

40

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

MA.1100/95 in OA.1469 and
OA.1469/95

dt. 25-6-96

Between

Clive Thompson

: Applicant

and

Divnl. Rly. Manager
Transportation, SC Rly.
Sanchalan Bhavan, Secunderabad

Divnl. Rly. Manager
Personnel, SC Rly.,
Sanchalan Bhavan, Secunderabad

Divnl. Rly. Manager
SC Rly., Sanchalan Bhavan
Secunderabad

: Respondents

Counsel for the applicant

: J. Venugopala Rao
Advocate

Counsel for the respondents

: J.R. Gopala Rao
SC for Railways

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

Q
M.B.

Judgement

Oral Order (per Hon. Mr. Justice M.G. Chaudhari, VC)

At the request of Mr. J. Venugopala Rao, learned counsel for the applicant the order passed yesterday dismissing the MA for default is set aside and the MA is heard on merits. The applicant prays for confirmation of delay of 2 years 9 months 29 days in filing the OA. The respondents have not filed any counter. The OA was filed on 2-11-1995. The relief prayed for by the applicant is as follows :

The order of the second respondent dated 5-6-95 to the extent of fixation of date of entry as Senior Clerk with effect from 11-7-1991 instead of 17-1-1992, that is from the date of joining as Clerk is illegal, arbitrary, contrary to

..2.

W.M.

the Establishment Circular dated 9-7-1979 and all other relevant circulars and rules of Railway Manual and consequently to direct the respondents to regularise/absorb the applicant as senior clerk/Head clerk with effect from 11-7-91 by calling for records for protecting his pay of Rs.1599/- as on 11-7-1991 and grade with all consequential benefits.

2. Although the relief thus ~~sought~~ appears as based on the order dated 5-6-95 that order merely mentions the date of the entry of the applicant in the grade of senior clerk as 17-1-1992. The order does not relate to any ~~claim made~~ by the applicant to assign him the date 11-7-91 instead of 17-1-1992. Thus when the relief is understood as a whole it relates to the grievance which arose in the year 1991-92. That is also clear from para-3 of the miscellaneous application wherein the applicant has stated as follows :

"While I am working as Goods Guard in the Scale of Rs.1200/- to Rs.2400/- while drawing Rs.1230/- basic pay, was medically decategorised to be fixed up as Head Signaller/Clerk, was given Junior Clerks category from 11-7-1991 instead of absorbing me in the vacancies of Head Clerk/Senior Clerk as on 11-7-91. Though I made representations to the respondents, the respondents promoted me as Senior Clerk on 17-1-1992 instead of from 11-7-91 on promotion basis from the date, my Junior Smt. K Sujatha was promoted by the proceedings dated 5-6-1995 of the 2nd respondent."

This narration leaves no manner of doubt that the applicant is speaking about what transpired or should have transpired in 1991-92. It cannot also be presumed that this contention is based on the ground available for the first time on 5-6-1995 because in paragraph 7(iv) of the OA, the applicant states as follows :

"Aggrieved by the said fixation of the applicant in the grade of Junior Clerk instead of in the grade of Head Clerk/Senior Clerk, the applicant made several representations on 17-12-1993, 26-9-1994, 24-1-1994, 4-7-1994 and 4-4-1995 to the respondents for seeking absorption as Head Clerk/Senior Clerk."





3. It is apparent that the applicant could not have filed a representation on 17-12-1993 unless his grievance had arisen at that point of time. It is, therefore, fallacious to say that the grievance arose on 5-6-1995.

The applicant therefore was not justified in making statement in para-6 of the OA that the application has been filed within the period of limitation as prescribed under section 21 of the AT Act.

4. It appears that after earlier hearing in the OA on 1-12-1995, the applicant thought it appropriate to file the instant miscellaneous application for condonation of delay. Paragraph-1, 2, 3 relate to factual statements. In paragraph-4 of the MA it is stated on the point of delay as follows :

"I have no other alternative remedy except to invoke the jurisdiction of this Hon'ble Tribunal by way of filing the above OA with the delay of 2 years, 9 months, 27 days. The delay is neither wanton nor wilful as the proceedings of the Department are dated 5-6-1995".

5. We fail to understand as to how on the one hand it is stated that there is delay and on the other it is stated that the proceedings of the Department are dated 5-6-1995. It is also not known as to in what manner the period of two years nine months and 27 days has been calculated. The mere bald statement that the delay is neither wanton nor wilful does not explain anything and it is not possible to read therein that the applicant had been legitimately pursuing Departmental remedies and therefore had not thought it necessary to approach the Tribunal earlier. In this connection it may be stated that repeated representations do not by themselves extend the period of limitation. A series of representations admittedly were filed by the applicant but it has not been stated by him that any one of them was entertained by the respondents. That only means that after



(43)

the expiry of a period of six months after filing the first representation the applicant had to file the OA with the overall period of 18 months from the date of accrual of the cause of action about which he could make a grievance. It would depend upon the facts of each case whether the conduct of the applicant in filing repeated representations should be looked upon as sufficient to condone the delay. ^{Such consideration} ~~It~~ ^{clearly} cannot be applied in the facts of the instant case. Moreover, an applicant is expected to approach the Tribunal fairly. Had the applicant believed that pendency of the representations should be taken into account by us he should not have asserted initially that the application was being filed within the period of limitation. Likewise he should not have waited for the Tribunal to advise that he may consider applying for condonation of delay. He should have filed such an application alongwith the OA itself. Similarly, he was expected to explain the circumstances owing to which he could ^{not} approach the Tribunal earlier. Even in the miscellaneous application the same has not been satisfactorily explained. We are not therefore impressed by the submission of the learned counsel for the applicant that this being a service matter we should not attach much importance to the occurrence of delay and should condone it.

6. It has been vehemently argued by the learned counsel for the applicant that a different and liberal approach is required to be adopted under service jurisprudence as regards procedural requirements ~~than~~ the stringent approach otherwise applied in judicial proceedings. In this connection we ~~should~~ ^{would} like to emphasise that limitation cannot be regarded as a matter of procedure alone. We also believe that what has come to be described as service jurisprudence even though may require a purely procedural technicality to be overlooked

will

44

in order to prevent failure in a case it does not contemplate that the bar of limitation should in all cases be ignored. Infact, we have been condoning the delay even where it has been inordinate where we find that the ends of justice are otherwise likely to suffer. We are thus conscious of the broadened outlook, we must have while acting under service jurisprudence. We cannot, however, ignore the provisions of Sections 20 and 21 of the AT Act. The theme of the Section 20 of the Act is that a Government servant should ordinarily seek redressal of his grievance in the service matter in the first instance Departmentally. That contemplates diligent pursuance of that remedy so as to get out of the rigour of the limitation prescribed under Section 21. For instance in a given case where the Government servant had diligently set in motion departmental representation and it is receiving attention on merits, he would be justified in claiming that the delay in approaching the Tribunal may be condoned. However, where for instance a representation has been rejected on merits, the mere filing of repeated representations without any purpose cannot entitle him to make such a plea. Answer to the question necessarily would depend on the facts of each case. We would like to mention in this connection that in this context the Legislature has in its wisdom provided for limitation under Section 21 of the AT Act. It was not the intention of the Legislature that under service jurisprudence the bar of limitation should not be provided. Section 21 is part of Law and there are inbuilt provisions therein to enable the Tribunal in appropriate cases to relieve the applicant from the rigour of the technicality of limitation to the extent it would be reasonable to protect the interests of such Government servant. Subject to the parameters available under

W.W.

45

- ✓ Section 21 it would not, in our opinion, be correct to obliterate the provisions of Section 21 by adopting an approach described as liberal under the service jurisprudence. Having regard to the provisions of Section 21 delay cannot be condoned, solely as a matter of equity as quoted can never override the law. The condonation of delay on equitable considerations is required to be done where permissible and it cannot be arbitrary exercise but has to be tempered with reasonableness. It is, therefore, that in a given case looking to the conduct of the applicant and the course of events, the Tribunal may adopt a liberal view and condone the delay ~~but as~~ such cannot be laid down as a universal principle. Simply because an applicant feels that some ~~injustice~~ ^{that} is caused to him would not therefore be a sufficient ground ipso-facto to condone the delay. We therefore find it difficult to agree with the argument of the learned counsel.

7. Apart from the above considerations caution is required to be applied so that a settled position for a long time should not be unsettled lightly as it may result in causing difficulty in the way of administration of the Department and may adversely affect other employees without they being concerned with the grievance of the applicant or action or inaction of the official respondents. It is for that reason we think that it is not open to the Tribunal to stretch the equitable consideration to such an extent that at any point of time at the whim and fancy of the applicant without any justifiable ground the delay should be condoned and a dispute should be entertained.

8. We think that the above discussion will suffice to demonstrate that we are fully conscious of the scope, content and extent of service jurisprudence and we are not adopting an arbitrary approach in the instant case in ~~in~~ refusing to condone the delay for want of satisfactory explanation.

Jill

..7..

1/6

7

9. We have been constrained to give the above detailed reasons as the learned counsel for the applicant stated that he wants to carry the matter to the Hon'ble Supreme Court and get it tested.

10. Thus as no sufficient ground has been disclosed for condoning the delay the prayer for condonation of the delay is liable to be rejected.

11. In the result the application is rejected. Consequently the OA stands rejected.

H. Rajendra Prasad
(H. Rajendra Prasad)
Member (Admn.)

M.G. Chaudhari
(M.G. Chaudhari)
Vice Chairman

Dated : June 25, 96
Dictated in Open Court

Deputy ^{Asstt. Secy. 17/7/96} ~~Registrar~~ (DCC)

sk

O.A.1469/95.

To

1. The Divisional Railway Manager,
Transporation, SC Rly,
Sanchalan Bhavan, Secunderabad.
2. The Divisional Railway Manager,
Personnel, SC Rly, Sanchalan Bhavan,
Secunderabad.
3. The Divisional Railway Manager,
SC Rly, Sanchalan Bhavan,
Secunderabad.
4. One copy to Mr.J.Venugopala Rao, Advocate, CAT.Hyd.
5. One copy to Mr.J.R.Gopala Rao, SC for Rlys, CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

pvm.

Q377/16
I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. ~~SHRI~~ ~~RAJENDRA~~ ~~RAO~~ M(A)
H. Rajendra Rao

Dated: 25-6-1996

ORDER/JUDGMENT

M.A./R.A.No. 1100/95

in

O.A.No. 58/95 1469/95

T.A.No. (W.P.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm

