IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 549/99

Date of Decision: 17.4.2001

Shri Harishchandra Ramawtar — Applicant.

Shri S.V.Marne — Advocate for Applicant.

Versus

Union of India & Anr. — Respondent(s)

Shri R.R.Shetty — Advocate for Respondent(s)

CORAM:

Hon'ble ~~Shri~~ Smt.Shanta Shastry, Member(A)

Hon'ble Shri.

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(3) Library ✓

(SHANTA SHASTRY)
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.549/99.
DATED THE 17th DAY OF APRIL 2001.

CORAM:HON'BLE SMT SHANTA SHASTRY, MEMBER(A)

Shri Harishchandra Ramawtar,
Working as MRCL Gangman
Under CPWI,
Bulsar.

Residing at

C/o Dwarka Prasad Gupta,
Mogarawadi,
Madhi Nagar,
At & PO : Valsad : Applicant.

By Advocate Shri S.V.Marne

V/s.

1. Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008. : Respondents

By Advocate Shri R.R.Shetty

(O R D E R)

Per Smt.Shanta Shastry, Member(A)

The applicant has impugned the letter dated 15/2/99 whereby he was informed that being a casual labour G/Man having temporary status, there is no provision to offer alternative appointment to him under medical de-categorisation. The applicant's prayer is to declare the aforesaid order as illegal and void and to direct the respondents to grant the applicant

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alternative employment w.e.f. 8/8/1985 with all consequential benefits as well as cost of the application.

2. The applicant was initially appointed as a casual labourer on 29/9/1984 under the control of CPWI, Valsad. While performing his duties, the applicant sustained injuries while working on open line on Railway Track when a stone struck on his right eye injuring it badly. This happened on 17/4/85. According to the applicant he was treated by Railway Doctor in Jagjivanram Hospital, Mumbai Central. After he had recovered from injuries he had submitted for examination for fitness to join his duties. The Divisional Medical Officer had directed the Senior Divisional Engineer, Valsad vide letter dated 9/7/1985 to de-categorise the applicant. The applicant was examined by the Divisional Medical Officer, Valsad. The applicant was declared fit only for C-2 categories vide order dated 8/8/1985 of the Divisional Medical Officer, Valsad.

3. The applicant states that he was granted temporary status by the respondents vide Office Order dated 25/3/86 with effect from 23/3/1986. It is the case of the applicant that he should have been offered alternate job in C-2 category. He had requested the respondents to give him an alternative job, but he was given to understand by the CPWI, Valsad that there was no light job, which could be offered to him and as and when such job would be available, the applicant would be called. The applicant submits that hoping that he would be called one or the other day, he waited. He was illegaly kept out of job for no fault of his. Finally he addressed a representation dated 8/12/98 to the respondents requesting to grant him alternative employment in accordance with rules. The respondents finally replied to the representation vide

the impugned letter dated 15/2/99 rejecting the applicant's request.

4. The applicant contends that he is legally entitled to be granted alternative appointment. The Indian Railway Establishment Manual clearly provides for grant of alternative employment to a Railway Employee who suffers injury during the course of his duties. Such a benefit is also available to a temporary Railway Servant. Further, the applicant's services have neither been terminated not has he been removed from service. So he continues to be under the services of the respondents. The respondents are duty bound to offer him a suitable job. The applicant has also referred to Chapter 10 of the Indian Railway Establishment Manual wherein also 100 posts of C-II category have been mentioned. Therefore it should not have been difficult for the respondents to adjust him against one of those posts.

5. The applicant has also relied on a decision of this Tribunal in OA-344/88 dated 22/9/93 in the case of J.B.Choudhari V/s. Union of India wherein it was held that alternate employment has to be offered to a casual labourer with temporary status after such medical de-categorisation. It was also observed therein that a medically de-categorised Railway Employee is not removed or terminated and he very much continues in the service of the Railways. The applicant submits that his case is exactly similar to the case of the applicant in OA-344/88, and therefore the ratio of that judgement should squarely apply in the applicant's case also.

6. The applicant also states that the respondents have determined an amount of Rs.468.55 towards compensation payable to the applicant. He has still not received the said

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amount. The amount is too meagre towards compensation.

6. The respondents have filed their written reply on 4/2/2000 in which the stand taken was that the applicant was never screened for grant of temporary status. He continued to be a casual labour on the date on which he had met with the accident. Hence the applicant does not come under the perview of these provisions for providing alternate job. The respondents have also taken a strong plea of limitation. The applicant was injured on 17/4/1985. He was paid Rs.659.60 vide payment order dated 12/2/86 and Rs.468.55 thereafter. The balance amount of Rs.10,949/- is still due to the applicant on account of his suffering 30% earning disability. However, the applicant never turned up in the Office of the respondents after his injury. The cause of action arose in 1985, whereas the applicant has approached the Tribunal in 1999. The application therefore suffers from delay and laches and is grossly barred by limitation. Further, even if a Railway servant who has attained temporary status and remains absent on extraordinary leave exceeding three months, he shall be deemed to have resigned from service. The applicant was absconding for past 14 years therefore he is deemed to have resigned. It is an indication that he was not interested in pursuing his career in the Railways.

7. The respondents rectified their reply later on by admitting that the applicant had been granted temporary status. In the additional written statement submitted on 1/2/2001, the respondents while admitting that the applicant had been granted temporary status, still stuck to the stand that the applicant was not entitled to alternate employment. In this context they have referred to the letter of Railway

Board dated 13/12/1972 and 10/5/1973 according to which only such of the casual labour who have rendered a minimum of six years service and are found on medical examination unfit for the particular category for which they were sent for medical examination despite the relaxed standard applied may be considered for an alternative category requiring a lower medical classification. In this particular case, since the applicant has not completed six years of service before his medical de-categorisation, he is not entitled for consideration in an alternative lower medical category. The respondents have also relied on the Railway Board's letter dated 17/9/90 which again goes to state that Casual labour with temporary status who are medically de-categorised would have to get their names registered in the Special employment exchange for the physically handicapped. Once their name is so registered as physically handicapped in the said exchange, they would be considered alongwith other eligible physically handicapped candidates nominated by the Special Employment Exchange, and Vocational Rehabilitation Centre as and when the next Recruitment against the quota for the Physically Handicapped takes place. Thus, these three circulars read together make it clear that there is no automatic grant of alternative employment in lower medical category upon de-categorisation. Therefore also the applicant's case could not be considered for regularisation, or for grant of alternative employment.

8. The learned counsel for the applicant however argued that Chapter-VIII of the IREM has cast the duty on the respondents to grant alternative appointment. The respondents have not considered the case of the applicant at all in the light of these provisions in Chapter-XIII of the manual.

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9. In regard to the limitation and delay and laches, the applicant contends that it is the respondents negligence which is responsible for delaying the case as the respondents all along held that the applicant had not been granted temporary status till they admitted in their reply on 1/2/2001 that the applicant had been granted temporary status. Further the applicant has cited following judgements wherein the Tribunal has ruled that the delay is decided from the date of last representation replied to in the instant case. In the instant case though the applicant has made a representation after 14 years of the actual cause of action, the applicant has made his last representation on 8/12/98 which was decided by the respondents on 25/2/99 and the OA was filed within two months of the reply i.e. 13/4/99. Therefore the application is clearly within limitation.

i) (1989)I AISLJ 97
B Kumar V/s Union of India

ii) (1995)I AISLJ 583
B L Behl V/s. Union of India

iii) (1994)(I) ATJ 497
Sharad Kumar Rana V/s. Union of India

iv) (1991)(I) ATJ 344
Gautam C Meshra V/s. DRM South Eastern Rly

10. The applicant has further argued that the respondents statement that the applicant had been absconding for the past fourteen years and therefore he is deemed to have resigned is also not correct. The applicant has relied on the judgement of the Hon. Supreme Court in L.Robert D'Souza V/s. Executive Engineer, Southern Railway reported in 1982(1)AISLJ 319 wherein it has been held as follows:-

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"Absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and enquiry or at any rate without complying with minimum principles of natural justice."

So if the applicant was found to be absent, the respondents could have conducted an enquiry in the matter which would have given the applicant as opportunity. The applicant has also referred to a judgemnt of the Tribunal dated 22/9/92 in the case of Janardhan Bhalchandra Choudhari V/s. Union of India. The Tribunal held that the applicant had been prevented from resuming duties without following the procedure prescribed under the disciplinary and appeal rules. The applicant had been de categorised due to an accident which he met. The applicant there also had been granted temporary status. The Tribunal was of the view that there is no justification for the action of the respondents in directing the applicant for fresh registration with the special employment exchange. He should have been considered for suitable job atleast on the date of his making a representation. The case of the present applicant is similar to the one decided in OA No.344/88 decided as above. The applicant therefore prays that he should be considered for alternative employment from 8/8/85 with all consequential benefits.

11. I have heard the learned counsel on both sides and have given careful consideration to the pleadings. I have also perused the various circulars and also the relevant chapters of the IREM.

12. Before proceeding with the matter, I would first come to the objection regarding limitation, delay and laches. I find that there is a gap of 14years from the date of cause

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of action xxxxxxxxxxxxx, i.e. 1985 onwards. The applicant has pleaded that since his last representation was replied to by the respondents on 15/2/99, his application is very much within limitation. In the judgement dated 12/11/87 in OA-191/86 in the matter of Shri B.Kumar V/s. Union of India and others referred to by the applicant, the Headnote reads as follows:-

> "Limitation and repeated representation- Applicant filed representation in 1979 which was rejected in 1979 itself after examination - Again filed representation in 1984 1985 which was again examined on matters and rejected - Filed application - Plea that application was barred by limitation - Held where department has chosen to entertain a new representation, examine on merits and reject, the limitation cannot be affected adversely and will run from such rejection.
>
> It has been further held that the applicant was guilty of delay and laches - Tribunal found he had filed a fresh representation which was also examined on merits and rejected - Held the question of delay and laches has to be viewed in light of section 19, 20, and 21 of the Administrative Tribunals Act and viewed in the light the plea of delay could not hold ground."

13. Since the applicant's representation made in 1998 was entertained by the respondents in 1999, the applicant's case is covered by the decision of the Tribunal mentioned above. Hence, limitation cannot be a ground for dismissal of the OA. Similar is the view in the case of B.K.Behl V/s. Union of India & Ors.

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14. There are several other judgements of the Supreme Court holding a different view on the issue of limitation and delay and laches. In the case of S.S.Rathore V/s. State of Madhya Pradesh, it has been held that the limitation period starts from date of order of the higher authority entertaining the statutory remedy. In the case of Ratam Chandra Sammanta & Ors. V/s. Union of India reported at JT 1993(3) SC 418 it has been held that delay deprives the person of the remedy available in law. A person who has lost his remedy by lapse of time loses his right as well. A writ is issued by thes Court in favour of a person who has some right and not for sake of roving enquiry leaving scope for manoeuvering - Petition dismissed.

15. In another case of State of Karnataka V/s. S.M. Kotrayya and Ors reported at 1996 SCC (L&S) 1488, it was held that explanation should be given for the delay which occassioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal sh should satisfy itself whether the explanation offered was proper. The Hon. Supreme Court therefore held that the Tribunal was wholly unjustified in condoning the delay where no satisfactory explanation could be given.

16. In regard to the laches and delay also, it has been observed that the Courts and Tribunals should be slow in disturbing the settled affairs after a long period. Parties should pursue their rights and remedies properly and not sleep over their rights.

17. I would also like to rely on the judgement in the matter of P.K.Ramachandran V/s. State of Kerala & Anr. reported at JT 1998(7) SC 21 it was held that law of limitation may harshly affect a particular party but it has to be applied

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with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.

18. No doubt in the present OA, the applicant made a representation in 1998 and the same was entertained by the respondents. However, the applicant has not produced any material to show that he had represented earlier also. He has merely stated that he had requested the respondents to give him alternative job after he was de-categorised and declared fit for only C II category. But he has not produced any copy of the representation made by him. It therefore appears that the only representation he has made was for the first time in 1998. The applicant has also not filed any application for condonation of delay. He has not explained why he kept silent for 13 years. He has not been able to explain the delay satisfactorily and therefore I am unable to condone the delay, in this matter.

19. I therefore dismiss the OA on the ground of limitation itself without going into merits of the case. The OA is dismissed. No costs.

(SHANTA SHASTRY)
MEMBER(A)

abp.