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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
 BOMBAY BENCH

O.A. No. 429 OF 1991.  
 Textbox

DATE OF DECISION 14.11.91

Devidas Vishwanath Puri, Petitioner

Mr. C.B. Kale, Advocate for the Petitioner(s)

Versus

Supdt. of Post Offices & Ors., Respondents

Mr. P.M. Pradhan, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. T.C. Reddy, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-13-86-15,000

  
 (M.M. SINGH)  
 MEMBER (A)

Devidas Vishwanath Puri  
Ex-Extra Departmental Branch Post  
Master Pohner Branch Post Office  
Under Dindrood Sub Post Office  
Taluka Amba Jogai,  
District Beed.  
Address: C/o. Shri C.B. Kale  
'Shree Niwas'  
Kardal  
P.O. Umbarpada  
Taluka Palghar Dist: Thana  
Pin - 401 102. .... Applicant.  
(Advocate: Mr.C.B. Kale)

Versus.

1. Supdt. of Post Offices  
Beed Division, Beed.
2. Director of Postal Services  
Aurangabad Region  
Aurangabad.
3. Chief Postmaster General  
Maharashtra Circle,  
Bombay. .... Respondents.

(Advocate: Mr.P.M. Pradhan)

J U D G M E N T

O.A.No. 429/1991

Date: 14.11.91

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

One B.D. Bhadre appointed as E.D.B.P.M.

Pohner on 24.12.1984 in account with Dindrood Sub Post Office faced a criminal complaint, arrest and prosecution. As he was detained in police custody for more than 48 hours, he was put off duty with effect from 23.3.86 as per rules. As B.D. Bhadre was put off duty, the applicant was appointed in his place by order dated 10.10.86 issued by Sub Divisional Postal Inspector, Ambajogai. This order of appointment contained stipulation that the appointment was provisional on purely temporary basis, liable to be terminated at any time without

assigning any reasons and that the service was governed by the P&T EDA (Conduct & Service) Rules, 1964. Later, when B.D. Bhadre was reinstated in service by order dated 13.9.1989 issued by Superintendent of Post Offices, Beed Division, instruction to SDI(P) Ambajogai was given that appointment made in place of B.D. Bhadre be terminated immediately. The applicant's services were thus terminated. The applicant has questioned the termination of his service by application dated 9.7.91 filed under section 19 of the Administrative Tribunals Act, 1985 and sought the principal relief of direction to set aside the order dated 6.4.90 by which the applicant's request to continue his services was rejected and further direction that his name be continued on the waiting list of EDA and he be provided a job at the earliest when vacancies arise in the vicinity of his residence.

2. The application has three respondents, the first being Supdt. of Post Offices, Beed Division, the second being Director of Postal Services Aurangabad Region Aurangabad, and the third being the Chief Postmaster General Maharashtra Circle, Bombay. B.D.Bhadre whose reinstatement in service resulted in termination of service of the applicant is not impleaded as a respondent.

3. We have heard Mr.G.B. Kale, learned counsel for the applicant and Mr.P.M. Pradhan, learned counsel for the respondents. Detailed submissions of counsel for both parties completing as submitted by the learned counsel, we perused the

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record for judgment.

4. The averments in the application including that the applicant had put in more service than B.D.Bhadre, that no reason has been furnished by the respondents for keeping B.D.Bhadre's claim alive for more than three years though his services were liable to be terminated at any time without notice as he had put in less than three years of service before he was placed under suspension, that rules say that those on put off duty should not be continued on put off duty of more than 120 days, that though the applicant was given appointment in place of B.D.Bhadre a clear understanding that his appointment was provisional till criminal proceedings against B.D.Bhadre was finally disposed of and he had exhausted all channels of judicial appeal and petitions was not given to the applicant, and that after finalisation of criminal charge against B.D.Bhadre he should have been reinstated elsewhere and not at Pohner, have <sup>the</sup> unmistakable purpose of the applicant questioning the reinstatement of B.D.Bhadre which led to the termination of his service. As we have observed above, B.D.Bhadre has not been impleaded as a respondent. It will <sup>be</sup> patently ~~be~~ just to consider the applicant's averments above against the reinstatement of B.D.Bhadre and to hold the <sup>in</sup> reinstatement of B.D.Bhadre as bad in law <sup>order</sup> to give relief to the applicant without giving opportunity to B.D.Bhadre to be heard. He who seeks equity must do equity. The applicant, in not impleading B.D.Bhadre as respondent, shut

the doors of equity on B.D.Bhadre.

5. Besides the above, we also notice bar of limitation. The applicant's service was terminated as per instruction contained in order dated 13.9.89. The applicant has mentioned in the application that he had submitted representation [redacted] dated 20.9.89 against this order dated 13.9.89. The memo of 6.4.90 is reply to the applicant's representation dated 20.9.89. Presuming for the sake of argument that the relevant statutory service rules provide for representation against termination of service and the representation made on 20.9.89 made in time under the rules, if any, the applicant's cause of action, under provisions of Section 21(1)(a) & (b) of the Administrative Tribunals Act/ <sup>1985,</sup> [redacted] considered together arose, counting six months from 20.9.89, on 20.3.90. The applicant had only one year thereafter available for filing the application. Therefore the application should have been filed latest by 20.3.91 to be in time for invoking the jurisdiction of this Tribunal. However, the same has been filed on 9.7.91, late by over three months and is therefore filed outside limitation prescribed under the provisions of the Act. No explanation has been furnished for not filing the application within the period of limitation. No prayer for condoning of delay has been made. In S.S.Rathore Vs. State of Madhya Pradesh, (JT 1989(3) SC 530), the Supreme Court observed as below on the question of limitation under the Act :

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse <sup>order</sup> but on the date when the order of the higher authority where a statutory remedy is provided entertaining

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the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned. Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

6. The application is liable to be dismissed on the above grounds alone. In addition, the applicant's appointment was provisional on account of having been made because B.D.Bhadre, the regular incumbent, was put off duty for reasons above stated because of a criminal complaint against him and his arrest and detention by police for more than 48 hours. The applicant's appointment was not against a regular vacancy and therefore he did not continue in service as a regular employee. He could therefore continue in service as long as the vacancy lasted and not after the vacancy ended by the reinstatement of B.D.Bhadre.

7. In view of the above, the application is dismissed but without any orders as to costs.

T. C. Reddy  
(T.C. Reddy)  
Member (J)

M. M. Singh  
(M.M.Singh)  
Member (A)