

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 25th day of January, 2010

ORIGINAL APPLICATION No.466/2008
With MA No.377/2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Sabbir
s/o Shri Hussaina,
Ex-Casual Khallasi,
r/o Village Dobra Kalan,
Post Sailoo,
District Sawaiomàdhopur,
Rajasthan.

.. Applicant

(By Advocate: Mr. Amit Mathür)

Versus

1. Union of India through General Manager, North West Railway, Jaipur
2. Chief Administrative Officer (Construction), North-Western Railway, Jaipur
3. Assistant Engineer (Construction-I), North Western Railway, Jaipur

... Respondents

(By Advocate: Mr. Hawa Singh)



ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)-

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

- a) By an appropriate order the Hon'ble Tribunal may kindly call for and examine the entire records relating to this case and by an appropriate order or direction the enquiry conducted by the Inquiry Officer may kindly be declared illegal contrary to the principles of natural justice and being contrary to the facts and be declared perverse. Consequently the finding of enquiry dated 18.01.1990 may also be declared illegal.
- b) By any appropriate order or direction the order of dismissal (Annexure A/1) dated 14.06.1990 may also be declared illegal and the respondents be directed to keep the applicant in service as if the order dated 14.06.1995 has never been issued and provide all the benefits to the applicant with all consequential benefits.
- c) By an appropriate order or direction the impugned order dated 12.9.1995 Annexure-A/2 (Appellate Order) may also be quashed and set-aside. The order dated 28.02.2006 (Annexure-A/3) may also be quashed and set-aside.
- d) By any other relief which is found just fit and proper in the facts and circumstances of the case may very kindly be passed in favour of the applicant by this Hon'ble Tribunal."

2. Briefly stated, facts of the case are that the applicant was dismissed from service vide order dated 14.6.1995 with immediate effect. The said order was passed by the respondents on the basis of a joint enquiry held in respect of 9 casual labours who were re-engaged in the Jaipur division on the basis of the forged service cards produced by them thereby showing that they were initially appointed in Kota Division. It is admitted case between the parties that the applicant alongwith other 8 persons were re-engaged in the Survey and Construction department, Jaipur on the basis of service cards produced by them which were found to be forged one. It may be stated that the order of dismissal was challenged by one Shri Ansar

Khan by filing OA No. 1/1996. The said OA was decided by this Tribunal vide order dated 27.3.2002 (Ann.A/18) and it was held that no witness has been examined during the course of enquiry to support the charge and nobody have stated that the cards produced by the applicant is bogus, even maker of the card has not been produced. Thus, it was held that findings recorded by the Enquiry Officer is based on surmises and conjectures. Thus, it being a case of no evidence, the punishment imposed on the applicant is liable to be quashed. Accordingly, this Tribunal quashed the order passed by the Disciplinary Authority as well as by the Appellate Authority and directed the respondents to retain the applicant in service forthwith. It was, however, stated that the applicant shall not be entitled for back wages but the period after dismissal to the reinstatement in service shall be treated as spent on duty for all purposes. The applicant did not agitate the matter immediately thereafter claiming benefit on the basis of the judgment rendered by this Tribunal. However, it is in the year 2006 that the applicant filed OA No.408/2006 thereby claiming benefit on the basis of the judgment rendered by this Tribunal alongwith application for condonation of delay.

During the course of arguments, the learned counsel for the applicant argued that the persons similarly situated have been reinstated by the department but the said benefit has not been extended to the applicant despite the recommendations made by the Deputy Chief Engineer vide his letter dated 26.12.2005 (Ann.A/24). Since there were no pleading to this effect, this Tribunal vide order dated 14.8.2008 disposed of the MA No.287/2006 as well as OA No.408/2008 by making following observations:-

"In sum and substance, case of the applicant, as argued by learned counsel for the applicant, is that no doubt the applicant has not challenged the order of dismissal from service in a court of law but the fact remains that one Shri Ansar Khan had challenged the said order, pursuant to the inquiry held by the respondents, before this Tribunal. This Tribunal vide order dated 27.3.2002, passed in OA No.1/96, has quashed the punishment imposed by the appropriate authority as the Tribunal found that it was a case of no evidence. The said decision has also been affirmed by the High Court in the year 2005. Based on these judgments, learned counsel for the applicant argued that since it was a case of joint inquiry and subsequently two persons who had also not challenged the order of dismissal from service, were reinstated by the department, the said benefit has not been extended to the applicant despite the fact that his case was also recommended by the Deputy Chief Engineer. Thus, learned counsel for the applicant argued that it is a case of discrimination.

We have heard the learned counsel for the applicant. Since the OA has not been taken on record and the arguments were to be advanced only on the MA No.287/2006, for condonation of delay, we asked the learned counsel for the applicant whether he has pleaded the case of discrimination. From perusal of the case file it is evident that the applicant has not raised this point in the manner argued by him.

At this stage, learned counsel for the applicant submitted that, he may be permitted to withdraw this MA for condonation of delay as well as OA with a liberty reserved to him to file a substantive OA thereby raising the specific pleas as contended by him alongwith other available grounds.

In view of what has been stated above, the applicant is permitted to withdraw MA 287/2006, for condonation of delay, with a liberty reserved to him to file another MA alongwith substantive OA for the same cause of action. It will, however, be permissible for the respondents to take all permissible objections in the said MA/OA.

With these observations, MA 287/2006 as well as OA stand disposed of.

In view of the aforesaid order, no order is required to be passed on MA No.25/2008, praying for listing the OA for hearing. The same shall also be stand disposed of."

Now, the applicant has filed this OA thereby praying for the aforesaid reliefs alongwith an application for condonation of delay. In para 22 of the OA the applicant has stated that he met Shri Ansar Khan in the year 2003 at Jaipur who was also dismissed alongwith the applicant and has filed OA No.1/1996 before this Tribunal, which was decided on

27.3.2002. He was informed that he has been reinstated back in service on 15.1.2003. He has also informed that two other identically situated employees Shri Amrud and Shri Mumaz have also been reinstated back in service. The applicant has also placed on record the order showing that Shri Amrun and Mumaz have been reinstated and working despite dismissal, as can be seen from Ann.A/20. Thus, according to the learned counsel for the applicant, in view of these peculiar circumstances of the case whereby the respondents have reinstated two persons *suo motu* and one Shri Ansar Khan pursuant to the judgment rendered by this Tribunal as affirmed by the Hon'ble High Court, who were held guilty in the joint enquiry alongwith the applicant, the applicant being similarly situated is also entitled to the aforesaid relief and delay in filing the OA need to be condoned.

2. On the contrary, the learned counsel for the respondents has opposed the MA for condonation of delay on the ground that no relief can be granted to the applicant on the basis of the judgment rendered by this Tribunal in the year 2002 as well as on the basis of the order passed in favour of Shri Amrud and Mumaz vide Ann.A/20 at this belated stage. It is further argued that applicant's application for condonation of delay does not disclose any cause of action with regard to the year 1995 as the applicant kept on sleeping in his deep slumber and never woke up before filing OA No.408/2006 to agitate his case. Thus, according to the respondents, the application is hopelessly time barred.

3. The applicant has filed rejoinder thereby reiterating the submissions made in the MA as well as OA.

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4. We have heard the learned counsel for the parties and gone through the material placed on record.
5. Admittedly, the applicant was dismissed from service vide order dated 14.6.1995 (Ann.A/1). The statutory appeal filed by the applicant was also dismissed on 12.9.1995. Admittedly, the applicant filed OA in the year 2006. The said OA was permitted to be withdrawn on the ground that at the time of arguments, the applicant has also raised ground of discrimination. As can be seen from the order dated 14.8.2008, which has been reproduced in the earlier part of the OA, opportunity was reserved to the respondents to take all permissible objections in the OA/MA to be filed subsequently. The applicant could not explain as to why he did not agitate the matter at the relevant time when cause of action accrued in his favour in the year 1995. Admittedly, the OA has been filed by the applicant in the year 2006 after a lapse of about 11 years which OA was also permitted to be withdrawn for the reasons that the applicant wanted to raise the ground of discrimination.
6. The question which requires our consideration is whether the applicant can be granted relief after such a long time, even if he is similarly situated to that of Shri Ansar Khan, in whose case the OA was allowed on 27.3.2002 and writ petition was also dismissed vide order dated 10.5.2005 and also on the basis of the order Ann.A/20 whereby Shri Amrud was reinstated in service in the year 1996 and his period of dismissal from 12.6.1996 to 20.2.1996 was treated as suspension period.

7. Law on this point is no longer res-integra. The Apex Court has repeatedly held that where a person is not vigilant of his right and is guilty of long delay and laches, relief can be denied to such person. Law on this

point stand also settled by the decision of three judge Bench in the case of Govt. of West Bengal vs. Tarun.K.Roy, 2004 (1) SCC 343 whereby the Apex Court has held that the plea of delay should be a ground for denying the relief to the other person similarly situated. Yet in another decision, the Apex Court in the case of New Delhi Municipal Council vs. Pan Singh, 2007 (9) SCC 278 where the writ petition was filed after 17 years held that after such a long time, the writ petition could not have been entertained even if they are similarly situated. Further, the Apex Court in the case of UP Jal Nigam and Another vs. Jaswant Singh and another, (2007) (1) SCC (L&S) 500 has held that when a person is not vigilant of his right and acquiesces with the situation, and the acquiescence prejudices, or there is change of position on the party allegedly violating the rights, such person's writ petition cannot be heard after a delay on the ground that same relief was granted to the similarly situated, who were vigilant to their right. The question arose for consideration before the Apex Court was whether the employees, who did not wake up to challenge their retirement and accepted the same should be given relief in the light of the subsequent decision delivered by the Apex Court in Harwinder Kumar case where the Apex Court has held that employees of UP Jal Nigam were entitled to continue in service upto 60 years which was the retiring age of the State Government employees. It was under these circumstances, the Apex Court held that the respondents are not entitled to any relief as they have acquiesced in accepting the retirement and did not challenge the same in time. It was further held that if they would have been vigilant enough they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did

not rise to the occasion in time for filing the writ petitions, then in such cases the court should be very slow in granting relief to such incumbent. It was further held that it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In that case if the respondents would have challenged their retirement being violative of the acts, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability, but by not asserting their right, the respondents allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming benefit of two years. Further, the same question was considered by the Apex Court in the latest decision in the case of Ghulam Rasool Lone vs. State of J&K and another, JT 2009 (13) SC 422 whereby the Apex Court in para 19 has made the following observations.

"19. If at this late Juncture the petitioner is directed to be promoted to the post of Sub-Inspector even above Abdul Rashid Rather, the seniority of those who had been promoted in the meantime or have been directly recruited would be affected. The State would also have to pay the back wages to him which would be a drainage of public funds. Whereas an employee cannot be denied his promotion in terms of the Rules, the same cannot be granted out of the way as a result whereof the rights of third parties are affected. The aspect of public interest as also the general administration must, therefore, be kept in mind while granting equitable relief."

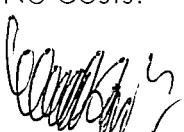
The law as laid down by the Apex Court in the case of Ghulam Rasool Lone (supra) is squarely applicable in the facts and circumstances of this case. In this case the applicant has challenged the order of dismissal passed in the year 1995 after a lapse of about 15 years. In the meanwhile some of persons must have been appointed/promoted and in case relief is granted to the applicant at this stage, it will affect seniority of those persons who had been appointed during the period of 15 years. Not

only that, the Government would also have to pay back wages to the applicant which would be a drainage to the public funds. Thus, in view of the law laid down by the Apex Court in the case of Ghulam Rasool Lone (supra), the applicant is not entitled to any relief and the present OA being hopelessly time barred has to be rejected.

8. Lastly, the learned counsel for the applicant submits that his client would be satisfied if the applicant is reinstated in service afresh. Suffice it to say that it is not a case set up by the applicant in this OA, as such, no finding on this aspect is required to be given. In case, the applicant wants that he may be re-engaged afresh thereby foregoing his past claim, it will be open for him to file fresh representation to the appropriate authority and we see no reason why the appropriate authority shall not consider the case in view of the fact that two employees who were also dismissed from service on the same charges during the course of enquiry have been taken back in service though in the year 1996.

9. With these observations the MA No. 377/2008 for condonation of delay is rejected. Since, we have not condoned the delay, the OA filed by the applicant is also dismissed as barred by limitation. No costs.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

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