

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1006/1995

Date of Decision: 30-04-97

Arun Kisan Ingle

Petitioner/s

Shri R.C. Kottiankar

Advocate for the
Petitioner/s

v/s.

Union of India & 2 Ors.

Respondent/s

Shri R.R. Shetty

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member (A)

Hon'ble Shri

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar
(M. R. KOLHATKAR)

MEMBER (A)

abp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG. NO.6, PRESCOT RD, 4th FLR.
MUMBAI - 400 001.

ORIGINAL APPLICATION NO: 1006/95.

DATED THIS 30th DAY OF APRIL, 1997.

CORAM : Hon'ble Shri M.R. Kolhatkar, Member(A).

Shri Arun Kisan Ingle,
Ex. MRCL,
working under the Carriage Foreman,
Bhusaval,
c/o.Tatya Mahadu Tapse,
Haddiwalla Chawli,
'K' type Quarter No.177,
Bhusaval, Dist. Jalgaon.

... Applicant.

By Advocate Shri R.C.Kottiankar.

V/s.

The Union of India,
New Delhi, Served Thro'

1. The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway, Bhusaval.

... Respondents

By Advocate Shri R.R.Shetty.

I O R D E R

I Per Shri M.R. Kolhatkar, Member(A) I

in

The applicant was working /the Central Railway at Bhusaval as a Casual Labourer. The applicant has claimed that he was working continuously from 25/11/82 till he was terminated by the order dated 16/12/85 at Exhibit A-1. But, on this point the say of the respondents appears to be more reliable which is that the applicant was engaged as a Casual labourer from 23/11/1980 to 18/2/1983 in Engineering Department and thereafter in Carriage and Wagon department from 15/2/84 and was brought on monthly rated casual establishment from 14/9/84. There is no dispute therefore that at the time of viz. 21/12/85 termination/he was on monthly rated casual establishment having completed 120 days of service. There were in all 85 such labourers who were given notice on 25/12/85 that their services

were to be terminated from 31/12/85 but thereafter sanction was available in respect of 59 casual labourers and therefore termination notice was given only to 26 casual labourers including the applicant. It is not disputed that the name of the applicant appears at Sr.No.5 of this notice. It is further not disputed that ~~26~~ ^{eight} out of 26 employees/including Balu Baliram Waghule who appears at Sr.No.13 of the notice, successfully challenged the notice before the Bombay Bench of the Tribunal vide OA-798/89 decided on 16/12/92 in which the Tribunal quashed and set aside the termination orders of petitioners therein and directed Railway Administration to reinstate them and treat them to be in continuous service without the benefit of backwages. It is further not disputed that the matter came up before the Tribunal in CP-123/93 decided on 22/11/93 and the requisite benefits were given to those employees from 16/12/92.

2. The contention of the applicant is that after his termination he was out of touch and he came to know about the judgement in Waghule's case on or about 28/7/84 and thereafter he sent a Lawyer's notice which at Exhibit-A-2, in which the relief of reinstatement of the applicant with all benefits was claimed. Respondents have denied receipt of any such notice. The applicant produced the Registered Post A.D. slip and I am inclined to hold that ~~lawyer's~~ notice was in fact issued ^{with the Department} and received. The contention of the applicant is that Waghule's judgement was judgement in rem and he is entitled to be given the benefit of that judgement and that the CP-123/93 judgement was disposed of on 22/11/93 and he came to know about the same and represented on 28/7/94 and therefore he is within limitation and therefore he has claimed the relief of reinstatement in service from 16/12/92, the date of decision in Waghule's case with full benefit of previous service and backwages from 16/12/92 as given to his colleagues. The applicant ^{has} also filed the MP-581/95 for condonation of delay. The applicant has taken the stand that his OA is within limitation but he

filed the MP by way of abundant precaution. According to applicant, the cause of action arose from the date of decision of the Tribunal and in terms of A.C. Mandal v/s. Union of India, he is required to take action within one year of knowledge ~~xxxxx~~ which he ~~had~~ done.

3. Respondents have contended that the judgement in Waghrule's case was not judgement in rem but it was judgement in personam, Relief was granted by the Tribunal only to the listed petitioners, that the cause of action arose ~~to~~ the applicant from the date of notice of termination namely 16/12/85, whereas the OA has been filed on 5/6/95 and the OA should be dismissed on the ground of limitation alone. In this connection, the applicant relies on the judgement of Supreme Court in Bhoop Singh v/s. Union of India reported at 1992(21) AIR 675 decided on 29/4/92. In that case the Supreme Court held that the cause of action arose from the date of termination and that a gross delay ~~which~~ in that case was 22 years could not be condoned on the consideration of the equity. The Supreme Court also distinguished Dharampal's case in Bhoop Singh's case on which the ~~xxxxx~~ applicant ~~had~~ relied, (Lt.Governor of Delhi v/s. Dharampal reported at (1990) 4 SCC 13). The facts in Dharampal's case and Bhoop Singh's case are to be seen in para-1 and 2 of Bhoop Singh case which ~~are~~ reproduced below:-

"1. The petitioner was appointed as a constable in the Delhi Armed Police in 1964. A large number of police constables participated in a mass agitation on April 14, 1967. The services of the agitating police constables were terminated on that account without specifying that reason for the termination. The petitioner claims that his service was similarly terminated on August 3, 1967 due to his participation in the agitation with other police constables. Apart from terminating their services, many of those police constables were also prosecuted. It appears that as a result of the demand by some Members of Parliament, many of the dismissed constables were taken back in

service as fresh entrants and the Home minister also directed withdrawal of prosecution against them. Some of the dismissed constables who were not taken back in service even as fresh entrants filed writ petition in the Delhi High Court in 1969 and 1970 which were allowed by the High Court on October 1, 1975 quashing the orders of termination of those petitioners. Subsequently, some other constables whose services were similarly terminated also filed writ petition in the Delhi High Court in 1978 which too were allowed rejecting the objection raised on the ground of delay and laches. Another set of similarly dismissed constables then filed writ petitions in the Delhi High Court challenging the termination of their services contending that their claim was identical with that of the petitioners in the writ petitions filed in 1978. These writ petitions were transferred to the Central Administrative Tribunal which held that the petitioners therein were entitled to the same relief as was granted to the petitioners in the writ petitions filed in the High Court in 1978. The Delhi Administration preferred appeals in this Court against that decision. Those appeals were dismissed by the judgement in Lt.Governor of Delhi v/s. Dharampal.

2. Petitioner, Bhoop Singh, claiming to be a similarly dismissed police constable filed OA No.753 of 1989 in the Central Administrative Tribunal praying for reinstatement in service and all consequential benefits on the ground that his case and claim is similar to that of the police constables, who had succeeded in the earlier rounds of litigation. The Tribunal has rejected the petitioner's application on the ground that it is highly belated and there is no cogent explanation for the inordinate delay of twenty-two years in filing the application on March 13, 1989 after termination of the petitioner's service in 1967.*

4. The Learned Counsel for the respondents therefore

has contended that in view of ratio of Dharampal's case not being applicable to Bhoop Singh's case, the Tribunal dismissed the OA, and Tribunal's stand was upheld by the Hon. Supreme Court.

5. On the other hand the Counsel for the applicant has relied on the judgement of Supreme Court in State of Karnataka V. Kappuswamy Gownder reported at AIR 1987 SC 1353 which enunciated the following principles. . . .

" It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have precolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted in principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of malafide. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

6. The Counsel for the applicant also refers to observations of the Supreme Court in Inderpal Yadav's case

which are quoted in Pramod Kumar Bhargava v/s. Union of India.

* There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing in between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.*

7. I have considered the matter. I am not in a position to accept the contention of the applicant that the judgement of the Tribunal gave him a cause of action. The cause of action arose only in 1985. The applicant has challenged the termination after a lapse of 10 years. However, I am required to take note of the fact that the termination order in Waghule's case was an identical order in which the applicant appeared at Sr.No.5 of the list and Waghule appeared at Sr.No.13 of the list. Waghule happened to have filed the OA in 1989 and the Tribunal gave relief by its order dated 16/12/92. From the facts as listed in Bhoop Singh's case, it is seen that the termination order of constables which were issued ^{in 1967} were quashed by High Court in 1975 and subsequently when some other constables whose services were similarly terminated filed writ petitions in High Court in Delhi, the petitions were allowed rejecting the objection of delay and laches. Another set of similarly

dismissed constables who had filed writ petitions in the Delhi High Court were given relief by the Central Administrative Tribunal in Dharampal's case. The Supreme Court in para-5 of the Bhoop Singh has observed

"Unless it can be held that delay of several years in claiming the relief of reinstatement must be ignored simply because some others similarly dismissed had been reinstated as a result of their success in the petitions filed many years earlier, the Tribunal's order cannot be reversed in the present case. Dharampal is of no assistance for this purpose. Whether, the delay in making the claim has been explained satisfactorily to negative the objection of laches is a question of fact in each case. In Dharampal the Tribunal had apparently been satisfied with the explanation for the delay and this Court declined interference with the Tribunal's view."

But in Bhoop Singh's case, the delay was much longer namely 22 years.

8. In the present case, the delay is that of 10 years and considered from the point of view of dates of disposal of OA-798/89 and CP-123/93, the gap between the grant of relief in that case and claim for relief based on that relief by similarly situated person is only of less than two years.

9. In my view therefore, the facts of the case are not identical with the facts of Bhoop Singh's case in which the delay was of 22 years, which the Tribunal had declined to entertain and the view of the Tribunal was upheld by Hon'ble Supreme Court. The present case is much more allied to Dharampal's case or even on a better footing than that of Dharampal.

10. I am therefore of the view that the delay in this case has been satisfactorily explained and I am inclined to consider the case on merits. On merits there is no dispute that the applicant being a Monthly Rated Casual Labourer was entitled to the benefits of (Discipline and Appeal) Rules., In other

words, his services could not have been terminated without following the Railway Servants (Discipline and Appeal) Rules. The applicant therefore succeeds for the same reasons that Waghule succeeded before this Tribunal in OA-798/89.

11. I therefore allow the OA and dispose of the same by passing appropriate directions. While giving these directions, I keep in view the observations of the Hon'ble Supreme Court in Bhoop Singh case.

"that the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained."

The prayer of the applicant to be reinstated with effect from 16/12/92 and full benefits of previous service, seniority and backwages from 16/12/92 cannot therefore be accepted. The prayer of the applicant for seniority from 1980 cannot also be accepted.

12. The respondents are directed to reinstate the applicant as M.R.C.L. (Muster Rated Casual Labourer) within two months from the date of communication of this order. The applicant should be given the benefit of counting of previous service from 23/11/80 to 31/12/85 as per rules and the period from 1986 to 1997, i.e. the date of reinstatement should be treated as dies non. There will be no orders as to costs.

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

abp.