

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 244 of 1991 (L)

Versus

1. D.R.M. Northern Railway, Hazratganj, Lucknow.
2. Divisional Engineer, Northern Railway, D.R.M. Office, Hazratganj, Lucknow.
3. Divisional Personnel Officer, Northern Railway, D.R.M. office, Hazratganj, Lucknow.

..... Respondent

Hon'ble Mr. S.N. Prasad, Member (Judicial)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for treating the period from 25.4.1978 to 2.10.1980 as on duty with full benefits and payment etc.

2. Briefly, stated the facts of this case, inter-alia, are that the applicant was employed on 22.12.1976 under the Inspector of Works, Charbagh, Lucknow, and was declared temporary employee on 25.4.77 after completion of 120 days continuous service (annexure 1). On 14.10.1977, a notification was issued that temporary status will be given to those who completed 1826 days continuous working and as such the service of the applicant was terminated on 2.4.1978 alongwith the others. The same notification was challenged in writ petition no. 872 alongwith 39 others Vs. General Manager and others and the Railway authorities filed an affidavit to the effect that the said notification of 1826 ^{~days~} of continuing service has been withdrawn and

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stated that those who had completed 120 days service would get temporary status and consequently, that writ petition was decided on terms of the above observation (copy of that judgement is annexure-2). The applicant was allowed duties from 2.10.1980, but period from 25.4.1978 to 1.10.1980 was not regularised and since no fruitful result was achieved by the applicant, The applicant has approached this tribunal after exhausting all the remedies.

3. The respondents have filed preliminary objection with the contentions, inter-alia, that the claim of the applicant is barred by limitation and this tribunal is not competent to condone the delay even under section 21(3) of the Administrative Tribunals Act, 1985.

4. The applicant has filed reply to the preliminary objection of the respondents, wherein it has been stated, inter-alia, that the applicant has been prosecuting the matter sincerely before the courts, but the applicant could not get any relief as both the courts dismissed the application of the applicant holding that they have no jurisdiction as would be obvious from the perusal of annexure A & B and as such the delay be condoned.

5. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

6. The learned counsel for the applicant while drawing my attention to the contents of the application and papers annexed thereto and while drawing my

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attention to the provisions contained under section 14 of the Limitation Act has argued that since the applicant has been making sincere efforts since the very inception but due to wrong advise he filed the application before the City Magistrate, Lucknow under the minimum wages Act and since that case was dismissed on 8.8.1983 by the City Magistrate and thereafter due to wrong advise of the counsel he sought remedy before the labour court under the payment of wages Act and as per direction of the Labour Court, the applicant drew that application as according to the Labour Court the ~~exist~~ matter relates to the service matter of the Central Government employees and as such the period spent in both the Courts should be excluded and the delay should be condoned and in support of his argument, placed reliance on the ruling reported in A.W.C.1985 State of U.P. and another (applicant) Vs. Malik Zarid Khalid (Respondent) wherein it has been enunciated that :

" Limitation Act, 1963 Sec. 5-Constitution of India, 1950, Art. 226- Condonation of delay- Mistaken advice by lawyer-Failure on the part of lawyer to explain the mistake does not make the advice to be malafide-."

7. The learned counsel for the respondents while adverting to the contents of the application has argued that the claim of the applicant regarding treating him on duty relates to the period from 25.4.78 to 2.10.1980 and as such it is apparent that cause of action arose much before three years of the enforcement of the Administrative Tribunals Act, 1985 i.e. much

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before on 1.11.1982 and as such the application of the applicant is clearly barred by limitation, and has further argued that the delay caused by the applicant can not ~~be condoned~~ be condoned by this tribunal even under section 21(3) of the Limitation Act and in support of his argument, has placed reliance of the following rulings :-

(i) (1986) ^{Acharya} vol. I, A.T.C. page 514 Paramu Gopinathan (Respondents) (applicant) Vs. Union of India and others wherein it has been enunciated that :

" Administrative Tribunals Act, 1985-Section 21, sub-sections(1), (2) & (3)-Limitation-~~Final~~ Final order passed prior to 1-11-1982 by the Government or other competent authority - Application impugning such order before the Tribunal, held, time-barred-such application could not be admitted even under sub-section(3)."

(2) (1987) vol. 3 A.T.C. page 427, Sukumar Dey and others (applicants) Vs. Union of India and others (Respondents) wherein it has been enunciated that :

" Administrative Tribunals Act, 1985-Section 21-Limitation-Application against grievance arising by reason of an order made before three years immediately preceding the date of setting up of the Tribunal-Held, barred by limitation-Tribunal, held, barred from entertaining such application or condoning delay in such a case."

(3) (1987) vol. 3 A.T.C. page 602-3, V.S. Raghavan (applicant) Vs. Secretary to the Ministry of Defence, New Delhi and others. (respondents) wherein it has been enunciated that :

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"Administrative Tribunals Act, 1985-Section 21-Limitation-Cause of action arising long before three years prior to the date of enforcement of the Act-Application ~~is~~ Held, time barred".

(4) (1988) vol.6 A.T.C. page 201, Suresh Kumar Joshi (Applicant) Vs. Union of India (Respondent) wherein it has been enunciated that :

"Administrative Tribunals Act, 1985-section 21(3)-Limitation-Condonation of delay-Grounds for Held, financial stringency and ignorance of law are not valid grounds for condonation of delay."

8. I have perused the above rulings.
9. This is noteworthy that from the perusal of records it is apparent that the cause of action for the applicant arose much before 1.11.1982 but this application has been filed before this tribunal in July 1991. Thus, this being so, and keeping in view the principle of law ~~has~~ enunciated in the above rulings, I find that the above ruling relied upon by the learned counsel for the applicant is found to be not ~~avail~~ to the applicant as the fact, of this present case are found ^{to be} different and distinct from the facts of the above ruling relied upon by the learned counsel for the applicant; whereas the above rulings relied upon by the learned counsel for the respondents go a long way in supporting the above argument of the learned counsel for the respondents as the facts of the case are found to be inresemblance

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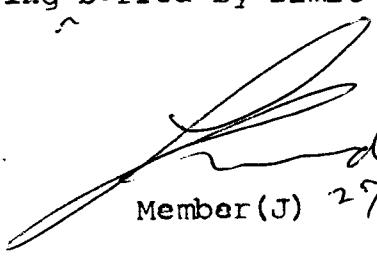
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with the facts of the above rulings.

10. In the result, the application of the
applicant is dismissed having ^{been} barred by limitation.
No order as to costs.



Member (J)

27.7.92

Lucknow dated 27th July, 1992.

(RKA)