

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 260/92

198

~~xxxxxx~~DATE OF DECISION 23.6.92B G Jagtap

Petitioner

Mr. L M Nerlekar

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

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Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M Y Priolkar, Member (A)

The Hon'ble Mr. J P Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *JS*
2. To be referred to the Reporter or not? *ye*
3. Whether their Lordships wish to see the fair copy of the Judgement? *2*
4. Whether it needs to be circulated to other Benches of the Tribunal? *✓*

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


 M(J)

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD; BOMBAY-1

OA NO. 260/92

Shri Balu Genu Jagtap
R/o. R.No.1 Papat Kedare Chawl
Vakad, Waldhuni, Ashok Nagar
Kalyan; Dist. Thane; Maharashtra ..Applicant

V/s.

Union of India
through
Chief Signal Inspector
(C-RR1); Central Railway;
Thane ..Respondent

CORAM: Hon.Shri M Y Priolkar, Member (A)
Hon.Shri J P Sharma, Member (J)

APPEARANCE:

Mr. L M Nerlekar
Counsel
for the applicant

ORAL JUDGMENT:
(PER: J P Sharma, Member (J))

DATED: 23.6.92

The applicant in this case assails
his removal from service by order dated 23.11.1983
with effect from 19.12.1983 and he has prayed in
this application under Section 19 of the Admini-
strative Tribunals Act, 1985 in para 8 of the
application as follows:

- "(a) the order of retrenchment dated 23.11.83 be declared as void and inoperative.
- (b) The applicant be declared as in continuous employment and he be made entitled to full back wages and continuity of service with effect from 19.12.83.

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- (c) Cost of this application be saddled on the respondents.
- (d) Grant any other relief or reliefs which this Hon'ble Tribunal may deem fit in the circumstance of the case.

2. The facts have been detailed by the applicant in the application in para 4. It is needless to reproduce facts as the short point involved in this case is whether the present application is covered within limitation as laid down under the provisions of Section 21 of the Administrative Tribunals Act, 1985. The main contention of the learned counsel for the applicant is that since the applicant has not exhausted the remedy or ~~as~~ ^{there is no final} order passed under Section 25 (g) & (h) of I.D. Act 1947 by the employer, which would have been the effective date for counting of limitation on the applicant, supplementing the argument by the fact that it was the bounden duty of the employer to pass such an order, so the present application should be entertained as in limitation. The learned counsel has also supplemented the argument by decision of New Bombay Bench (Bombay Bench, now) in O.A. Nos. 438 to 440; 445; 447; 506 and 509/88 decided by the Division Bench by the judgment dated 2.5.1991

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3. S.21 is a self contained section in the Central Administrative Tribunals Act, 1985 and the same is reproduced below:

"21. LIMITATION: (1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."

Sub-section 20 of the Administrative Tribunals Act, 1985 enjoins the aggrieved person to get his grievance redressed departmentally and if the same is not redressed he can assail the same within the limitation provided under section 21 of the Act. Section 20 further provides that if the department remains negative for six months then the aggrieved employee can still come to the Tribunal after waiting for one year if he so likes. The stale matter of 1983, in this case the termination of service, does not in our view is covered by the provisions of the Section 21 of Administrative Tribunals Act, 1985. ✓

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The matter was also taken up yesterday, but the learned counsel for the Applicant sought an adjournment to move an application for condonation of delay purportedly under section 21(3). We have also considered this application. In the application for condonation of delay there is much discussion of law on the point rather than the fact which prevented the applicant to get his grievance redressed at the proper competent forum. The Tribunal came into existence in November 1985. The remedy was available to the applicant in November 1983.

4. Learned counsel for the applicant has also referred to the decision of Dr. S.S. Rathore V. State of Madhya Pradesh, AIR 1990 SC 10/1988 SCC Page 50. There the authority goes against the contention raised by the learned counsel for the Applicant. The authority lays down that the limitation will start running against a person the moment an order is passed against him or if there is an appellate order after the decision of the appeal. The authority also lays down that such a person who has preferred any departmental remedy can wait for six months and pursue the remedy thereafter within one year of waiting. This authority does not lay down that if any remedy was available to an aggrieved person/employee under Industrial Disputes Act and the employer does not take any action under section 25(g)&(h) of the said Act then the limitation as envisaged under S. 21 will stand suspended.

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5. Basically the question arises is that whether, if a remedy is available under Industrial Disputes Act then the period of limitation provided under S. 21 of Act has been repealed or suspended during that period or not? To our mind there can be no preposition of law to this effect. Otherwise an employee retrenched years ago may claim as of right ~~redress of~~ the remedy without any hitch of limitation. The applicant had every right to approach the Industrial court or Labour Court at the proper time. Waiting upto 9 years and then approaching the Tribunal would not in any way condone this long period.

6. When this order was being ~~concluded~~ the learned counsel again pointed out that what he wanted to convey us was that under ^{Section} 25 (g) (h) he is claiming re-employment. Be that as it may, we are of the opinion that the present application is not only stale but hopelessly barred by time and the reasons for condonation of delay are not sufficient and reasonably explained nor it can ~~be~~ be accepted reasonably. The authorities cited by the counsel for the applicant relates to casual labour employees where certain status has been granted after putting in 120 days of work. This case does not apply to the present case.

7. In view of the above consideration we are of the view that the present application ~~is~~

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is barred by limitation and is dismissed at the admission stage itself.

Jomane

(J P Sharma)

Member(J) 23-6-72

23-6-72

(M Y Priolkar)

Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
* * *

Date of Decision : 28.12.92.

RA 197/92 in OA 260/92
Shri Balu Genu Jagtap Vs. Union of India

ORDER

The applicantt has filed the Review Application for review of the judgment dt.23.6.1992 by which the relief claimed by the applicant of his removal from service by the order dt.23.11.1983 w.e.f. 19.12.1983 was disallowed because the applicant's application was found to be hopelessly barred by time. The applicant has preferred this Review Application on the ground that there is an error apparent on the face of the record and further that the Review is also required on the ground that the important case law cited has been mis interpreted. The applicant has taken all these grounds touching the merit of the case. The point of limitation has been fully discussed in the judgment in para 2 to para 6.

As provided by Section 22(3)(f) of the Act, the Tribunal possesses the same powers of review as are vested in a Civil Court while trying a civil suit. As per the provisions of Order XLVII, Rule 1 of the Code of Civil Procedure, a decision/judgment/order can be reviewed :

(i)if is suffers from an error apparent on the face
of the record; or

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(ii) is liable to be reviewed on account of discovery of any new material or evidence which was not within the knowledge of the party or could not be produced by him at the time the judgment was made, despite due diligence; or

(iii) for any other sufficient reason construed to mean "analogous reason".

There is no averment to show that there is an error apparent on the face of the record. The Review Application is, therefore, devoid of merit and as such is dismissed by circulation.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)

M. Y. Priolkar

(M.Y. PRIOLKAR)
MEMBER (A)