(8)

O.A.187/87, O.A.224/87, O.A.275/87 &
O.A.774/87 Date: 18-7-1990

Mr.Ramamurthy for the applicant and Mr.J.G.Sawant for the respondents. As we have no sufficient time to ~~xx~~ take up the matter we adjourn the case to 22nd August,1990.

(M.Y.PRIOLKAR)
Member(A)

(A.P.BHATTACHARYA)
Member(J)

22/8/90

Heard Mr. M.S Ramamurthy advocate for the applicant & Mr. J.G Sawant Advocate for the respdts. Both the Counsels have concluded their arguments. Adjd to 28/8/90 for Judgment

(M.Y. Priolkar)
M(A)

(G. Sreedharan Nair)
V.C.

28/8/90

None present for either side. Judgement pronounced in open Court today

(M.Y. Priolkar)
M(A)

(G. Sreedharan Nair)
V.C.

Judgment & order dtd: 28.8.90 issued on either side. on 19.10.90

19/10/90

Judgment dtd 28/8/90 Served to R. 1, & 2, on dtd 25/+/90-

(9)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 187/87, 224/87 and 275/87
T.A. No. 198

DATE OF DECISION 28.8.90.

~~Periaswamy Achan and others~~ Petitioner

Mr M.S.Ramamurthy Advocate for the Petitioner(s)

Versus

Permanent Way Inspector, Panvel and others Respondent

~~Mr J.G.Sawant~~ Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. M.Y.Priolkar, Member(A).

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. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

(G.Sreedharan Nair)
Vice Chairman.

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :NEW BOMBAY BENCH
NEW BOMBAY:

O.A. 187/87,224/87 and 275/87.

Shri Periaswamy Achan .... Applicant in OA 187/87.

Shri Ponnuswamy Karuppan .... Applicant in OA 224/87.

Shri M.Murugesan .... Applicant in OA 275/87.

versus

Permanent Way Inspector,Panvel, District-Raigad and others ... Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y.Priolkar, Member(Admn).

For the applicants- Mr M.S.Ramamurthy, Advocate

For the respondents- Mr J.G.Sawant, Advocate.

Date of hearing - 22.8.90.

Date of Judgment & Order - 28.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :-

These applications were heard together as the issues involved are the same and are being disposed of by a common order.

2. The applicants were employed as Mates under the first respondent. Their grievance is against the termination of their services.

3. The applicant in OA 187/87 alleges that he was employed from about 31.12.1984 upto 6.9.1985, was sent for medical examination by the end of August,1985 for being tested in B-1 category and he was found not fit; he requested examination for B-2 category or other permissible categories, but the first respondent refused to do so and orally told him that he will not be engaged with effect from 6.9.1985.

4. The respondents have stated in their reply that the medical examination was conducted for engaging the applicants on temporary basis, but the applicant was found unfit for B-1 category and thereafter he voluntarily abandoned his services and did not report for work from 21.9.1985.

5. The applicant in OA 224/87 alleges that he was under the employment of the first respondent from the end of August, 1981 to the end of December, 1983 and that he was sent for medical examination by the end of December, 1983 for C-1 category and after a few days he was informed that he was found unfit and hence he could not be continued in service.

6. In the reply filed by the respondents, it is stated that after the medical examination, the applicant did not report back for duty but remained absent and abandoned service with effect from 30.11.1983.

7. In OA 275/87, it is stated by the applicant that he was engaged from 1977 and was sent for medical examination in December, 1982 in B-1 category and was reported failed. It is alleged that despire repeated representations, alternative employment has not been given.

8. In the reply, the respondents have taken up the specific plea of bar of limitation as the services of the applicants were dispensed with from February, 1983. It is stated that as the applicant was found unfit on medical examination for B-1 category, his services were terminated and that in accordance with the Rules there is no scope for re-medical examination.

9. When these applications were heard, counsel of the

respondents took the prelimiary objection that they are barred by limitation. It was submitted by the counsel of the ~~respondents~~ applicants that as these applications have been admitted by the Tribunal, it has to be presumed that the delay, if any, in filing the application has been condoned, and, hence, it is not open to the respondents to raise this plea. On a perusal of the proceedings, it is seen that the question of limitation really did arise at the time when the applications were taken up for hearing on admission, but without deciding the same, these applications were admitted " subject to the question of limitation". As such, the respondents cannot be precluded from raising the plea.

10. The main relief claimed in all these applications is to hold that the termination of the services of the applicants is illegal and for reinstatement. In OA 187/87, the alleged termination of service took place in September, 1985, while according to the applicant in OA 224/87, he was not engaged from December, 1983. The plea of the applicant in OA 275/87 is that his services were terminated in the beginning of the year 1983.

11. Thus, it is clear that these applications have been filed long after the expiry of the period of one year from the date of alleged termination of service. It cannot be disputed that the cause of action arose from the respective dates on which the alleged termination of service took place. It has also to be pointed out that so far as the applicant in OA 275/87 is concerned, the cause of action arose more than three years prior to the establishment of this Tribunal. No doubt, the applicant has referred to some representations having been made against the termination of service. But those representations

cannot be relied upon for extension of the period of limitation.

12. We uphold the prelimiary objection raised by the counsel of the respondents that these applications are barred by limitation.

13. These applications are dismissed.

28/8/90

(M.Y.Priolkar)
Member(A)

(G.Sreedharan Nair)
Vice Chairman.

24-8-1990

S.P.Singh/
24.8.90.