

(A2/1)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH, LUCKNOW.

O.A. 37/89(L)

Kunj Bihari Lal

...Applicant

versus

Union of India & ors.

...Respondents.

Hon. P.S. Habeeb Mohammad, A.M.

Hon. J.P. Sharma, J.M.

(Hon. J.P. Sharma, J.M.)

The applicant was an L.D.C. in the office of the Chief Engineer, Northern Zone, Lucknow and on being declared surplus, was posted to 46, Prisoner of War Camp Faizabad w.e.f. 14.1.1972. When the unit was disbanded the applicant was posted to COD Kanpur under the control and administration of AOC records, Secunderabad who has been impleaded as respondent No. 3. The applicant was confirmed as LDC with effect from 9.2.76. From 1978 the applicant was posted to A.M.C. Records, Lucknow under the control of respondent No. 2 where he served up to October 1984. The applicant was asked in December, 1984 by Commandant A.M.C. Records, Lucknow to intimate the position of the applicant regarding his absorption at Lucknow in order to authorize the promotion of the applicant. The applicant was asked to submit unwillingness to go back to the office of COD Kanpur, respondent No. 3. The applicant submitted unwillingness to go back to COD Kanpur and as such his lien was terminated by respondent No. 3.

2. The applicant was again informed by respondent No. 3 in January, 1985 to give his willingness for the promotional post of U.D.C. but the fact was concealed by respondent No. 2

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A.M.C. Records, Lucknow. Ultimately the respondent No. 3 vide letter No. 6959223/LDC/FS/ADM dated 14.2.85 (Ann. -4) informed that since the applicant was not willing to revert back to his parent department, nor accepted higher promotion offered to him, his lien in AOC was terminated with effect from 1.5.80. It is the case of the applicant that this letter for the he/first time learnt that his lien from the post of AOC was terminated w.e.f. 1.5.80. The applicant made a representation on 16.2.85 on which AOC records informed on 6th March, 85 to AMC Records, Lucknow that on the representation of the applicant and his wife Smt. Shobha a fresh willingness or unwillingness certificate as per specimen attached to the individual be sent for further action for giving final option. Copy of this was sent to the wife of the applicant also. Again on 22.7.85 AMC records wrote to AOC Secunderabad regarding the considering the option of the applicant since 1985 onwards. The applicant did not take any step, nor came to the court. Only he came submitted a representation again on 29.6.88 (Annexure -8) and the reply to which is Annexure A-9 which is only a recommendation for consideration.

3. The applicant claims the relief noted below:

"(i) that the Hon'ble Tribunal be graciously pleased to set aside the unwillingness and quash it which has been obtained from applicant by practising fraud upon him by respondent No. 2 and direct it to be ineffective and unenforceable against the applicant.

(ii) That the Hon'ble Tribunal again be pleased to direct the respondent No. 3 to authorise the promotion of the applicant after restoring his lien on the basis of earlier unwillingness submitted by the applicant or to obtain willingness afresh from the applicant.

(iii) That the hon'ble Tribunal be further pleased to award all the benefits of the post arising out of the said post had the applicant been promoted at due time together with cost of the application."

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4. The respondents opposed the application of the applicants and a primary objection was taken about the maintainability of this application as it is patently barred by time. In the counter affidavit at ~~xx~~ page 3 and 4 the events, as happened have been given in chronological order and it was denied that there was any fraud practised on the applicant in any manner whatsoever. It is specifically pointed out that the contents detailed in para 9 of the application are incorrect and are denied. The applicant himself gave his unwillingness on 29.10.84 for his permanent absorption as LDC in AMC records, Lucknow and submitted his resignation for termination of his lien in permanent post of L.D.C. in AOC w.e.f. 1.5.80. The order of termination of lien were passed on 14.2.85. The time limit for filing appeal is only one year which expired on 13.2.1986. The present application has been filed on 8.2.1989, is abnormally barred by time.

5. We have heard the learned counsel for the parties at length and have gone through the records of the case. Section 21 of the A.T. Act prescribes limitation from the date of order ~~xxx~~, the limitation starts running. If any statutory representation has been made than the decision of that representation is further point for starting of limitation. In the present case, the applicant very well knew in February 85 that his lien on the post of L.D.C. in AOC had been terminated. Again taking a magnanimous view up to July 85, there was a correspondence with the applicant; after that the applicant did not pursue the matter. The learned counsel for the applicant referred to the fact that he was asked to wait and referred to Para K

at page 5 of the application. In this para, there is no mention of any oral order or advice given to the applicant by any of the respondents or subordinates. In para L the applicant admits that he went on waiting from July 85 to July 88 but he has not given any explanation for keeping in wait for such a longer period of three years. We do not find any substantial reason^{or} cause that the applicant was prevented by any assurance from the side of the respondents or their subordinates that he may be awarded the relief now he aspires for.

6. Though on the principle of natural justice as well, as equity, a case should not be allowed to be defeated if the applicant shows sufficient cause for not coming for redressal of his grievance before the Tribunal or Court. Further ~~the~~ applicant is bound to establish that he was prevented by reasons beyond his control or that he was not aware of any relevant action to be taken by him. The applicant is a illiterate person and he has made certain wild accusations against two of the Military personnel and it cannot be said that he was a person totally ignorant of the worldly affairs. We do not find any justifiable ground to ~~take~~ entertain the matter which is already dead in ~~February, 1985,~~ in February 89 i.e. after 4 years of the original order of Feb., 1985 and the applicant has not filed any sworn testimony of his own by way of affidavit to explain the circumstances leading to coming to the Tribunal after such a long period. We find therefore, no force in this application and the application is therefore dismissed.

J. M. A. S.

JUDICIAL MEMBER.

12.4.90

P. J. H.
12/4/90
ADM. MEMBER.