IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : PATNA

Date of Order:- 13.1.2006

Registration No. OA-677 of 2005

C O R A M

Hon'ble Mr. Justice P.K.Sinha, Vice-Chairman

Hon'ble Shri Shankar Prasad, Member (A)

Rajendra &Others ...Applicants

-By Shri H.K.Karn, Advocate

Versus

The Union of India & Others ... Respondents

-By Shri A.A.Khan, Standing Counsel

O R D E R

Hon'ble Shri Shankar Prasad, Member (A):- Aggrieved by the order dated 06/06/2005 passed pursuant to the directions in OA-288 of 2003 these applicants have preferred the present O.A..They have sought for the quashing of this order by which their claim for screening, absorption and regularisation has been rejected and for a direction to the respondents to regularise the services of these applicants in accordance with orders of Apex Court, this Tribunal and extant rules and regularisation.

2. The case of these applicants in brief is that they were engaged prior to 1981 and had served the departments (Annexure-A/1 series). (These cards are unusual in the sense that not only they are undated but also they have only the names and days of work. They are silent about date of engagement & termination.) They were called for screening vide letter dated 6.6.90 (Annexure-A/2 series). A seniority list was also prepared (Annexure-A/3). (The list has been produced without the forwarding letter of which it will be

part.) The respondents have appointed substitutes ignoring the claim of the applicant. Some ex-casual labours had preferred OA-1818 of 1992 and pursuant to the directions the Chairman, Railway Board had passed order dated 21.10.97. The respondents have engaged new faces as substitutes. As no action was taken by respondents on their oral request the applicants had preferred OA-288 of 2003, which had been rejected. The applicants have thereafter preferred the present O.A.

3. We have heard the learned counsels on the point of admission. An important question that has arisen in the instant case is as to whether directions given in an earlier round of litigation to consider the representation without considering the question of limitation condones the delay in filing of O.A.

4. Section 19(1) of the A.T. Act provides that an application for redressal of grievances may be made subject to othef provisions of this Act. Sub-section (3) provides that the Tribunal can summarily reject the application after recording the reasons. Section 21 contains provisions relating to limitation.

5. The Apex Court in Ramesh Chandra Sharma Vs U.O.I. 2000 SCC (L&S)53, has held :-

"7. On a perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the OA filed before the Tribunal after expiry of three years could not have been admitted and disposed of on merits in view of the

statutory provision contained in Section 21(1)of the Administrative Tribunals Act, 1985. The law in this behalf is now settled (see Secy. to Govt. of India V. Shivram Mahadu Gaikwad)."

6. The applicant Bhoop Singh in Bhoop Singh Vs. Union of India,1992 (2) SLJ 103(SC) was a police constable.. His services were terminated in 1967. He preferred an O.A. on the ground that similarly situated persons have been reinstated in service on the basis of orders passed by Court. The Tribunal dismissed the claim on the ground of delay of 22 years in filing the O.A. On appeal the 3 Judge Bench held:-

"6. It is expected of a government servant who had a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain or more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering if in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement, in our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who

approached the Court earlier and got reinstatement. It was clear to the petitioner latest in 1978 when the second batch of petitions were filed that the petitioner also will have to file a petition for getting reinstatement. Even then he chose to wait till 1989. Dharampal's case also being decided in 1987. The argument of discrimination is, therefore,not available to the petitioner.

7.There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal in the manner suggested by the petitioner. Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under Article 136 of the

Constitution."

7.The appellants in Y. Ramamohan Vs. Government of India, 2001(2) SLR 36 were promotee officers of Indian Forest Service and had been allotted 1976 as year of allotment. This was assailed by direct recruits in OA-611 pf 1986 in which these persons were respondents. The OA was dismissed but pursuant to the orders of Tribunal these appellants preferred a representation for antedating the year of allotment to the Central Government. On rejection of the representation they filed an O.A. which was dismissed on the ground of delay and laches. The Apex Court held:-

"2. Mr. Gururaja Rao appearing for the appellants vehemently contended that the Tribunal was not justified in dismissing the application on the ground of laches on the part of the appellants, particularly when there is a positive assertion of the appellants, that they did not know of earlier gradation list prior to the order of the Tribunal in the earlier case filed at the instance of the direct recruits. Even if that is assumed to be correct, notwithstanding a positive finding of the Tribunal in the earlier proceedings wherein the appellants were party-respondents to the effect that the Principal Chief Conservator of Forests has, in fact, communicated the commond gradation list dated 3.5.1983, even then there was no rationable or logic on the part of the appellants to file a representation to the Central Government claiming that the order of allotments should be 1974. Even if they have come to know of the gradation list during the course of the proceedings in 1986, we see no justification for their not approaching the appropriate authority within a reasonable time, and having waited for more than 3 years they have approached only in the year 1990. We, therefore, do not see any illegality

with the order of the Tribunal dismissing the claim of the appellants on the ground of laches. Before us, four authorities of this Court have been cited in support of the contention that application ought not to have been rejected on the ground of laches only. But in each and every case what has been noticed is that the question whether the discretion of the court or the Tribunal should be exercised for condoning the laches would depend upon the facts and circumstances of each case. In the case in hand when the Tribunal itself has recorded a finding in the earlier case that his gradation list had been duly communicated in the year 1983, we must assume that the applicants knew of the gradation list assigning them the year of allotment as 1976, in 1983, and therefore the so-called representation filed by the appellants to the Central Government after disposal of the earlier application filed by the direct recruits is nothing but a subterfuge to get the period of fresh limitation. This method adopted by the appellants disentitles them of any relief. That apart, the gradation list of the year 1983 allotting 1976 as the year of allotment to the appellants have almost settled the seniority list, which need not be disturbed after this length of time. We, therefore, see no infirmity with thel impugned order of the Tribunal requiring our interference in the matter. This appeal is accordingly dismissed."

8. The Ahmedabad Bench of the Tribunal in OA-479 of 2002, Major I.N.Maligi Vs Union of India, to which the present Member (A), was a party, was considering a similar question. The earlier OA-131 of 2000 was disposed off with a direction to the respondents to consider his representation for grant of promotion to Lt. Colonel rank from the date of promotion of his junior in 1984. The representation was rejected. It is, thereafter, that the O.A. was filed. The respondents took the preliminary

objection that the direction to consider the representation did not provide a fresh cause of action and the OA was barred by limitation. The applicants in the aforesaid OA had filed MA-707 of 2002 for condonation of delay. It was contended that once a concession had been granted and the Tribunal had given a direction for consideration of representation the plea of limitation cannot be raised. The Tribunal had also taken note of the decision in Y. Ramamohan's case. Paras 21 & 22 of the order passed in OA-479 of 2002 are as under:-

"21. While deciding the OA-131 of 2000 the Tribunal did not consider the question of limitation nor gave any finding on that point. Counsel for the respondents in that case did not make any statement with regard to limitation. The counsel's statement recorded is that "the respondents have no objection if such a representation is moved and according to him, if such a representation is moved the competent authority will consider the same." Thus the question of limitation was neither considered nor decided nor any concession with regard to limitation was granted when OA-131 of 2000 was decided. Besides this a counsel cannot grant any concession on point of law. A wrong concession made on question of law is not binding as has been held in the case of Uptron India Ltd. Vs. Shammi Bhan & Another, reported in 1998(6) SCC,page 538. Note 21 and Note 23 below Section 3 of limitation Act (AIR Manual 1989 edition) have the following comments.

"An admission of a counsel on a point of law as to limitation will not bind his client."

"The court is bound under this Section to discuss a suit or other proceeding which has been instituted after the period of limitation although limitation has not been set up as a defence. It is not competent to a party to

waive a plea of limitation so as to absolve the Court from this duty. Even if such plea is waived, the party or Court itself can take up again."

These principles will apply to OA under A.T. Act also. Thus the respondents can not be debarred or stopped from taking plea of limitation. The applicant's earlier OA-131 of 2000 was only a subterfuge to get a fresh cause of action to agitate the matter which was due long back, if any, during the year 1981-84. Simply because the Tribunal vide its order in OA-131 of 2000 gave the liberty to the applicant to make a representation and to the respondents to decide the same would not cover up two decades delay in filing of the O.A.

22.In MA-707 of 2002 the ground taken for condonation of delay is that the applicant was under bona fide impression that the respondents will consider the applicant's claim to provide justice. The other ground is that the applicant has been representing for his right, claim since long back regularly and repeatedly and that the claim of the applicant in respect of recurring continuous loss. In our view the grounds taken in MA-707 of 2002 for condonation of delay are totally untenable. We have already referred to the decision of the Apex Court in the case of S.S. Rathore which fully covers the case of the applicant. There is nothing on record to show that repeated representations were sent. The only representation referred to is 30th August 2000 which was rejected on 06.01.2001,which is impugned in the present O.A. Another representation referred is of subsequent date sent to the Secretary,Ministry of Defence. Thus there is nothing to show that any representation prior to 30th August 2000 was sent by the applicant for a relief, which accrued to the applicant prior to 1984. Thus there is no ground to condone the delay in the present O.A. Claim for permanent commission or promotion to the post of Lieutenant Colonel

cannot provide a recurring cause of action after many juniors have been granted permanent commission or promoted to various higher stages. Besides this, the Tribunal's order in OA-131 of 2000 does not provide a fresh cause of action to the applicant to approach the Tribunal for claim, which relates back to the year 1984 and earlier."

9. It is clear from the decision in Bhoop Singh's case that the decision in the case of a similarly situated person cannot provide the cause of action or starting point of limitation. As per the decision in Dr. Ramesh Chandra Sharma's case Dr. the matter relating to limitation has to be first decided. Following the decision in Y. Ramamohan (supra) a coterminous Bench has held that a direction in an earlier round of litigation does not provide for condonation of delay. The same has also to be reckoned from the date when the cause of action actually arose.

10. It is stated in para 3 of the O.A. that the limitation is within time

11.Coming to the facts of the case we find that Annexure-A-1 series contain certificates granted to 18 persons only. It has Dr. no entry regarding the period of employment. Whether they were engaged before 1.4.81 and were in service when the exercise to enter their names on live register was made is an important question. Were they engaged before 1.4.81 but discontinued before that date. Their names were required to be entered in supplementary live register provided they had applied before 31.03.87 in response to notice issued. The letter dated 19.06.90 produced by applicants is in this regard. If that be so cause of action arose in 1990. It is only such casual labourers who will be conferred temporary status as per the scheme and can claim reengagement.

12. It is thus clear that there is a delay of more than a decade. The OA is

Dr.

hopelessly time barred. It is dismissed. No costs.

Shankar Prasad

(Shankar Prasad)
Member (A)

(P.K. Sinha)
Vice-Chairman

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