

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH
JAIPUR

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Date of order : 14.05.2001.

1. O.A.NO. 385/1997
2. M.A.NO. 271/1997 (IN OA 385/97).

Dr.R.M.Pandey S/o Late Shri Ram L.Pandey aged 48 years, Senior Divisional Medical Officer, Western Railway, Hospital, Ajmer, R/o House No. L 37, Beawar Road, Railway Colony, Ajmer.

.....Applicant.

VERSUS

1. The Union of India through General Manager, Western Railway, Churchgate, Mumbai-20.
2. The Secretary, Railway Board (Ministry of Railways), Rail Bhawan, New Delhi.
3. The Director General (Railway Health Services), Railway Board, Rail Bhawan, New Delhi.

.....Respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER
HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

.....
Mr. Sunil Samadaria, proxy counsel for Mr. Akhil Simlote, Counsel for the applicant.

Mr. T.P.Sharma, Counsel for the respondents.

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3pm

PER HON'BLE MR.A.K.MISRA :

The applicant had filed this O.A., the facts of which are as follows :-

2. The applicant joined in the Indian Railways as Adhoc Assistant Medical Officer on 13.5.1977 and his services were regularised on 23.8.1977. Due to certain family circumstances, the applicant resigned from the Railway service vide his letter dated 22.12.1978. The resignation of the applicant was accepted and he was relieved of his duties as Assistant Divisional Medical Officer w.e.f. 21.1.1979 in the afternoon. Thereafter the applicant due to improvement in the family circumstances applied vide his letter dated 12.2.1979 for withdrawal of his resignation. The Chief Medical Officer, Western Railway, recommended his case but the General Manager, Western Railway, did not agree to the recommendation and the applicant was sounded that if he agrees for reappointment then only the case of the applicant could be considered otherwise not. Due to the compelling circumstances, the applicant consented for reappointment/reemployment. Thereafter, on the recommendation of the General Manager, the Secretary to the Railway Board recommended the case of the applicant for reemployment. After consideration UPSC agreed to the proposal and the applicant was reappointed as Assistant Divisional Medical Officer and he joined the services on 14.3.1980 in the Railway Hospital, Ajmer. The case of the applicant for grant of extra ordinary leave for the intervening period was not agreed by the finance ministry. Since the applicant was not in a position to insist for regularisation of this period before he joined the duties on reappointment, therefore, he carried-out the offer of reappointment. But, thereafter continued to make representations to the Railway Administration that his case be treated as a case of

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reinstatement in service than a case of reappointment. These representations were made by the applicant in July, 1980, July 1982, December 1984, April 1987, July 1989, May 1990 and December 1992 but the representations of the applicant remained un replied. It is alleged by the applicant that in a similar case of Dr.(Smt.) Nargis Shoeb, Ex. Assistant Divisional Medical Officer who had resigned from the Railway service w.e.f. 12.10.1988 ^{she} was reappointed in the Railway service on the same conditions as that of the applicant. But, subsequently in the year 1993 the Ministry of Railways vide its communication relaxed the conditions as a special case and informed Dr. Shoeb that her appointment will not be treated as a fresh appointment, the period between her resignation and reinstatement would not be treated as dies non, the intervening period would however count for qualifying service for pension and previous service rendered by her shall also be counted. But the case of the applicant was differently treated and thus a discriminatory treatment has been shown by the administration to the two similarly situated candidates. All efforts of the applicant to drive the point home with the Railway Administration were in vain and the applicant did not get the desired relief from the Railway Administration and the matter continued to be delayed. Therefore, he was forced to file the present O.A.

3. The applicant claimed the relief that the respondents be directed and it be declared that the applicant be treated as having been re-instated in service w.e.f. 14.3.1980 and the intervening period between 22.1.1979 to 13.3.1980 as dies non which may qualify for pensionary benefits and direct the respondents to treat the case of the applicant at par with Dr.(Smt.) Nargis Shoeb with all consequential benefits.

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4. It is also alleged by the applicant that if the desired relief is not awarded to the applicant the applicant would be losing enormously in the matter of her seniority and would be much down in the seniority. His previous services will be of no benefit to him for pensionary purposes and thereby his pension would be affected due to reappointment. The applicant would be drawing lesser salary than many of his contemporaries and thus would be at great difficulties due to the discriminatory treatment.

5. Along with the O.A. the applicant filed a M.A. for condonation of delay on the ground that all through he has been representing his case but his representations were not replied by the administration. The applicant's representation treating his case similar to that of Dr. Shoeb were rejected and thus the delay in presenting the O.A. deserves to be condoned and the application deserves to be decided on merits.

6. Notice of both the applications were issued to the respondents who have filed their reply. It is stated by the respondents that the case of the applicant is hopelessly time barred and deserves no consideration. The applicant was re-appointed in March 1983 and the grievance of the applicant if at all there was any arose in the year 1983. Repeated representations made by the applicant in this regard though not replied by the Railway Administration, would not save the limitation and the grounds taken by the applicant for condoning the delay are not sufficient for such relief. The O.A. deserves to be dismissed on the point of limitation. Replying the applicant's contention on merits, the respondents submitted that the case of Dr. (Smt.) Nargis Shoeb was dealt-with by the administration as a special case because the husband of Dr. Shoeb was murdered and it is in that

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state of shock she tendered her resignation the withdrawal of which was subsequently sympathetically considered by the administration and she was reappointed. However, looking to the circumstances subsequently the concerned ministry modified the conditions as mentioned in the communication which have not correctly been reproduced by the applicant. In fact, the period between resignation and re-instatement was to be treated as dies non and only earlier services were allowed to be counted for pensionary benefits. Since the case of Dr.(Smt.) Shoeb for reinstatement ^{was} on a special consideration, the applicant cannot derive any advantage out of that. It is also stated by the respondents that ~~as per~~ the master circular governing the cases of withdrawal of resignation lays down that period between resignation and withdrawal could be regularised only when it does not exceed 90 days and not otherwise. The total period in applicant's case is much more than that, therefore, the same cannot be ignored. The case of the applicant is only of re-appointment and applicant deserves no relief. The O.A. deserves to be dismissed.

7. Both the learned counsel for the parties advanced their arguments on the lines of their pleadings which we have duly considered and have gone through the records.

8. First of all we will look into the matter of delay. In our opinion the case is hopelessly time barred. The cause of action arose to the applicant in the year 1983 when he was given re-appointment after considering withdrawal of his resignation which he had tendered earlier. It makes no difference that applicant at that point of time was not in a position to refuse the re-appointment and was forced to agree to the dictated terms. Even if the applicant has been representing his case through

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representations which remained un replied, the applicant should have moved the Court when his representations were not attended to. This is a settled principle that repeated representations do not save or extend the limitation. Law provides that if on the representations of an employee his grievance is not redressed within six months or no reply is given to the said representations then within one year thereafter the applicant can knock the doors of the Court. Keeping that provision of law the applicant should have come to the Court in 1985 or 1986. But, the applicant had moved the present O.A. in 1997 i.e. after a long delay of 11 to 12 years and that too after the case of Dr. Nargis Shoeb was decided by the authorities, which cannot be condoned. From the letter Annex.A/13 dated 12.2.1993 written by the Ministry of Railways to the General Manager, it appears that Dr. Nargis Shoeb was reappointed as Assistant Divisional Medical Officer and her appointment was treated as fresh appointment. Subsequently, vide letter Annex.A/4 dated 21.4.1993 Dr. Nargis Shoeb was allowed to withdraw her resignation submitted earlier on 31.8.1988 as a special case in relaxation of rules and the period between her resignation and re-instatement was ordered to be treated as Dies non and no pay and allowances was held admissible to her. In fact the grievance of the applicant relating to reappointment came to a rest much earlier than 1993, therefore, the applicant cannot claim the benefit parallel to the one extended to Dr. Nargis Shoeb in 1993 as a special case. The facts of the case of Dr. Nargis Shoeb and that of the applicant are different. Applicant was a probationer when he tendered resignation. If in such a case decided earlier, the controversy is allowed to be raised on the basis of subsequent decision of the Government then there would be no end to the litigation. The case of the applicant was in fact dealt-with and decided by the

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authorities much prior to the case of Dr. Nargis Shoeb. In our opinion, each subsequently decided case does not regenerate the cause of action of earlier decided case. There are no sufficient reasons for condoning the delay in this regard because repeated representations do not keep the limitation alive. In our opinion, unrepplied representations should have been taken as rejected. Therefore, in our opinion, the present O.A. is hopelessly time barred and deserves to be dismissed on this count alone.

9. Now, the case of the applicant on merits. The applicant had moved the present O.A. in the year 1997 i.e. more than four years after the case of Dr. Nargis Shoeb was decided by the authorities. It should be noted that each case is governed by the facts and circumstances of that case. In the case of Dr. Nargis Shoeb, her husband was murdered and due to that shocking incident, she tendered her resignation which was allowed to be withdrawn subsequently and the intervening period was treated as dies non at the time of passing the fresh order by the Government. We were told that Dr. Nargis Shoeb had a long service before she tendered her resignation. On the contrary, the applicant was only a probationer when he had tendered his resignation. Thus, the circumstances of both the cases are quite different for treating the case on the same footing. The applicant had represented for treating his appointment continuous one, till 1987 and thereafter kept quite. When he came to know of the decision in the case of Dr. Nargis Shoeb, he reopened his case by making fresh representations which, in our opinion, cannot be permitted. If this is permitted then it will lead to many complications and already long back decided cases would be tried to be re-opened for fresh decision by the Government. In fact, the applicant himself is trying to get his case re-opened by

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by citing the instance of Dr. Shoeb's case. We may repeat here that the circumstances and facts governing the case of Dr. Shoeb are widely different than that of the applicant and, therefore, the applicant cannot claim to have been discriminated in this regard. If applicant was forced to resign due to some family circumstances then he has to face the facts as they are. In our opinion, no case of discrimination of the applicant vis-a-vis the case of Dr. Nargis Shoeb is made out.

10. In the case of the applicant, he was given a fresh appointment after due consideration and if subsequently case of Dr. Nargis Shoeb was treated as per the circumstances of her case then the applicant cannot be permitted to draw similarity of circumstances for seeking a decision in his favour by asking continuance of his earlier service on the lines of the case of Dr. Shoeb. Having once accepted the fresh appointment, the applicant cannot request for treating the same as continuous one on the basis of subsequently decided case of Dr. Nargis Shoeb. It should be noted that each case has its own merits and facts for consideration. Therefore, the applicant cannot claim his case to be decided on the lines of Dr. Nargis Shoeb. In our opinion, the applicant has not been able to make-out a case for recounting his past services treating the intervening period as dies non in continuation to the fresh appointment which was extended to the applicant after due consideration by the respondents.

11. In our opinion, the O.A. of the applicant is hopelessly barred by time and has also no merit. The same deserves to be dismissed.

and the M.A.

12. The O.A.'s are therefore, dismissed. The parties are left to bear their own cost.

(N.P.Nawani)
Adm.Member

Man
(A.K.Misra)
Judl.Member