 1979, but even after the ruling was given, he did not approach the Tribunal until February 1991. In Bhoop Singh vs. Union of India and others, 1992(2) SLJ 102, the Supreme Court held that the plea that similarly placed persons got the benefit through a Court does not entitle a time-barred claim to be allowed unless the delay is explained. The Supreme Court held in that case that Art.14 is an equitable principle and relief claimed must be found on equity and inordinate and unexplained delay by itself is a ground for refusing the relief irrespective of the merits of a claim. From his representation dated 4/5.4.1990 at Annexure-VIII, it appears that the applicant had represented for getting the benefit of the Supreme Court judgment on 25.2.87 and 21.9.87. But he never moved the Tribunal thereafter to get the benefit of that judgment till this application was filed in February, 1991. In A.P.Jain vs. Union of India and others, (1991)16 ATC 249, it was held that the limitation starts from the date of representation on the basis of a favourable judgment in a case in which one was not a party. On that basis also, this application is hopelessly time-barred to get the benefit of the Supreme Court judgment in Dharendra Chamoli's case.

6. As regards the relief claimed against the seniority given to him lower than that of respondent No.3 vide the impugned order at Annexure-VII, since respondent No.3 was regularly appointed in the grade on 1.8.72 and the applicant on 10.12.79 and the applicant's stale claim for antedating the date of his regularisation is time-barred, the applicant cannot claim seniority over respondent No.3.

7. In the facts and circumstances, we see no force in the application and dismiss the same without any order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


26.2.93
(S.P.MUKERJI)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. R.A 120/92 in O.A.243/91
T. A. No. 199

DATE OF DECISION 3.11.92

V.Sasidharan Nair _____ Applicant (s)

Mr.Sasidharan Chempazhanthiyil _____ Advocate for the Applicant (s)

Versus

Assistant Programme Adviser, National Service
Scheme, Regional Centre, Vazhuthacaud, Trivandrum and two others. Respondent (s)

Mr.Mathews J.Nedumpara _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

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

JUDGEMENT

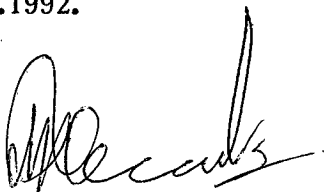
(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this review application dated 3rd September 1992 the review applicant who was the original applicant in O.A.243/91 has prayed for a review of our order dated 10.8.1992 in which the original application was rejected principally on the ground that whereas the last communication rejecting the applicant's representation was issued on 10.11.87 the O.A was filed on 15.2.1991 and accordingly the O.A was time-barred. In the review application the applicant has brought out that this Bench by the order dated 12.2.1991 held that the original application was within time because the applicant had filed a representation dated 5.4.90 and the respondents by their communication dated 18.6.90 indicated that the representation was under consideration. With the review application the applicant has produced the communication dated 18th June 1990 indicating that his contention that his casual service should be

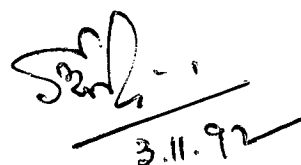
counted for pay and pension cannot be accepted and his representation had been forwarded to the Department for necessary action.

2. We have heard the learned counsel for both the parties on the review application and gone through the documents carefully. In the light of the communication dated 18th June, 1990 produced along with the review application at Exhibit P3 and our order dated 19.2.1991 at Exhibit P4, we find that the O.A. was within time and our order dated 10.8.1992 based on the assumption that after 10.11.87 there was no communication rejecting the representation was not correct.

3. Accordingly, we allow the review application, recall our order dated 10.8.1992 in O.A. 243/91 and direct that the original application should be heard on merits again. We direct that notices be issued to the parties to appear before the Division Bench for rehearing on 16.11.1992.



(A.V.HARIDASAN)
JUDICIAL MEMBER



(S.P.MUKERJI)
VICE CHAIRMAN

njj.