

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 07th day of March, 2011

TRANSFER APPLICATION NO. 02/2011
IN
SB CIVIL WRIT PETITION NO. 7224/2007

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Mahavir Nagar son of Shri Kanhaiyalal Nagar, aged about 40 years, resident of Village Sogaria, District Kota.

.....Applicant

(By Advocate: Mr. Rajvir Sharma)

VERSUS

1. Bharat Sanchar Nigam Limited through its Chairman Cum Managing Director, BSNL, 10th Floor, East Wing, Chandralok Building, 36 Janpath, New Delhi.
2. Chief General Manager, Bharat Sanchar Nigam Limited, Sardar Patel Marg, Rajasthan Telecom Circle, Jaipur.
3. General Manager Telecom, Bharat Sanchar Nigam Limited, Kota.

.....Respondents

(By Advocate: -----)

ORDER (ORAL)

This case has been transferred by the Hon'ble High Court vide order dated 06.12.2010 whereby both the parties agreed that Central Administrative Tribunal has jurisdiction to decide the matter of BSNL.

Accordingly, the parties were directed to appear before this Tribunal on 25.01.2011. On 25.01.2011, none appeared on behalf of the applicant and this Tribunal had passed the following order:-

"This case has been transferred by the Hon'ble High Court. One set of the Paper book is not available. The applicant is directed to file second set of Paper Book on or before the date of hearing."

Let the copy of this order be sent to the applicant, who besides making available second set of Paper Book shall also make alternative arrangement of contesting his case on the next date of hearing.

Let the matter be listed on 07.03.2011."

2. Today, Mr. Rajvir Sharma, Advocate, appeared on behalf of the applicant. We have heard learned counsel for the applicant. We are of the view that the present TA cannot be entertained for the reasons stated hereinafter. At this stage it will be useful to notice relevant facts, which may have bearing on the issue involved. The case projected by the applicant in this case is that he was appointed in July, 1985 by the respondents as Class IV employee and his services were illegally and arbitrarily terminated. He raised industrial dispute before the Assistant Labour Commissioner (Central), Kota. It was further pleaded that notices were issued to the Department and the matter was adjudicated by the Assistant Labour Commissioner and it was resolved that the petitioner will be reinstated in service without back wages within 15 days from 30.10.1990 and in view of such terms the conciliation proceedings were concluded. The applicant has placed the copy of the order dated 30.10.1990 passed by the Assistant Central Labour Commissioner, Kota as Annexure-1. Based on reinstatement of the applicant pursuant to order dated 30.10.1990 (Annexure-1), the applicant who was working as Casual Mazdoor was conferred temporary status but his request for grant of temporary status from back date was declined vide order dated 02.11.2003 (Annexure-2) on the ground that he was reinstated as workman without back wages, which condition was also accepted by the applicant. As such, he is not entitled for temporary status from the date of his initial appointment. The grievance of the applicant is regarding the impugned order dated

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02.11.2003 (Annexure-2) whereby his request for grant of temporary status was declined and he was treated as a fresh appointee. The applicant has further stated that persons junior to him are getting higher pay scales, as such he should be granted temporary status, seniority etc. from the date of his appointment i.e. July, 1985 and he should be given promotion from the date his juniors were promoted. The applicant has also prayed that respondents may be directed to pay salary and other consequential benefits including arrears with interest @ 12% per annum. The applicant has also prayed for quashing the order dated 02.11.2003 (Annexure-2).

3. It may be stated that the order dated 02.11.2003 was challenged by the applicant by filing OA No. 351/2005, admittedly after the statutory period of limitation as prescribed under Section 20 & 21 of the Administrative Tribunal's Act, 1985. However, the said OA was finally disposed of by this Tribunal vide order dated 29.05.2007 thereby holding that this Tribunal has got no jurisdiction to entertain the matter regarding the BSNL. Thereafter, the applicant had filed Writ Petition No. 7224/2007 before the Hon'ble High Court, which has now been transferred to this Tribunal. As can be seen from the facts, as stated above, it is evident that the applicant has raised industrial dispute under the Industrial Dispute Act, 1947 regarding his termination as casual workman. The Assistant Labour Commissioner did not refer the industrial dispute to the Labour Tribunal, which had the jurisdiction to decide the dispute raised under the Industrial Disputes Act as the matter was re-conciliated and the applicant was reinstated in service without back wages. The applicant has not placed on record the re-conciliation proceedings, which was signed by the

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applicant as well as Assistant Labour Commissioner (Central), Kota. According to the respondents, the applicant was reinstated as workman without back wages within 15 days from the re-conciliation order dated 30.10.1990. As such, the applicant could not have been granted temporary status from the back date. According to us, in case the applicant has any grievance regarding the settlement arrived by the Assistant Labour Commissioner, it was open for him to agitate the matter by filing writ petition under Article 226 before the Hon'ble High court on the ground that the re-conciliation proceedings is not acceptable to him and the matter may be referred to the Industrial Dispute for adjudication regarding counting of his back service for the purpose of seniority and grant of temporary status. Certainly, the TA cannot be entertained on this aspect. The view which we have taken is in confirmity with the decision of the Apex Court in the case of **B.S. Bharti vs. I.B.P. Company, Ltd.**, 2005 (1) SLJ 122, whereby 3 judges Bench of the Apex Court has held that remedy against refusal of reference under the I.D. Act, 1947, by Government to Labour Tribunal, the only course open is to file writ under Article 226 before the High court and to obtain order directing Government to refer the dispute. It may be stated that in the case before the Apex court, the services of the appellant, who was a workman, were terminated. He raised industrial dispute, which was not referred to Tribunal by the appropriate Government and filed a civil suit against his termination. It was in this context, the Apex Court has held that civil suit is not maintainable and remedy lies before the Hon'ble High court for filing writ petition. At this stage we also wish to notice the decision of the Delhi High court in the case of **Lufthansa German AIR Lines vs. Lufthansa German AIR Lines Employees Union & Others**, 2003

(3) SLJ 208, whereby the Hon'ble High court has held that industrial dispute can be triable by the Labour Tribunal and no other court has jurisdiction. At this stage we also wish to notice the decision of the Apex Court in the case of **U.P. State Bridge Corporation Ltd. & Others vs. U.P. Rajya Setu Nigam S. Karamchari Sangh**, 2004(1) SLJ 357. That was a case where services of 168 muster rolls employees were terminated by the appellant company which was a Government Company. Hon'ble High court entertained the matter on behalf of Union. The order of termination was quashed by the Single Judge. It was under this context the Apex Court in Para No. 12 held that right and obligation sought to be enforced by the Union in the writ petition are those created by the I.D. Act and Hon'ble High court erred in entertaining the writ petition of the Union as the dispute was an industrial dispute. Thus once the applicant has not only raised the industrial dispute but also the matter was settled by the Assistant Labour Commissioner instead of referring the dispute to the Labour Tribunal, we are of the view that this Tribunal has got no jurisdiction to entertain such type of disputes and the said dispute cannot be said to be within the ambit of service matter. Further, we are of the view that the order dated 02.11.2003 whereby the applicant was declined temporary status from back date is outcome of the order passed in conciliation proceedings dated 30.10.1990 whereby the management had agreed to re-instate the workman without back wages. As such, remedy if lies to the applicant is enforcement of such order before the competent authority and certainly, this Tribunal cannot comment upon the order passed in conciliation proceedings in terms of the provisions contained under Industrial Disputes Act.

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4. That apart, the applicant is not entitled to any relief even if it is held that the present dispute can be entertained. Admittedly, the applicant was reinstated pursuant to re-conciliation proceedings dated 30.10.1990 without back wages. The applicant is not only seeking seniority and back wages qua the workman who were engaged after the applicant but he is also claiming promotion from the back date with consequential benefits. The applicant was granted temporary status with effect from 12.10.1999. The applicant has not placed the said order on record. It appears that he has made grievance regarding grant of temporary status from the back date i.e. with effect from July, 1985 only in the year 2003 which resulted into rejection of his representation vide order dated 02.11.2003. Thus this stale claim of the applicant to grant temporary status with effect from July, 1985 after a lapse of about 25 years cannot be entertained. The law on this point is no longer res-integra. At this state, we wish to refer the decision of the Apex Court in the case of **Union of India & Others vs. M.K. Sarkar**, 2010(1) SCC (L&S) 1126, whereby the Apex Court has held that when a belated representation in regard to a stale or dead issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the dead issue or time barred dispute. The issue of limitation or delay and latches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and latches. Moreover, a

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court or tribunal, before directing consideration of a claim or representation should examine whether the claim or representation is with reference to a live issue or whether it is with reference to a dead or stale issue. If it is with reference to a dead or stale issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration.

5. As already stated above, the applicant is claiming temporary status and seniority with effect from July, 1985. The applicant was reinstated vide conciliation proceeding held on 30.10.1990. He was granted temporary status in the year 1999. As per his own showing, the applicant has not challenged the validity of the order whereby he was granted temporary status with effect from 1999. He raised the dispute qua this aspect in the year 2003, which was rejected vide impugned order dated 02.11.2003 (Annexure A/2). Thus according to us, this rejection of representation of the applicant in the year 2003 will not furnish a fresh cause of action for reviving the time barred issue, as held by the Apex court in the case of **M.K. Sarkar** (supra). Thus we are of the view that even on this ground, no relief can be granted to the applicant even if for arguments sake it is to be held that this TA is maintainable before this Tribunal. The contention raised by the learned counsel for the applicant that respondents have not raised any objection regarding maintainability of the TA on the ground that order passed in re-conciliation proceedings cannot be adjudicated by this Tribunal or remedy lies elsewhere, as such this Tribunal should entertain the OA, cannot be accepted and deserves out-right rejection. As already stated above, this Tribunal in M.K. Sarkar relying upon its earlier judgment in the case of **C. Jacob vs. Director of**

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Geology and Mining, 2008 (2) SCC (L&S) 961 has deprecated the practice of the Courts/Tribunal to entertain the applications/petitions ignoring huge delay preceding the representation and thereby directing the department to examine the claim on merit and grant relief. The law laid down by the Apex court is to be followed in letter & spirit and duty is cast upon this Tribunal to consider the matter in the light of law laid down by the Apex Court even if no objection is raised by the respondents.

6. For the foregoing reasons, we are of the view that this OA is bereft of merit and is accordingly dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)
MEMBER (J)

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