

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1016/95

Date of Decision : 5.5.2000

B.Namdeo _____ Applicant.

Shri K.B.Talreja _____ Advocate for the
Applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V.S.Masurkar _____ Advocate for the
Respondents.

CORAM :

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

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library

D.S.Baweja
(D.S.BAWEJA)
MEMBER (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1016/95

Dated this the 5th day of May 2000.

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

Bhalchandra Namdeo,
Casual Labourer,
Under Divisional Engineer
(South), Central Railway,
Bombay V.T.

... Applicant

By Advocate Shri K.B.Talreja

V/S.

1. Union of India through
The General Manager,
Central Railway,
Bombay V.T., Bombay.
2. Divisional Railway Manager,
Central Railway, Bombay V.T.,
Bombay.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

(Per: Shri D.S.Baweja, Member (A))

The applicant was engaged as Casual Labourer on 23.7.1978 under Permanent Way Inspector, Panvel, Central Railway. He thereafter worked in various spells till 19.4.1980 when his services were terminated. The applicant along with two other casual labourers were not issued Casual Labourer Cards. Because of non issue of Casual Labourer Cards, the applicant along with

the other two were not considered for screening/regularisation against Group 'D' vacancies. The case of the applicant along with the other two was taken up by one of the recognised Labour Unions as an item of Permanent Negotiating Machinery at the Divisional level in January, 1986. After the item being discussed in several meetings, in March, 1988 the administration agreed to issue Casual Labour Card to the applicant. Accordingly, the applicant along with the other two were issued Casual Labour Cards. Thereafter, the applicant waited for being engaged and regularisation but no action was taken by the administration. The applicant again approached through the recognised Labour Union which took up the matter through Permanent Negotiating Machinery at the Headquarters' level in January, 1992. However, as per letter dated 30.6.1994, the claim of the applicant for re-engagement as well as for regularisation was rejected. The applicant submits, that out of the three casual labourers who were not issued Casual Labour Cards, one has already been engaged and the remaining two including the applicant were being denied the benefit of engagement and regularisation. Feeling aggrieved, the applicant has filed the present OA. on 9.8.1995 seeking the following reliefs :-

- (a) to direct respondents to absorb and regularise the applicant in any of the departments in Group 'D' post.
- (b) to direct respondents to regularise the applicant from the date he has acquired temporary status with all consequential benefits including back wages.

2. The respondents have opposed the OA. through the written statement. The respondents at the out set have taken strong objection to the OA. stating that the same is barred by limitation and also suffers from delay and laches as the cause of action arose in 1980 and the present OA. has been filed in 1995. The respondents have cited several judgements to support this contention. The respondents have also taken a plea that since the cause of action arose in 1980, the matter is beyond the jurisdiction of the Tribunal. On merits, the respondents submit that the casual labour card was not issued to the applicant as he had not paid the necessary charges to the administration as per the rules and this fact has been brought to the notice of the Union in 1987. The name of the applicant does not appear in the casual labour live register and therefore it is not possible to consider re-engagement/regularisation at this belated stage. This position has been conveyed to the recognised Union through which the applicant represented as per letter dated 30.6.1994. The respondents contend that the applicant has no merit in his case and the OA. deserves to be dismissed.

3. The applicant has not filed any rejoinder reply for the written statement.

4. I have heard the arguments of Shri K.B.Talreja and Shri V.S.Masurkar, learned counsel for the applicant and respondents respectively.

5. The applicant was engaged as casual labour on 23.7.1978. Thereafter, he worked in various spells till 19.4.1980. The applicant has filed the present OA. on 9.8.1995 seeking the reliefs of absorption and regularisation in Group 'D' from the date he has acquired temporary status with all consequential benefits including back wages.

6. Respondents have strongly opposed the OA. on two counts: (a) It suffers from delay and laches and is also barred by limitation. (b) The cause of action is not within the jurisdiction of the Tribunal. These pleas have been made stating that the cause of action arose in 1980 and the present OA. has been filed in 1995. As stated earlier, the applicant has not filed any rejoinder reply to contest the plea of limitation and delay and laches and lack of jurisdiction raised by the respondents. The applicant in OA. against para 3 has stated that the application is within the period of limitation as prescribed in Section 21 of the Administrative Tribunal Act, 1985. The applicant's presumption of the application being in limitation is perhaps with reference to letter dated 30.6.1994 at Annexure-1 through which the request of the applicant on the matter being taken ^{up} _A by Union has been rejected. However, it is noted that the applicant has not impugned this order while seeking the reliefs referred to earlier. On careful consideration of facts and circumstances of the case and the documentary evidence brought on the record, I am inclined to subscribe to the stand of the respondents. From the averments in

the OA., it is noted that applicant has not made any representation at any time since 1980 with regard to his engagement and regularisation. The applicant has submitted that the matter was represented through one of the recognised labour unions which took up the matter through an item of Permanent Negotiating Machinery at the Divisional level in January, 1986. The applicant has brought on the record the minutes of meeting at page 13 of the paper-book. On perusal of these minutes, it is noted that in January, 1988 it was decided by the Administration to issue casual labour card. Accordingly, casual labour card was issued to the applicant. The applicant thereafter however kept quiet till February, 1992 when it is noted from the averments made in the OA. that the matter was again taken up by the recognised Union at the Headquarters' level. At the headquarters' level finally the request for engagement and regularisation has been rejected as per order dated 30.6.1994. From these facts, it is noted that for the period from February, 1992 till 1992 the applicant neither has brought on the record any document to show that he had made representation for engagement or regularisation nor there is any averment made in the OA. Even after taking the matter through Union in 1992, the applicant waited for three years for agitating the matter through the present OA. The applicant has not made any explanation for the delay of 15 years in seeking legal remedy from 1980 onwards. It is the case of the applicant that he has been denied engagement/regularisation on

account of non issue of casual labour card though the same was issued to the others. If that was so, then if the applicant was not regularise and his juniors were regularised, the same would have given cause of action to the applicant and he should have agitated the matter at the appropriate time if the department fails to redress his grievance. ~~He should have agitated the matter with legal remedy.~~ It is not the discretion of the applicant as to when he will seek legal remedy after pursuing the matter with the department. As held by the Hon'ble Supreme Court in the case of Administrator of Union Territory of Daman & Diu vs. R.D.Valand, 1995 (8) SLR 617 (SC), repeated representations will not stop limitation and the issue of limitation cannot be over-looked while making adjudication in an OA. where retrospective benefits are sought.

7. The respondents have relied upon a number of judgements of Hon'ble Supreme Court on the plea of delay and laches as brought out in para 4 of the written statement. It is not necessary to review all the cited judgements. I will make reference to two of the cited judgements :-

(a) Ratam Chandra Sammant & Ors. vs. Union of India & Ors.
1993 (2) SLR 811

In para 6 the hon'ble Supreme Court has observed as under :-

"Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well."

In the case of Ex.Capt.Harish Uppal vs. Union of India & Ors., 1994 (2) SLJ 177, the Apex Court in para 8 has observed as under :-

"8. The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India - and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion."

Keeping in view the facts and circumstances of the present OA. and the law laid down by the Hon'ble Supreme Court, I have no hesitation to hold that the application suffers from delay and laches and is also barred by limitation.

8. The respondents have also taken a plea that the present OA. is beyond the jurisdiction of the Tribunal as the cause of action arose in 1980. In view of the findings recorded above, it is not considered necessary to go into this aspect and express any opinion as the OA. deserves to be dismissed on the question of limitation and delay and laches alone.

9. In view of the OA. being barred by limitation and delay and laches, it is not necessary to go into the merits of the reliefs prayed for.

10. In the result, the OA. is dismissed as being barred by limitation and delay and laches. No order as to costs.

D.S. Bawej's
(D.S. BAWEJA)

MEMBER (A)

mrj.