

1

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

Dada Sadashiv Kamble,
Technician - I,
O/o Chief Works Manager,
Electrical Loco Workshop,
Central Railway, Bhusawal.
R/o RB-II/1073/A,
15th Block, Bhusawal.
(By Advocate Shri D.V.Gangal) - Applicant

1. Union of India,
through General Manager,
Central Railway, HQrs Office,
Mumbai, CST, Mumbai.
2. The Divisional Railway Manager,
Central Railway,
Bhusawal Division, Bhusawal.
3. The Chief Works Manager,
Electrical Loco Workshop,
Central Railway, Bhusawal.
(By Advocate Shri R.R.Shetty)

Shri Yashwant Baburao Handore,
Technician - I,
O/o Chief Works Manager,
Electrical Loco Workshop,
Central Railway,
Bhusawal.
R/o RB-II/1118/A,
40, Bungalows,
Bhusawal.
(By Advocate Shri Shri D.V.Gangal) - Applicant

1. Union of India
through the General Manager,
Central Railway, HQrs.Office,
Mumbai, CST, Mumbai.

2. The Divisional Railway Manager,
Central Railway,
Bhusawal Division,
Bhusawal.
3. The Chief Works Manager,
Electrical Loco, Workshop,
Central Railway,
Bhusawal - 425 201.
(By Advocate Miss S.Dhaware on behalf
of Shri Suresh Kumar, Advocate) - Respondents

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Membr (A) -

We are disposing of these two OAs 506/99 and 871/99 together, as the basic issues in both OAs are similar. As Shri Gangal mentions, only the dates are different. For the sake of convenience we have taken up OA 506/99 for the facts.

2. The Applicant has stated that he was appointed in the Railways on 5.1.1970, and continued till 16.2.1976, when he was served with order stating that his services are not required by the Administration. He was put off duty w.e.f. 1.3.1976. The Applicant avers that he was removed from service without any reason, which action is illegal and void. Upon representation by Applicant, the Respondent took him back vide order dated 18.6.1977 (Annexure-D), and the Applicant states that he was re-appointed to the post (a reading of the copy of Order on file shows that all Applicants were taken as fresh entrants).

3. The Applicant made representation on 25.4.1984 (Exhibit-E). It is stated that the Respondents failed to reply to the Applicant and as such the Applicant made another representation on 18.7.1996. The Applicant then cites Rule 39 of the Railway Pension Rules and mentioned case law. Being thus

aggrieved, the Applicant is before us seeking the relief for a direction to the Respondents to condone the break in service for the period between 1.3.1976 and 17.6.1977 thus treating the Applicant as being in continuous service w.e.f. 11.2.1974.

4. The Respondents have filed a Reply-Statement resisting, the claims of the Applicant, and have first taken the stand that the Application is badly barred by limitation and suffers from delay and laches, and that repeated representations do not extend the period of limitation. The aspect of limitation/delay is discussed in length in written statement.

5. The Respondents then submit para-wise comments to the averments made in OA, denying the claim of the Applicant for regularising of the break in service. It is stated that this is not a case of reinstatement, and that the action of fresh appointment was not challenged for 24 years.

6. The Learned Counsel for the Applicant, Shri D.V.Gangal and the learned counsel for the Respondents Shri Suresh Kumar were heard at some length. We have considered the arguments on both sides and the papers in the OA. We have also heard the arguments of Shri R.R.Shetty yesterday.

7. Upon consideration of facts and circumstances of these cases, we find that the issue on limitation, delay and laches is of importance and needs to be dealt with at the outset. Based upon our conclusion with regard to the issue of limitation, the aspect of jurisdiction may also be relevant in the case with reference to Section 21 of the Administrative Tribunals Act.

8. Now, Office Order No.42/1977 covers both the cases viz. Shri Y.B.Handore and Shri D.S.Kamble. The Applicants in both the OAs state as follows:

"The services of the following Skilled Artisans Gr.Rs.260-400 (RS) were terminated from the dates as shown against such:-

1. Shri Y.B.Handore - From 01.3.76
2. Shri D.S.Kamble - From 01.3.76
3. Shri K.R.Kulkarni - From 10.3.76

C.E.E. has considered their representation in terms of CPO (EL) RB's order No.HPB/853/EL/R/Fil/dt.18.6.77 and the above-mentioned 3 ex-employees are appointed as Skilled Artisans Gr.Rs.260-400 (RS) as fresh entrants with immediate effect. They are appointed on the posts in which they were working prior to their termination of services."

The phrase "Fresh entrants" has relevance to the aspect of limitation also. It is seen from the Annexure to the Respondents' reply that the representations have been made by the Applicant, Shri Kamble at page 30 of the OA and the same has been rejected vide letter dated 13.8.1984 at page 29. Earlier to this, there is another letter from the Administration rejecting the representation of the Applicant dated 11.2.1980 on the ground that the Applicant Shri Kamble was appointed as a fresh entrant. In this regard, Learned Counsel for the Applicant Shri Gangal had made the specific point that the matter would not be hit by limitation, delay and laches since the Applicants are not impugning these orders. These orders by way of re-appointment were not challenged per se and the stand that once the Applicants were taken back on duty it must follow that Rule 39 and 43 of the Railway Pension Rules (or analogous provisions which exists prior to 1993) that break in service be condoned would apply (copies available at page 19).

9. The arguments on the point of limitation are first to be considered. The point is taken by Respondents that taking back the Applicant on duty was clearly ordered to be by way of fresh appointment. This was a conscious decision of the Respondents. Whether this decision was correct or not can be challenged. We are not going into the merits of the case, but there is force in the argument that it should have been challenged at the due time. Even assuming that 1984 reply gives cause of action to the Applicants, the filing of this OA is delayed by 14 years for which no reason is forthcoming. In fact, the arguments taken on behalf of the Applicants to the effect that they are not challenging these orders cannot save the Applicants from facing the infirmity of delay and laches either.

10. Another argument was that the letters rejecting the representation was not served on them. Even assuming this as true, the provisions of the Administrative Tribunals Act also applies. No reply also gives a cause after six months. Infirmity of delay and laches is far too great to be considered for condoning the delay. Condoning such delay would make the law of limitation and the principle of delay and laches meaningless.

11. The Learned Counsel for both sides had tried to argue on the question of merits also. However, once we come to the conclusion that the matter is badly hit by limitation and suffers from the infirmity of delay and laches, we cannot go into the merits. For the aforesaid reasons, we hereby dismiss both the OAs 506/99 and 871/99. There will be no order as to costs.

Member (J)

Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. No.: 5/2003 IN O.A.No. 871/99.

Dated this Friday, the 31st day of January, 2003.

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

Hon'ble Shri S. L. Jain, Member (J).

Yashwant Baburao Handore ... Applicant.

Versus

Union of India & Others ... Respondents.

TRIBUNAL'S ORDER ON CIRCULATION :

This is a Review Petition filed by the Applicant in O.A. No. 871/99 which O.A. was disposed of by us vide order dated 06.12.2002. It was a common order disposing of O.A.No. 506/99 and 871/99.

2. We have gone through this Review Petition, and are disposing it of by circulation. We find that the O.A. has been dismissed since we had come to the conclusion that the matter was badly hit by limitation and suffered from the infirmity of delay and laches.

3. The Review Petition seeks to raise the point that since the matter is pending with the Railway Board, it cannot be said that the Applicant is guilty of delay in filing the O.A. Also that, the matter is not hit by limitation, because the Original Application is filed on 20.09.1999; that Applicant had no access

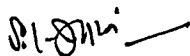
[Signature]

...2


to official documents which were filed by M.P. on 17.12.2002, and that the Labour Union had given him these documents after 06.12.2002.

4. Well as the matter may be pending with the Railway Board or in other level of Government, the contention in fact is that the Government has not decided the matter. The Administrative Tribunals Act, 1985, clearly expects that after making a representation and allowing six months time to elapse, the aggrieved party should come to the Tribunal within one year thereafter. Thus, at best, a period of some 18 months is provided. Hence, the argument that the matter is still pending with the Railway Board holds no water. In any case, these are arguments which really seek to challenge the view of the Tribunal and conclusion reached regarding limitation, delay and laches, and cannot constitute errors apparent on the face of the record, as is made out.

5. We have seen the other parts of the R.P. also and cannot find any argument or fact which can convince us of any error apparent in the judgement. Well as the Applicant may have a grievance against our conclusions, the remedy does not lie in a Review Petition. Hence, the R.P. No. 5/2003 is devoid of merit and is hereby dismissed with no order as to costs.



(S. L. JAIN)
MEMBER (J)



(B. N. BAHADUR)
MEMBER (A).

OS*