

CENTRAL ADMTNISTRATIVE TRIBUNAL
MUMBAI BENCH

OA 510/2000

MUMBAI, THIS THE 15th DAY OF JUNE, 2001

HON'BLE SHRI SHANKAR RAJU, MEMBER (JUDICIAL)

Shri Jaising Bhaurao Shingote
C/o Shri Pratap B. Shingote
Sewri Police Line
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Reay Road, Mumbai - 400 010

Home Address :-

Vill. & P.O. Badhi (Belapur)
Taluka : Akola
Distt. Ahmadnagar (MAHARASHTRA).

...Applicant

(By Advocate Shri R.P. Saxena)

V E R S U S

1. Union of India, through
The General Manager
Canteen Stores Department
ADELPHI 119, M.K.Road
Mumbai - 400 020.

2. The Area Manager
Canteen Stores Department
Gunpowder Road, Mazgaon
Mumbai - 400 010.

... Respondents

(By Advocate Shri R.K. Shetty)

O R D E R

BY HON'BLE SHRI SHANKAR RAJU, MEMBER (J)

The applicant in this OA who had worked as casual labour from 1.12.85 to 10.1.89 has assailed an order dated 31.5.2000 whereby his request for grant of temporary status and regularisation has been denied to him on the ground that his services had been terminated ² w.e.f. 11.1.89 and that he was not a empanelled candidate in the local panel drawn our of which the incumbents were regularised. The applicant has sought setting aside of the impugned order dated 31.5.2000 and to hold that the applicant is entitled to regularisation in Group "D" post and direct the respondents to reinstate the applicant in

service with all consequential benefits from the date is juniors were accorded the same benefits. The applicant has worked as casual labour w.e.f. 1.12.85 to 10.1.89 and his services were dispensed with vide an order dated 11.1.89. The applicant contends that he was eligible to be considered as per the memorandum dated 26.10.84 issued by the Govt. of India for regularisation Group 'D' post as he had already put in two years as casual workers with 240 days and more service. The applicant contends that a common seniority rule was prepared for all Group 'D' daily rated employees of the respondents. It is stated that the services of about 63 casual labours were dispensed with on 9.3.90 which was challenged in OA-183/91, whereby directions have been issued by the Tribunal to reinstate the applicants and regularise them. It is stated that in pursuance of the directions of the Tribunal their services were regularised. The applicant has stated that his two juniors including Salve whose services have been dispensed with him on drawal of panel was regularised in August 1995 and the applicant has been called for being empanelled. The applicant contends that a panel was drawn in 1990 and he was not informed about the same. The applicant has moved an MP for a direction to the respondents to produce the call letter given to the applicant in 1990 for attending the interview held on 16.10.90 but the respondents have failed to produce the same and as such an adverse inference can be drawn against them. The applicant has also contended that similar reliefs have been accorded to identically situated applicants in OA-183/91 and he cannot be deprived of the same treatment on the ground that he was not a party to the said OA. The applicant placing

reliance on A.R.C. Laminart Pvt. Ltd. v. A.P. Agencies, ATR 1989 SC 1239 contended that the cause of action is a bundle^h of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the respondents since in the absence of such an act no cause of action can possibly^h accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. The learned counsel of the applicant has also placed reliance on the ratio of Apex Court in Rajpal v. State of Haryana & Ors., JT 1995 (8) SC 450 to contend that the person similarly situated if regularised in service the applicant is also entitled to the same relief by condoning the delay by depriving the back wages. It is also contended that the representation of the applicant was entertained and disposed of by a speaking order by the respondents which gives rise to a cause of action and as such his OA is not barred by limitation. It is also contended that one R.S. Yadav whose services were also dispensed with along with the applicant was empanelled with the applicant have been regularised in the year 1998 and 1999 and the applicant immediately coming to know of this fact as the person was posted at Mumbai made their representation. It is also contended that one S.R. Padam and Ramesh Aganna on the basis of the interview dated 16.10.90 were regularised and when substantial justice and technical considerations are pitted against each other, the cause of substantial justice is to be preferred.

The learned counsel for the respondents took exception to the averments of the applicant and contested the application on the ground that the same his hopelessly barred by limitation. It is contended that the applicant was disengaged from service as a daily wagee on 11.1.89 and the case has been filed after 11 years without any justified and reasonable grounds for condonation of delay prayed in his MP. The respondents have further contended that there is no differential treatment meted out to the applicant in the matter of his regularisation. It is contended that as the applicant was not sponsored through Employment Exchange he was not given the benefit of the OM dated 20.5.85. As the applicant despite being informed has not reported to the respondents he could not be empanelled and as such he has no right to seek regularisation as Group 'D' employee. It is contended that the cause of action had arisen to the applicant in the year 1989 but yet no representation was filed immediately and further contended that one cannot stake his right on the basis of similar treatment accorded to an employee who is not similarly situated and is not on equal footing. In this conspectus it is contended that the juniors of the applicant in pursuance of the call letter reported to the respondents and were empanelled but the applicant had not reported to the respondents despite being given proper notice as such he cannot claim his right after a long lapse of time on the basis that his juniors have been accorded regularisation in the year 1988. It is also contended that the record of regularisation etc. of the casual labour is not maintained after a long lapse of time and the same is destroyed. Referring to the ratio of the Apex Court in

Bhoop Singh v. Union of India, AIR 1992 SC 1414 as well as State of Karnataka v. S.M. Kotrayya, it is contended that the belated applications filed on the ground that the applicant has come to know that similar reliefs have been granted by the Tribunal is not a proper explanation and justification of delay and relief cannot be granted merely because other similarly situated persons have been accorded the same reliefs. It is also contended that by acceding the reliefs the applicant would disturb the seniority of other persons and this would amount to unsettling the settled position and by placing reliance of B.V. Siviah & Others v. K.A. Babu, 1998 SCC (L&S) 1656 it is contended that even restoration of inter-se-seniority even after 4 years is held to be belated and denied on the ground of laches. The respondents have further contended that the applicant had given his address of Mumbai and was very close to the office of the respondents but yet had not taken pains to pursue his grievance and had remained silent for such a long time.

The applicant in his rejoinder reiterated the contentions taken in the OA and also placed reliance on the ratio of Raj Kamal v. Union of India, 1990 (2) SLJ CAT 169 to contend that casual labour must be regularised where there is a vacancy.

m I have carefully considered the rival contentions of the parties and perused the material on record. The applicant vide his MP-330/2001 has prayed for a direction to the respondents to produce the call letters whereby he has been asked to attend the interview held on 16.10.90 in pursuance of which the casual labours have been put in

the panel for the purpose of being considered for regularisation in Group "D" post. The respondents have failed to bring on record the letter and rather with their sub-rejoinder have produced Board's proceedings of 16.10.90 whereby it is contended that all the casual labours except five have attended the interview, which, inter alia, included the applicant and were later on regularised in accordance with their seniority. The claim of the applicant was that when he had come to know about the regularisation of his junior in 1989 he immediately made a representation to the department and had come to know that as he was not empanelled he could not have been considered for regularisation. In my considered view mere non-production of the letter whereby the applicant was called for interview on 16.10.90 would not indicate that no information was given to the applicant to participate in the process of being regularised to Group "D" post. The applicant even after ^{he} ~~was~~ being disengaged had not raised his grievance either before the respondents or before the Court. ^{He} remained silent for a long period of 12 years and thereafter on the basis that one of his juniors whose services have been dispensed with along with the applicant was regularised in the year 1998 had staked his claim for being regularised. The case of the applicant cannot be equated with his juniors as those candidates have participated in the interview held on 16.10.90 and placed in the seniority list and as and when their turn came they were regularised. Mere regularisation of a junior would not bestow the applicant a right to challenge his termination and non-regularisation as Group "D" as the cause of action is neither recurring one and had arisen in the year 1989 when the applicant's services have been

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dispensed with. Accord of similar benefit to a person would not create a right in favour of the applicant to claim regularisation. In this view of my I am fortified by the ratio laid down by the Apex Court in Bhoop Singh's and Kotrayya's cases wherein it has been held that within the reasonable period a Govt. servant has to seek relief. Inordinate and unexplained delay or laches is itself a ground to refuse relief, irrespective of the merit of the claim. I am of the view that the grounds given by the applicant in his MP for condonation of delay are absolutely vague and are not justifiable. The applicant has failed to state any reasons or grounds to explain ⁱⁿ each day's delay in filing the OA. As regards, the order passed by the respondents on 31.3.2000 the same also indicates that indirectly one of the grounds to reject the claim of the applicant is his belated representation by referring to the fact that the services of the applicant were terminated w.e.f. 11.1.89 would itself indicative of the fact that that the same has been denied being time barred. The Apex Court in the case of S.S. Rathore v. State of M.P., AIR 1990 SC 10 has also laid down that one has to come for redressal of grievance within the stipulated period under Section 21 of the A.T. Act and repeated representations and even order passed on it when it is not an available statutory remedy will not bestow the applicant a cause of action to assail the orders. The relief claimed in this OA is highly belated and no justified reasons have been shown by the applicant in his MP for condonation of delay. As such the MP for condonation of delay is rejected and the claim of the applicant is held to be time barred.

On merits also I do not find any merit in the claim of the applicant. The resort of the applicant to make out a case of hostile discrimination in violation of Articles 14 and 16 is not tenable as the juniors with whom the applicant is equating his case are not equally placed. They are not at par with the applicant. The juniors have been interviewed on 16.10.90 had been placed in the panel drawn and as per seniority had been regularised whereas the applicant who had failed to report to the respondents was not placed in the panel and as such was not to be accorded the same benefit. It is an established principle of law that unequals cannot be treated equally and there cannot be any discrimination between the unequals. As such the applicant being not empanelled would not have any legal right to allege parity with his juniors and I find that there is no infringement of articles 14 and 16 of the Constitution of India in the instant case.

Having regard to the discussion made above and reasons recorded I find no merit in the claim of the applicant. The O.A. is, therefore, dismissed as bereft of merit but without any order as to costs.

S. Raju
(Shanker Raju)
Member (J)