

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH, NEW BOMBAY

CAMP : NAGPUR

(W)

OA.NO. 111/90

Smt. Yeshodabai
vs.

... Applicant

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri G.Sreedharan Nair
Hon'ble Member (A) Shri I.K.Rasgotra

Appearance

Mr.V.S.Yawalkar
Advocate
For the Applicant

Mr.P.S.Lambat
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 6.8.1990.

(PER: G.Sreedharan Nair, Vice Chairman)

Heard counsel on either side.

2. The relief claimed in this application by the widow of Luggage Parcel Porter who died on 14.12.1985 is to set aside the order dated 28.8.1985 under which he was removed from service and to treat him as if he died during the period of service. Family pension, gratuity etc. are also claimed as consequential reliefs.

3. M.P.No. 570/90 has been filed by the applicant for condoning the delay in filing the original application. It is urged therein that an application was filed in the year 1989 by the applicant before the Central Government Labour Court at Nagpur under Section 33-C(2) of the Industrial Disputes Act, 1947, ^{and} as the said application was rejected as not maintainable, there is no question of limitation for the present application.

4. Counsel of the respondents opposed the admission of the application and stressed that the application is barred by limitation and that there is no ground for condonation of delay.

(S)

5. The retirement benefits claimed in the application can be allowed only if the order by which the husband of the applicant was removed from service is vacated. The said order was passed on 28.8.1985. The husband of the applicant died only in the month of December, 1985. Admittedly, he had not challenged the order of removal from service.

6. Counsel of the applicant invited our attention to clause (a) paragraph 4 of the application where it is stated that the husband of the applicant died on 14.12.1985 while he was in service, and ~~stated that in view of the statement~~ in the reply where by way of answer to the averments in para 4 (a) of the application it is mentioned that "Contents are admitted". On this basis it was argued that there is the admission of the respondents that the husband of the applicant died while he was in service and as such there is no question of removal from service. We are unable to accept this submission. It is very clear from the further statement in the reply that the penalty of removal from service was actually imposed on the applicant by the order dated 28.8.1985 and that it was served on him. Moreover, when the specific prayer is for quashing the order of removal, it is futile to submit that there is no removal at all. 2

7. The present application has been filed only on 15.1.1990. The reason putforward in the petition for the condonation of delay is that as the Labour Court rejected the application on the ground that it is not maintainable, there cannot be any bar of limitation. The application before the Labour Court was for the retirement benefits. The question of removal from service was not sought to be attacked there at all. Even assuming that the period spent in prosecuting the matter

Competing

before the Labour Court has to be excluded in competition
limitation,
the period of ~~relief~~, the present application cannot be
said to be in time as the application before the Labour
Court itself was filed only in the year 1989.

8. We hold that there is absolutely no ground for
condoning the delay in filing the original application.
M.P.No. 570/90 is dismissed.

9. Since the petition seeking condonation of delay in
filing the original application is dismissed, we reject
the original application.

I.K.Rasgotra
(I.K.RASGOTRA) 6/8/90
MEMBER (A)

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8.1985
(G.SREEDHARAN NAIR)
VICE CHAIRMAN