

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 698/95

DATE OF DECISION: 14th Jan., 2000

Shri Prakash Krishna Mhatre Applicant.

Shri D.V.Gangal Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri V.S.Masurkar Advocate for
Respondent(s)

CORAM

Hon'ble Shri D.S.Baweja, Member (A).

Hon'ble Shri S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?
- (3) Library. ✓

S.L.Jain
(S.L.Jain)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:698.95

the 14th day of JANUARY 2000.

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Prakash Krishna Mhatre
Residing at
Ambelwadi Kegaon
Post Uran, Dist. Raigad.

... Applicant

By Advocate Shri D.V.Gangal

V/s

1. Union of India through
The Chief of Naval Staff,
Naval - Head quarters,
New Delhi.
2. The Flag Officer,
Commanding in Chief
Western Naval Command
Shahid Bhagatsingh Road,
Bombay.
3. The Officer in Charge,
Naval - Trasport Pool,
Colaba, Bombay.

...Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking a Writ of Certiorari quashing the termination order dated 25.4.1981, 30.7.1982, 30.6.1983 and review order dated 22.2.1995, a writ of mandamus directing the respondents to produce the termination order, appellate order, to hold and declare that the applicant deserves

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to be reinstated with full back wages and continuity in service, ought to be deemed to be regular.

2. The applicant's case in brief is that being sponsored by the Employment Exchange he is working with the respondents since 11.5.1973 on casual basis. He was appointed on casual basis with effect from 26.3.1979 and since 27.1.1981 he was made regular. He is the holder of a permanent post after completion of probation period satisfactorily. He has completed the probation period of six months satisfactorily. He worked continuously without break from 26.3.1979 to 31.10.1985 as a Labourer. Since 1.11.1985 he was prevented from performing the duties of the post held by him without any written order and valid cause. He submitted an appeal against the same in November 1985, also approached the Indian Naval Dockyard employees Union, which pursued the grievance of the applicant and assured a favourable decision. Hence he could not rush to the Court. The respondent No.2 ~~who~~ is duty bound to decide the appeal. Two/three reminders were submitted. On 31.8.1981 on the advice of the Union Review/Revision to the Chief of Naval staff was submitted under Rule 29 of the CCS(CCA) Rules 1965 which was decided on 29.2.1995. The respondents have continued large number of junior employees.

3. The applicant further alleged that letter dated 25.4.1981 and 9.4.1981 purporting to terminate the appointment with effect from 31.3.1982 were never issued. His services were not

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terminated on 30.4.1981 or 31.3.1982. Letter dated 9.4.1982 and 25.4.1981 were not served on him. Vide order dated 30.7.1982 and 30.6.1983 the term of appointment is extended upto 31.3.1983 and 31.4.1984 which is contrary to order dated 27.1.1981 as he was not appointed on a fixed term. Order dated 30.7.1983 and 30.6.1983 are void as they are un-conscionable, arbitrary and un-reasonable. The service of the applicant were continued till 31.10.1985 as his services were terminated as he remained absent without permission from 25.8.1985 to 31.10.1985. As no charge sheet was issued, the termination is illegal being against principles of natural justice. Hence this OA for the above said relief.

4. An application for condonation of delay is also filed alongwith the OA alleging that after submitting the appeal he lost the papers. He approached the respondents for supplying the copy of the termination order, appeal memo and appellate order, if any. In the above circumstances the matter in respect of the appeal could not be pursued, he was relying on the advise of the Union and in compliance of the same review was filed in 1991.

5. The respondents resisted the claim, alleged that the prayers are vague one, cause of action accrue on 30.4.1981, hence this Tribunal has no jurisdiction to entertain and try the cause as it arose before 1.11.1985. The applicant was appointed as casual labour on 11.5.1973 in a temporary sanctioned vacancy.

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Subsequently he was brought on regular temporary status and appointed as INS TUNIR for a further period from 1.4.1981 to 31.5.1981 in the vacancy sanctioned vide headquarter W.N.C. letter CS/Tys/5757 dated 14.3.1981 as per appointment letter CS/1351 dated 9.4.1981. His services were terminated with effect from 30.4.1981 in accordance with para 2 of Headquarter W NC letter CS/M/480 dated 25.4.1981. Once again he was appointed as a casual labour at Naval Trasport Pool Bombay with effect from 1.8.1982 purely on humanitarian grounds as a local candiates, his services were extended from time to time for a specific period till 31.10.1985. During the last spell of extended period of his service he remained absent without permission with effect from 29.8.1985 till 30.10.1985 hence his services were discontinued thereafter. He neither reported on duty nor made any representation till September 1991. Thus there is delay of 10 years from the date of termination of services and delay of 6 years from the date of discontinuation of his services. The applicant cannot take shelter of Naval Head quarter letter dated 22.2.1995 for condonation of delay as the cause of action accrues in 1981, 1985 and there is an inordinate delay in filing the appeal/review petition. Hence prayed for dismissal of the OA alongwith costs.

6. The applicant filed the rejoinder affidavit and alleged that he is in countinuous service since 1973 to 31.10.1985. The termination of the service by 30.4.1981 is not admitted and alleged that such letter was never served on him. No reason was

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there to terminate the service. If terminated, it was illegal and arbitrary and against CCS(CCA) Rules. It is further alleged that he was never absent from 29.8.1984 to 31.10.1985. The termination is against the principles of natural justice and CCS (CCA) Rules.

7. The respondents have filed annexure R2 dated 25.4.1981 by which the services of the applicant are terminated in view of para 2 of Annexure R-1 dated 9.4.1981, with effect from 30.4.1981. The applicant claims that the said order R2 was never served on him. The applicant was again appointed on 1.8.1982 on humanitarian ground which is also denied. The official acts are presumed to have been performed in due course until and unless it is established otherwise. The bare allegations of the applicant in this respect are not sufficient to conclude that the said order was not served on him.

8. The applicant has filed this OA in the Tribunal on 29.6.1995. Alongwith rejoinder affidavit he has filed Annexure A-2 dated 24.3.1996 a letter addressed to Flag Officer Commanding in Chief, Western Naval Command, Bombay requesting for supply of removal order dated 30.10.1985. He has filed A-1 certificate from Naval Employee's Union dated 5.1.1996 which mentions filing of appeal but no date is mentioned. It also mentions his continuous service upto 31.10.1985 and the missing of the papers by the applicant. Thus the said fact is mentioned by the Union only on the basis of information supplied by him and not on the basis of

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any record available in their office. For this reason only, the Union is not in a position to state the date of filing of appeal. It would not be out of place to state that all these documents are manufactured and collected after filing of the OA.

9. The applicant filed the review application dated 31.8.1991. In the said letter dated 5.10.1993 (A4) he has averred that he has filed an appeal to the Flag Officer-in-Chief Western Naval Command, Bombay and lost the papers in this respect, hence he could not pursue the appeal. Letter of the applicant dated 15.1.1994 (A9) and 20.1.1995 (A 11) to Chief of Naval staff, Naval Head quarter, New Delhi are of no significance as there is the request to reinstate the applicant. The letter of the applicant dated 25.12.1993 (A5) to the Flag Officer Commanding in Chief Western Naval Command, Bombay, a copy of which was sent to Chief of Naval staff, Naval headquarter, New Delhi with reference to the letter dated 26.8.1993 speaks only misplacement of the termination order and not the papers relating to appeal.

10. From the above correspondence, it is suffice to state that theory of the papers of appeal etc being lost came into existence at the time of filing of Review application and not earlier to it.

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11. The order dated 25.4.1981 passed long back cannot be said to be fabricated one by which the applicant's service was determined with effect from 30.4.1981 though[✓] the said fact is denied by the applicant, the theory of filing of appeal and the papers being lost, there is no provision for filing of appeal, the absence of the applicant for a period of about 6 years when he was out of job all leads us to conclude that the said theories are nothing but a cock and bull story made out by the applicant only with a view to explain the delay till the filing of review application.

12. The order^r to terminate the services of the applicant dated 25.4.1981, as alleged by the applicant is void, this Tribunal cannot go into the said question, as the said order was passed prior to 3 years of coming into existence of the Tribunal. It would not^{be} out of place to mention that even an order is void, it is to be got declared so and the person challenging the same cannot agitate the matter at any time when ever he chooses so. Further, in view of the said legal position, the termination of services of the applicant with effect from 31.10.1985 also cannot be challenged now.

13. The applicant claims that on the advise of the union, he waited for the decision of the appeal and then filed the review application dated 31.8.1991 under Section 29 of CCS Rules, hence delay be condoned. We are not inclined to accept the said contention for the reason that union's advice is not on record,

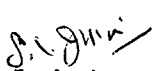
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an advice which is given without due care and caution even by an unauthorised authority cannot be a ground for condoning the delay.

14. The learned counsel for the applicant relied on 1989(2) Bom C.R. 15 Baburao Deorao Wankhede V/s Sewa Sahakari Sanstha and another and argued that the facts are such that throwing of OA on ground of limitation would work injustice, such application should not be approached with undue strickness. The said case relates to an appeal. The learned counsel for the respondent relied on 1999(6) SCALE 531 - JT 1999 (8) SC 286 Ramesh Chand Sharma and others V/s Udham Singh Kamal and others and argued that in para 3 of the OA the applicant claim that application is well within limitation and there is no delay condonation application, hence the said question cannot be examined by the Tribunal. We found that applicant has not come with the plea of delay condonation and claims that the OA is well in time, hence the applicant cannot be permitted to travel beyond his pleadings, hence 1989 (2) Bom C.R. 15 Baburao Deorao Wankhede's case does not help the applicant at all and 1999(6) SCALE 5631 Ramesh Chand Sharma and other's case applies fully to the facts of the present case.

15. In the result, we do not find any merit in the OA., it deserves to be dismissed and is dismissed accordingly.


(S.L. Jain)
Member (J)


(D.S. Baweja)
Member (A)