

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.60/1999

TUESDAY DATE OF DECISION:
this 11th Day of July 2000

1. Shri Prakash Lakshman Mandlik Applicant.
(By Shri Y.R.Singh, Advocate)

Versus

Union of India thru Post Master Genl. Respondents

(By Shri. V.S.Masurkar, Advocate)

CORAM

Hon'ble Shri B.N.Bahadur, Member (A)

(1) To be referred to the Reporter or not?
(2) Whether it needs to be circulated to other Benches of the Tribunal?
(3) Library.

B.N.Bahadur
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No. 60/1999.
This TUESDAY the 11th Day of July 2000.
(11-07-2000)
Coram: Hon'ble Shri B.N. Bahadur, Member (A)

Shri Prakash S/o Lakshman
Mandlik,
Resi: C/o. Yashwant
22/1, Hendrapada, Behind
Mehar Chawli, Lalbahadur
Shashtri Marg,
Kulgaon, Bandlarpur (West),
Bandlarpur (West),
Ulhasnagar, Dist. Thane. Applicant

(Applicant by Shri Y.R. Singh, Advocate)
vs.

1. Union of India
through
The Post Master General,
General Post Office
Mumbai -1. Respondents

(Respondents represented by Shri V.S. Masurkar, Advocate)

O R D E R

(Per B.N.Bahadur, Member (A)):

B.N.B
The Applicant in this case, Shri Prakash Laxman Mandlik -
seeks the relief from the Tribunal, for a direction to the
Respondents to extend the benefit as made available to him along
with others, as per judgement dated 20.4.1993, made by this Bench
of Tribunal in O.A.688/88. The Applicant had made a
representation dated 26.6.1997 and his request has been turned
down by the Respondents vide their letter dated 25.10.1997, which
is impugned in this O.A.

2. The Applicant contends that he did not receive any
communication from the Respondents after the judgement of the
Tribunal, since he had left his place of abode, where the
communication was addressed and that he "was running from Pillar
to Post having lost employment and no one to depend upon.....".

B.N.B

He also states that he was suffering from bouts of delarious attacks making him incapable of keeping in touch with reality. He thus, himself explains the cause of delay in approaching the Respondents. He claims that before approaching Respondents vide letter dated 27.9.1997 he had been contacting the Respondents' staff personally..

3. The Respondents have filed a reply statement where the facts of the case are first narrated. It is admitted that the Applicant was one of the 54 persons granted relief of benefit of the Scheme vide judgement dated 20.4.1993. The defence of the Respondents is that Applicant was asked to contact their Office vide letter dated 30.6.1994, but this letter was received back on Ans ^{undelivered} 30.9.1994. The envelope is not preserved. Thereafter the Respondent had again written to Applicant through letter dated 4.10.1994, and informed that his name will be stuck off from the panel, if he did not respond before 10.10.1994.

4. The Respondents state that despite these two attempts and another by reposting the letter on 23.12.1994, their letters were not received at the address of Applicant. Respondents deny that the ground of mental disturbances raised by Applicant is correct, and state that the benefit of judgement could be given only for six months, as per time given. Hence, it is contended that it is not now open to Applicant to secure relief that he seeks in the present O.A.

5. I have heard Learned Counsels on both sides. Counsel for Applicant argued the case in detail, first taking me over the facts of the case. He contended that no letter was served on the Applicant and no presumption can be made regarding his service in the facts and circumstances of the case, since the letter was not

actually received by the Applicant. He further argued that Applicant had written letters, albeit belatedly, and this delay took place because of the reasons already given in the Application.

6. Learned Counsel for Applicant stated that the plea of the respondents was not that vacancy did not exist and hence he could easily be provided with the job, as has been made available to him through the Order of this Tribunal.

7. Shri V.S.Masurkar argued the case for the Respondents, stating that it was unbelievable that such a person as Applicant would go about, all over, but would not approach the Respondents for a period of few years. He described in detail the efforts made for serving letters on the Applicant, three times and even produced relevant records of the Respondents office in this regard. He further argued that no possible motive could be ascribed to the Respondents, who would naturally like to provide the benefit according to the Applicant along with a large number of others.

8. Shri Masurkar further argued that the copy of letter [Annexed by Applicant with this O.A. at page 17,] clearly shows that Applicant had indeed received the letter dated 10.10.1994 from the Respondents.

9. I have seen all the papers in the case including the file made available by Respondents. I have also considered the arguments made before me by learned Counsels on both sides.

10. It is clear that the benefit of employment had been provided to the Applicant by an Order of this Tribunal. The main argument taken by Applicant is that he never received any communication from the Respondents and was not well and was without a job, and



...4/-

hence did not approach the Respondents early. It is seen from the records produced before us that two efforts were made as two envelopes are on record. In the case of the third one, Applicant has stated that wrapper has not preserved. Considering all facts and circumstances, and the record, there is no doubting that the Respondents had taken action to inform the Applicant, who was perhaps not available on three occasions. Since this effort has been made three times, and not just once, we cannot fault the respondents or doubt their bonafides in regard to their attempt to inform the Applicant.

11. The contention taken by Applicant about his not being well for three years is something that cannot be depended upon and certainly not as the basis for providing benefit by judicial assessment. The period in question is of three to four years and it is difficult to merely brush aside this aspect of delay and laches, of as long a period as this. No medical certificate or other evidence is forthcoming from Applicant. It is also not unimportant to note that the Applicant himself in his letter addressed to PMG Mumbai on 27.9.1997 accepted that he had received a communication dated 10.10.1994. It is, however, true that in the same letter [page 17] he alludes to a promise by whomever he had met in PMG's office to the effect that he (Applicant) would be suitably informed.

12. In the facts and circumstances of the case, it is not possible to intervene in the matter by judicial determination. It is indeed unfortunate that the Applicant is losing an opportunity of employment in these difficult days of unemployment. It is even more tragic, that this should happen when he has been accorded the benefit through an earlier Order of this Tribunal. Even though we cannot intervene judicially as

explained above, I am making it clear hear that orders in this O.A. should not be taken to wipe away the right of the Respondent to themselves consider the case of the Applicant sympathetically, and on humane considerations, within the ambit of rules. For instance if Respondent could possible employ the Applicant by loss of seniority or anyother condition/s. This is a matter that the Respondent can decide on their own best judgement, as per rules. No directions however, are being given. I trust that this case will be put up to the Respondent No.1 (Post Master General) for consideration as per observations above.

13. In view of the detailed discussions above, this Application is hereby dismissed, subject to observations made in the preceding paragraph. There will be no orders as to costs.

B.N.Bahadur

(B.N.Bahadur) 11.07.2000

Member (A)

sj*