

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 1014/2000

Jabalpur, this the 9th day of March, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. G.Shanthappa, Judicial Member

Shri Keshavdas and Ors.

APPLICANTS

(By Advocate - Smt. S.Menon)

VERSUS

1. Union of India, through Secretary,
Ministry of Communications, Sanchar
Bhawan, New Delhi.

2. The Chief General Manager Telecom,
M.P. Telecom, Circle P&T Bhawan,
Hoshangabad, Road, Bhopal(MP)

RESPONDENTS

(By Advocate - Shri B.dasilva along with Shri S.Akhtar and
Sh. Terrence Burrows)

ORDER

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicants 57 in number have sought the reliefs in terms of order dated 28.8.1995 passed in O.A.411 of 1990, Dhaniram Tiwari and others Vs. Union of India & others, and other connected matters, by holding the termination as ab-initio void; and direct the respondents to reinstate the applicants with all consequential benefits and also to consider them for regularisation.

2. The brief facts of the case are that the applicants had worked as casual labourers in different spells of time during the period 1977 to 1990, as per the chart enclosed by the applicants along with this OA, in the Department of Tele-communication. One Dhaniram Tiwari and others were also terminated and they had moved this Tribunal by filing OA No.411 of 1990. The said OA and other connected OAs were decided in favour of the applicants, in ~~these~~ ^{as per} OAs, vide order dated 28.8.1995.

According to the applicants, they are claiming regularisation based on the scheme framed on the direction of the

Hon'ble Supreme Court, called as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecom, 1989. The applicants have submitted that they had continued to work even after the scheme had come into force. The applicants requested the authorities concerned to grant the same benefit to them as granted by the Tribunal in the case of Dhani Ram Tiwari (supra). However, the respondents have declined to grant them the same benefits for the reason they had not preferred any OAs before the Tribunal. According to the applicants, they were made to believe by their previous Advocate Shri R.C. Shrivastava that their case has already been preferred way back in the year 1990. But, subsequently for the facts and reasons mentioned in the application for condonation of delay it revealed that in fact the case of the applicants was not filed by the said Advocate. Hence they have filed this OA, claiming the aforesaid reliefs.

3. The respondents have stated that the present OA is not maintainable for want of jurisdiction. In the case of Bheesam Singh and others Vs. Union of India and others, O.A.No.71 of 1997/ decided on 29.9.1998 this Tribunal had specifically held that it does not have jurisdiction to entertain matters arising from and under the Industrial Disputes Act, 1947 (for short 'ID Act'). The learned counsel for the respondents has relied on Section 2-A of the ID Act wherein it has been provided that "Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute". The respondents have also opposed the application on the ground of limitation as provided under Section 21 of the Administrative

Tribunals Act, 1985, as the applicants' services were terminated in the year 1990 and they have filed this O.A. after a long delay of 10 years. The contention of the applicants/^{is} that they have entrusted the work of filing the OA to one Shri R.C. Shrivastava, Advocate in the year 1990 through one Shri L.D. Sharma, who did not file the case and told them that their case has not been decided and their case will be decided in their favour in accordance with the relief granted in Dhani Ram Tiwari's case (supra). However, it was only in the year 2000 when the Advocate has stated that their papers have been misplaced and file is not traceable, the applicants have filed this OA in November, 2000. On the other hand, the respondents have stated that the applicants have not come with the clean hands and the ground taken by the applications for condonation of delay that they were not aware whether their case has been filed by their Advocate Shri R.C. Shrivastava or not, is totally false and contrary to records. The respondents have stated that most of the applicants had earlier approached this Tribunal in the earlier OAs 538/1997, 824/1998 and 823/1998, which were dismissed vide orders dated 12.7.1999, 4.8.1999 and 14.7.1999 on the ground that this Tribunal had no jurisdiction to entertain such matters as they come under the purview of the ID Act, 1947 in view of the decision in Bheesam Singh's case (supra) decided by the Full Bench. However, a liberty was given to them to approach the appropriate forum. Thereafter, most of the applicants had approached the Assistant Labour Commissioner in conciliation case nos. J-8(21)/99, J-8(22)/99, J-8(23)/99, the details of which are given in their reply to the application for condonation of delay..

4. It has been averred on behalf of the respondents that one Shri L.D. Sharma had been representing them and acting on their behalf. Even before the Regional Labour

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Commissioner (Central) Jabalpur the dispute has been raised through Shri L.D.Sharma. In the circumstances, the applicants are intentionally and with full knowledge of the facts are trying to mislead the Tribunal. The respondents have further submitted that before the Conciliation Officer, the applicants have specifically averred and explained the delay in raising the industrial dispute on the ground that they had earlier approached this Tribunal and have been given liberty to raise the industrial dispute. Before the Conciliation Officer the applicants had not contended that the delay is on account of their counsel and cannot be attributed to them. Prima facie, the applicants have not come with clean hands and have tried to mislead this Tribunal. In the circumstances, the respondents have prayed that this application filed under Section 19 of the Administrative Tribunals Act, 1985 needs to be dismissed with heavy costs.

5. The respondents have also stated that the regularisation is not a benefit that can be automatically extended to each and every employee on the basis of single judgment. The employee is first required to establish his rights and thereafter establish that he is squarely covered by the decision relied upon. In the instant case, the applicants have failed to prove any material on record to show that they have rendered service for the department and in the circumstances they cannot claim the benefit of regularisation as a matter of course. The Hon'ble Supreme Court has repeatedly held that regularisation is a means of back door entry into Government service and is to be avoided at all costs. The applicants even if they were entitled to benefit, they have been sleeping over their rights and cannot claim regularisation at such a belated stage. The learned counsel for the respondents has also stated that since the applicants have approached the Regional Labour Commissioner

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in the conciliation proceedings, therefore, this OA is not maintainable. In support of their claim, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of Bachi Singh and another Vs. Union of India and others, (1992)5 SLR 607.

6. Heard both the learned counsel for the parties and perused the records.

7. The learned counsel for the applicants has submitted that the delay in filing this OA is only on the ground that the applicants are illiterate and poor and they have been kept in dark by their earlier Advocate, by not filing this OA for all these years. As regards the reply submitted by the respondents that they have come to this Tribunal by filing their OAs, the details of the OAs have not been stated by the respondents. As regards the contention of the respondents that they have approached the Labour Commissioner in Conciliation proceedings, it may be possible that their Union might have approached on behalf of these labourers, for which they are not aware. Moreover, the judgment of the Hon'ble Supreme Court relied upon by the respondents is not applicable on the ground that when a person has approached the Industrial Tribunal, he cannot approach the Administrative Tribunal. Here, the Union had approached the Industrial Tribunal. In this case, the Union has not approached this Tribunal but only the individuals have filed this OA and, therefore, the reliance placed by the respondents on the aforesaid judgment is not correct. The learned counsel has also stated that even if some of the applicants had approached the Labour Commissioner in conciliation that cannot be treated the proceedings under the Industrial Disputes Act.

8. The respondents have also submitted that this OA is liable to be dismissed on the ground of limitation



and also that the applicants have not come with clean hands as the ground taken by them for condonation of delay is not correct. Moreover, the OA is not maintainable on the ground that the applicants had already approached earlier ^{with} before the Regional Labour Commissioner for conciliation and thereafter they have filed the present OA. He has also submitted that on merits also the OA is not maintainable as the applicants have not given any supporting documents with regard to their engagement during the period stated in the chart produced by them.

9. After considering the elaborate arguments advanced by both the learned counsel for the parties, we find that the applicants have not filed any supporting evidence to corroborate the chart of engagement prepared by them. We also find that this OA is highly barred by limitation in terms of Section 21 of the Administrative Tribunals Act, 1985 as the services of the applicants were alleged to be terminated in the year 1990 whereas they have approached this Tribunal after a long gap of 10 years in the year 2000. The applicants' plea that the delay has caused because of their earlier Advocate, who had not given the correct information to the applicants, is not acceptable ^{most of} as/the applicants had filed O.As.Nos.538/1997, 824/1998 and 823/1998 which were dismissed vide orders dated 12.7.1999, 4.8.1999 and 14.7.1999 and thereafter they had filed conciliation proceedings before the Regional Labour Commissioner and their cases were registered as Conciliation Case Nos.J-8(21)/99, J-8(22)/99 & J-8(23)/99 wherein they had taken the plea that they have been directed by this Tribunal to approach the Industrial Tribunal. While approaching both the forums most of the applicants had approached through Shri L.D.Sharma who is working in CTO. Therefore, the applicants now cannot take the plea that they were not aware of the fact that their cases were not filed

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by their Advocate Shri R.C.Shrivastava. The applicants, have, therefore, not come with clean hands. Moreover, they have suppressed the fact of approaching the Labour Commissioner in this O.A. These facts were nowhere mentioned in the Original Application and they have conceded these facts, only after the reply has been filed by the respondents to the condonation of delay application. The applicants by filing 'rejoinder to the application submitted by the respondents in relation to the condonation of delay' have submitted that "it is the fact that some of the applicants had moved this Court and have later submitted before the Assistant Labour Commissioner (Central) Jabalpur. But subsequently, an application was moved for withdrawing/deleting their names from the statement of the claim which came to be preferred by them". In para 7 of the Original Application under the title "Matters not pending in any other court of law" the applicants have stated that "as informed by the Advocate Shri R.C.Shrivastava, the subject matter of the grievance is not pending before any court of law". Therefore, we have ourselves perused the original records produced by the respondents and we find that the fact regarding the approach to the Labour Commissioner and taking the ground that they have been directed by the Tribunal to approach the appropriate forum, is correct. Therefore, we are satisfied that neither the applicants have given any satisfactory ground for condonation of delay nor the OA is maintainable in this Tribunal as they have approached the Labour Commissioner for conciliation proceedings. In view of the above, we find that his OA is hopelessly barred by limitation and is liable to be dismissed only on this ground. We also find that this OA is also not maintainable in the light of the judgment of the Hon'ble Supreme Court in the case of Controller, Printing & Stationary, (1996) 32 ATC 211 Krishan Prasad Gupta Vs. as the applicants had also approached the RLC before coming to this Tribunal.



