

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.130/2006 with MA No.79/2006.

Jaipur, this the 28th day of April, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

Pancham Singh
S/o Shri Rampal,
Aged about 35 years,
R/o Chove Ka Nala, Tehsil Kumher,
District Bharatpur.

... Applicant.

By Advocate : Mr. Sunil Kumar Singodia.

Vs.

1. Union of India
Through General Manager,
Western Central Railway,
Jabalpur.
2. The Divisional Railway Manager,
Division Office,
Western Central Railway,
Kota.
3. The Divisional Railway Manager (EStt.)
Western Central Railway,
Kota.
4. The Senior Divisional Engineer,
Rail, Western Central Railway,
Bharatpur.

... Respondents.

: O R D E R (ORAL) :

The applicant has filed this OA thereby praying for
the following reliefs :-

"It is therefore, most respectfully prayed that by
issuing an appropriate order or directions the
respondents may kindly be directed to allow the
applicant to join his duties on the post of Khallasi
in pursuance of the order dated 21.1.2000 and
further the respondents be directed to pay the
backwages to the applicant w.e.f. 21.1.2000 and the

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respondents be also directed to accord the status of permanent employee to the applicant with all consequential benefits.

Any other appropriate order or direction which is deemed just and proper by this Hon'ble Tribunal may also be passed in favour of the applicant."

2. Briefly stated the facts of the case as stated by the applicant are that he was initially appointed as Khallasi (Casual Labour) on 21.4.1988 under the control of respondents department. It is further stated that he worked in that capacity for more than 5 years i.e up to 30.06.1993. It is further stated that thereafter the applicant was required to submit an affidavit proving his date of birth which he accordingly submitted on 4.7.1999 thereby mentioning his date of birth as 4.5.1970. Subsequently, the applicant was asked to appear before the Medical Board for medical examination and he was examined on 18.11.1999 and after medical examination the applicant was offered appointment vide order dated 21.1.2000 (Annexure A/3) whereby the applicant was appointed under the control of Senior Engineer, Western Railway, Hindaun city, Bayana in the pay scale of Rs.2550-3200/- ~~(550)~~ revised) and the applicant was ordered to join his duty on 8.2.2000. It is further case of the applicant that under compliance of the order dated 21.1.2000 (Annexure A/3) the applicant appeared before Senior Engineer to submit his joining report but he was refused to join. It is further pleaded that thereafter the applicant contacted the respondents and he was given assurance that he will be allowed to work as Khallasi.

id

Since the applicant was not allowed to join pursuant to order dated 21.1.2000 (Annexure A/3), the applicant has filed this OA after a lapse of about 6 years.

3. Along with this application, the applicant has filed MA No.79/2006 for condonation of delay. The reason given by the applicant for not filing the OA within the prescribed period, as can be seen, from the averment made in the MA is that he was given assurance by the respondents that he will be allowed to work as khallasi, as such, the OA was not filed. At this stage, it will be useful to quote para 2 and 3 of the MA whereby such pleading has been made and the delay in filing the OA has been prayed to be condoned, which is in the following terms :-

"2. That vide order dated 21.1.2000 the applicant was ordered to be appointed under the control of Senior Divisional Engineer, P.Way Hindaun City and Bayana and the applicant has submitted joining report but the respondents has refused to take him on duty. Thereafter the applicant contacted to the respondents and they gave him assurance that they will allow him to work as Khallasi, because of the assurance of the respondents the applicant failed to file the above OA within the prescribed time period.

3. That in view of the above facts and circumstances the delay caused in filing the original application is bonafide and unintentional, therefore, same is liable to be condoned by this Hon'ble Tribunal."

4. I have heard the Learned Counsel for the applicant at admission stage. Before the applicant can be heard on the merit of this case, it is necessary to decide whether

the applicant has made out a case for condonation of delay in filing the OA after a lapse of more than 6 years.

5. Admittedly, the applicant was issued appointment order on 21.1.2000 (Annexure A/3) whereby he was directed to join his duties under the control of Senior Engineer, Western Railway, Hindaun City, Bayana on 8.2.2000. According to the applicant he was not allowed to join his duty, as such, cause of action has arisen in favour of the applicant on 8.2.2000 when he was refused to join duty pursuant to appointment order dated 21.1.2000 (Annexure A/3). The version of the applicant that he was given assurance by the respondents that he will be allowed to work as Khallasi pursuant to appointment order Annexure A/3 cannot be accepted as a sufficient cause for condoning the delay within the meaning of Section 21 (3) of Administrative Tribunals Act, 1985. Even if, for arguments sake, it is accepted that the applicant was given assurance by the respondents, in that eventuality, he should have waited for a reasonable time and in case he was not allowed to join pursuant to order Annexure A/3, he should have approach before this Tribunal within a period of one year which is the time prescribed under Section 21 of the Administrative Tribunal Act, 1985. The applicant has not given any explanation why he kept waiting for 6 years before filing OA in this Tribunal. Further the applicant has not also annexed any

representation which may justify the case of the applicant that he continue to make representation to the authorities when he was not allowed to join pursuant to appointment order Annexure A/3, As can be seen from the prayer clause the applicant has prayed that he may be allowed to join pursuant to appointment letter Annexure A/3 and be paid arrears w.e.f. 21.1.2000. Such a relief cannot be granted to the applicant as this will adversely affect many persons who have been appointed after 21.1.2000 till date which will adversely affect their seniority. The matter on this point is no longer res-integra. The Apex Court has repeatedly held that inordinate and unexplained delay of laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. At this stage it will be useful to quote some of the decision of the Apex Court which will have bearing in the matter, which thus reads as under :-

4.1 In Bhoop Singh v. Union of India, AIR 1992 SC 1414 : [1992 (4) SLR 761 (SC)] the Supreme Court observed thus :

" It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been

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working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim.

There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief."

4.2 Dealing with a matter where seniority dispute was raised after more than a decade, the Supreme Court in B. S. Bajwa v. State of Punjab, (1998) 2 SCC 523 : [1998(1) SLR 461 (SC)] held thus :

"The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all long treated as junior to the other aforesaid persons and the rights inter se had crystallized which ought not to have been re-opened after the lapse of such a long period. At every stage others were promoted before B.S. Bajwa and B.S. Gupta and his position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re-opened in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

4.3 Dealing with a matter relating wrong fixation of pay, the Supreme Court in M.R. Gupta v. Union of India, AIR 1996 SC 669 : [1995(5) SLR 221 (SC)] observed thus :

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gives rise to a recurring cause of action each time he was paid a salary which was

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not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation if a continuing wrong of on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs."

The Supreme Court also made a distinction between cause like termination from service or imposition of punishment which furnish a 'one time cause of action' and causes like wrong pay fixation which is a continuous wrong which subsists during the entire tenure of service furnishing a 'recurring cause of action' every month when the salary is incorrectly computed.


5. Thus, from the decision as reproduced above, it is clear that inordinate delay and laches is by itself a ground to refuse relief irrespective of the merit of the claim and the doctrine of delay and laches will apply and applicants who are not diligent will be refused relief. However, if the belated claim of the applicants has to be entertained it will upset promotions already made over a number of years and unsettled administrative position. At this stage, it will be also useful to quote yet another decision of the Apex Court in the case of State of Karnataka and Others vs. S. M. Kotrayya and Others, 1996 SCC (L&S) 1488, whereby the Apex Court has held that the mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal, held, not a proper explanation to justify condonation of delay. The explanation must relate to failure to avail the remedy within the limitation period. In Para 9 of the judgment, the Apex Court has held as under :-

"9. Thus considered, we hold that it is not necessary that the respondents should give an

explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

6. In the instant case, except stating that the applicant was given assurance by the respondents that he will be allowed to join pursuant to appointment order Annexure A/3, no explanation is furnished by the applicant for delay in filing the OA. The applicant has also not given any explanation why he could not avail the remedy of redressal of his grievances before the expiry of the period prescribed under sub-section (1) or (2) of Section 21 of the Administrative Tribunal Act. As such, in view of the law laid down by the Apex Court in the case of S. M. Kotrayya and others, relevant portion of which has been reproduced hereinabove, the applicant has not made out any case for condonation of delay. Accordingly, MA No.79/2006, filed for condonation of delay, is dismissed.

7. Consequent upon the dismissal of the MA, it is not necessary to go into the merit of the case. Accordingly, the OA shall stand dismissed. No costs.


(M. L. CHAUHAN)
JUDICIAL MEMBER

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