(579)

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No.

229/2006,242/2006,365/2006,371/2007,231/2006,243/2006,346/2006

This the 8th day of August, 2008

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)
HON'BLE DR. A.K.MISHRA, MEMBER (A)

(O.A. No. 229/2006)

Bindra Prasad aged about 43 years son of Shri Mata Pher, T.No. 677/J, R/o Village Ganauli, Post – Jarayal Kala, District- Faizabad.

Applicant

By Advocate; Sri N. Chitravanshi

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior General Manager (NR), Baroda House, New Delhi.
3. Chief Electrical Engineer (W), Northern Railway, Carriage and Wagon Workshops, Alambagh, Lucknow.
4. Assistant Electrical Engineer (W), Northern Railways, Carriage and Wagon Workshops, Alambagh, Lucknow.

Respondents

By Advocate: Sri Praveen Kumar for Sri Anil Srivastava
Sri B.B. Tripathi for Sri N.K. Agrawal.

(O.A. No. 242/2006)

Sunil Sonkar aged about 31 years son of Shri Rajjan Lal T.No. 64 H/123 F, R/o Village Mohammadpur (Daudpur), Post- Hunhunna, District- Faizabad.

Applicant

By Advocate; Sri N. Chitravanshi

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior General Manager (NR), Baroda House, New Delhi.
3. Chief Electrical Engineer (W), Northern Railway, Carriage and Wagon Workshops, Alambagh, Lucknow.
4. Assistant Electrical Engineer (W), Northern Railways, Carriage and Wagon Workshops, Alambagh, Lucknow.

Respondents

By Advocate: Sri Praveen Kumar for Sri Anil Srivastava
Sri B.B. Tripathi for Sri N.K. Agrawal.

(O.A. No. 365/2006)

Rakesh Kumar aged about 39 years, S/o Sri Ram Nath T. No. 88F, R/o Mohalla-Brahampur Pull, P.O. Chapra, Saran, Bihar.

Applicant

By Advocate; Sri N. Chitravanshi

Versus

1 Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior General Manager (NR), Baroda House, New Delhi.
3 Chief Electrical Engineer (W), Northern Railway, Carriage and Wagon Workshops, Alambagh, Lucknow.
4 Assistant Electrical Engineer (W), Northern Railways, Carriage and Wagon Workshops, Alambagh, Lucknow.

Respondents

By Advocate: Sri Praveen Kumar for Sri Anil Srivastava
Sri B.B. Tripathi for Sri N.K.Agrawal.

(O.A. No. 371/2007)

Sher Singh aged about 43 years, S/o Shri Kunwar Singh, R/o Yoga Kendra, Hanuman Setu, University Road, Lucknow.

Applicant

By Advocate; Sri N. Chitravanshi

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.

2. Chief Electrical Engineer (W), Northern Railway, Carriage and Wagon Workshops, Alambagh, Lucknow.
3. Assistant Electrical Engineer (W), Northern Railways, Carriage and Wagon Workshops, Alambagh, Lucknow.

Respondents

By Advocate: Sri Praveen Kumar for Sri Anil Srivastava
Sri B.B. Tripathi for Sri N.K.Agrawal.

(O.A. No. 231/2006)

Ram Chandra Yadav aged about 41 years, S/o Shri Hira Lal, T. No. 75H, R/o Village-Madad Ali Ka Purwa, Post Rauzagaon, District- Faizabad.
Applicant

By Advocate; Sri N. Chitravanshi

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior General Manager (NR), Baroda House, New Delhi.
2. Chief Electrical Engineer (W), Northern Railway, Carriage and Wagon Workshops, Alambagh, Lucknow.
4. Assistant Electrical Engineer (W), Northern Railways, Carriage and Wagon Workshops, Alambagh, Lucknow.

Respondents

By Advocate: Sri Praveen Kumar for Sri Anil Srivastava
Sri B.B. Tripathi for Sri N.K.Agrawal.

(O.A. No. 243/2006)

Pratap Chandra aged about 41 years, S/o Shri Shyam Lal, T. No. 164H/241A, R/o Village-Purey Bainama, Post Rauzagaon, District Faizabad.

Applicant

By Advocate; Sri N. Chitravanshi

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior General Manager (NR), Baroda House, New Delhi.
3. Chief Electrical Engineer (W), Northern Railway, Carriage and Wagon Workshops, Alambagh, Lucknow.
4. Assistant Electrical Engineer (W), Northern Railways, Carriage and Wagon Workshops, Alambagh, Lucknow.

Respondents

By Advocate: Sri Praveen Kumar for Sri Anil Srivastava
Sri B.B. Tripathi for Sri N.K.Agrawal.

(O.A. No. 346/2006)

Ram Singh aged about 43 years, S/o Late Nand Lal, T. No. 556A. R/o Village-Sardar Nagar, Post Khurda Madarpur, District Hardoi.

Applicant

By Advocate; Sri N. Chitravanshi

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior General Manager (NR), Baroda House, New Delhi.
3. Chief Electrical Engineer (W), Northern Railway, Carriage and Wagon Workshops, Alambagh, Lucknow.
4. Assistant Electrical Engineer (W), Northern Railways, Carriage and Wagon Workshops, Alambagh, Lucknow.

Respondents

By Advocate: Sri Praveen Kumar for Sri Anil Srivastava
Sri B.B. Tripathi for Sri N.K.Agrawal.

ORDER

BY HON'BLE DR. A.K. MISHRA, MEMBER (A)

Heard the counsel for both parties.

2. Since the facts of all the cases and the pleadings of the parties are more or less similar, all these applications were heard in bunch. All the OAs are taken up together to be disposed of by a common order.

3. Original Application No. **242/2006** has been filed against the order dated 13.5.2004 issued by the respondent No. 4, terminating the services of the applicant. According to the applicant in O.A. No. 242/2006, he was appointed as Khalasi in the Carriage and Wagon Workshop, Northern Railway, Alambagh, Lucknow on 18.9.1997 and subsequently promoted to act as Helper Khalasi (a grade higher) . All of a sudden, he was removed from service vide order dated 5.4.2000 of respondent No. 4. He filed O.A. No. 225/2000 against this order of termination before the Lucknow Bench of the Tribunal. On detailed analysis of the contentions of both the parties, the Tribunal had decided the bunch of 126 OAs by a common order vide order dated 17.10.2003 and came to the following conclusions:-

i) The applicants could not establish that they were appointed in the Railways in accordance with the rules and as such they were not entitled to claim protection under Railway Servants (Disciplinary and Appeal) Rules, any such protection would amount to giving premium to those who had gained entry in the Railways through unrecognized methods, not permitted by rules. "If it is encouraged it would amount to recognizing those who have gained back door entry. Therefore, this contention of the applicant's counsel is rejected." (paragraph 9 of the judgment).

ii) An inference was also drawn about the existence of a racket which has given rise to such irregular appointments and that there was a need to take action against the officers who were involved in this racket (paragraph 10 of the judgment).

iii) Nevertheless, it was held that since the applicants had worked for some length of time, it was necessary to give a show cause notice which would provide an opportunity to them to defend themselves and to explain how their appointments came about.

With these observations, the termination orders were quashed and the respondents were set at liberty to issue show cause notice calling upon the applicants to explain how they were appointed, who had asked them to join and who was their acquaintance as stated in the OAs. On getting reply to the show cause notice, it would be open to the respondents to pass appropriate speaking orders.

4. On the basis of such a direction, the respondent No. 4 issued the show cause notice on 7.1.2004 and the applicant submitted his reply on 4.2.2004. The applicant requested for certified copies of a number of documents as well as his original application for employment. The respondent No. 4 supplied copies of six documents and said that other documents were not relevant. Further he asked for specific explanation on the three issues which were mentioned in the order dated 17.10.2003 of this Tribunal. The applicant in his reply to this letter again reiterated his request for supply of copies of five more documents. He also mentioned his version of how he got the appointment.

5. The respondent No. 4 issued another notice on 9.3.2004 calling upon the applicant to submit the application as earlier directed. In his reply dated 19.3.2004, the applicant again requested for copies of documents which had not been supplied. Thereafter, the impugned order dated 13.5. 2004 was passed by the respondent No.4, in which he has dealt with the points raised by the applicant in his various replies/letters and came to the conclusion that the original appointment in C& W shop Northern Railway, Alambagh, Lucknow on the basis of transfer of the applicant , who was shown as a departmental candidate of adjoining Division of DRM/Lucknow, has been made on baseless grounds. As such, the appointment made on that basis as well as subsequent orders emanating from such an appointment which is de hors were cancelled by him.

6. The applicant has admitted in the application that Original Application had not been filed within the limitation period prescribed Under Section 21 of the AT Act, 1985. He filed a Misc. Application with a supporting affidavit for condonation of delay. Counsel for respondents made a preliminary objection against the request for condonation of delay. By way of justification of the delay, the applicant has stated that he had sent an application on 6.6.2004 to respondent No. 4 for review/ recall of the impugned order, but there was no development on his representation. He contacted his counsel Sri Prabhat Kumar Tripathi in the month of January, 2005 who advised him to file an O.A. before this Tribunal. Accordingly papers for filing this application were prepared but unfortunately, he was not able to establish contact with his counsel even in spite of repeated efforts. Sri Prabhah Kumar Tripathi , his counsel

informed him that the application could not be filed before the Tribunal because of some mistake of his office. This prompted him to take away the brief from Sri Tripathi and engage the present counsel. In short, the applicant is alleging negligence on the part of his previous counsel. Such a serious allegation cannot be accepted without a corroborating statement from the counsel who was responsible for the delay. There is no such statement by Advocate Sri Tripathi. It is improper to accept such allegations behind the back of an advocate.

7. The applicant had been following this case scrupulously from the time the original termination order was issued and the order of Tribunal dated 17.10.2003 was passed. He has been replying diligently to the show cause notice and subsequent letters issued by the respondent No.4. It is therefore, a lame excuse on his part to cover the delay in filing this application by imputing allegation of negligence against his own counsel.

8. Section 21 of the AT Act , 1985 dealing with limitation is extracted below:-

"**21. LIMITATION-** (1) A Tribunal shall not admit an application-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

9. The application should have been made within one year from the date of impugned order dated 13.5.2004 or within 18 months from 6.6.2004, when according to his own averments, he filed a review application. Since the present O.A. has been filed on 18.5.2006, the same is barred by limitation. The delay involved is 1 years 5 days from the date of passing of order and 5 months 12 days from the date of filing of review application. As regards the delay in other OAs , the position is as follows:-

i). The Original Application No. **365/2006** was filed against the order of termination dated 13.5.2004 on 21.8.2006 involving a delay of 1 year 3 months 8 days beyond the prescribed limitation period. Even considering his own averment that he

filed a review petition on 10.6.2004, the delay is 8 months 11 days beyond the limitation period as prescribed.

ii). In Original Application No. 371/2007 filed on 30.8.2007, the delay in filing the O.A. from the date of termination order (13.5.2004) is 2 years 3 months and 17 days beyond one year's prescribed limitation period. The delay is 1 year 8 months and 29 days from the date of review application (1.6.2004) beyond the prescribed limitation period of 18 months.

iii). The Original Application No. **231/2006** was also filed against the order of termination dated 13.5.2004 on 11.5.2006 with a delay of 11 months 28 days from the date of passing of order beyond the prescribed limitation period of one year and with delay of 5 months 5 days from the date of filing of review application (6.6.2004) beyond the prescribed limitation period of 18 months.

iv). In Original Application No. **243/2006** on 18.5.2006, with the delay involved is of 1 year 5 days beyond the prescribed period of one year from the date of passing of termination order and 5 months 20 days beyond the prescribed period of 18 months from the date of filing of review application (28.5.2004).

v). In Original Application No. **346/2006** which was filed on 8.8.2006, the delay involved is 1 year 2 months and 25 days from the date of passing of order beyond the prescribed period and 8 months 7 days from the date of filing of review application beyond the prescribed period.

vi). The Original Application No. **229/2006** was filed on 10.5.2006 against the order of termination dated 11.5.2004 involving a delay of 11 months 30 days from the date of passing of order beyond the prescribed period and 5 months 22 days from the date of filing of review application beyond the prescribed period.

10. In OAs No. 242/2006, 365/2006, 231/2006 and 346/2006 postal receipts for registered letters addressed to Respondent No. 4 have been filed along with the Original Applications but no such receipts no evidence about receipts have been filed in O.As 371/2007, 243/2007 and 229/2007. However, there is no endorsement or acknowledgement about receipt of these review applications by the respondents.

11. In all the applications for condonation of delay, the same ground of negligence on the part of the Counsel for applicant has been taken. This aspect has

been examined in preceding paragraphs No. 6 and 7 where a view has been taken that such a justification involving serious allegation of negligence on the part of applicant's own counsel cannot be accepted behind the ~~back~~ back of the counsel concerned.

12. In the result, we find that all these Original Applications suffer from delay and latches and no satisfactory justification has been given for such delay which can be accepted for their condonation. Therefore, we uphold the objection of the respondents that these applications are barred by limitation and deserve to be dismissed. Accordingly all the OAs are dismissed as time barred. No costs.

MEMBER (A) **MEMBER (J)**

HLS/-