

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No.1490/2013

Reserved on: 03.07.2015

Pronounced on:09.10.2015

Hon'ble Mr. Sudhir Kumar Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Kanwar Pal S/o Shri Bholu Ram
Working as Substitute Safai Karamchari
Municipal Corporation of Delhi
West Zone, Rajori Garden, New Delhi
R/o H.No.D-131, J.J.Colony,
Wazirpur, Delhi.

...Applicant.

(By Advocate: Shri A.K.Bhakt)

Versus

Union of India & Others, through

1. The Chief Secretary,
Govt. of NCT, Delhi Secretariat
I.P. Estate, New Delhi-110002.
2. Commissioner,
Municipal Corporation of Delhi,
(South West Zone),
Civic Centre, Dr.S.P.Mukharji Marg,
Minto Road, New Delhi-110001.
3. The Deputy Commissioner,
Municipal Corporation of Delhi,
West Zone, Rajouri Garden,
New Delhi.

...Respondents.

(By Advocate: Ms.Vertika Sharma)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA is before us claiming that he was working as a Substitute Safaikarmachari/Substitute Swachchhata Karmachari with

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Respondent Nos.2 and 3 (representing the erstwhile MCD), which has since been trifurcated, and, in this case, replaced by the South Delhi Municipal Corporation, on whose behalf a counter reply was filed in this case.

2. The applicant has alleged that even though he was performing his duties continuously, to the entire satisfaction of his superior officials, but the respondents have not regularized him on the basis of a plea that the documents in his file have bogus/forged signatures of the concerned officials. It is submitted that even though the applicant had made several representations requesting for his regularization, and had also sent a legal notice to the respondents on 19.01.2013, through his counsel, yet he has got no relief from them. Hence this OA.

3. The applicant has claimed that even though he was appointed as a Substitute Safaikarmachari/Substitute Swachchhata Karmachari with the respondents with effect from 01.01.1994, and he was initially getting his salary through Vouchers, but, later on, he had been getting his salary through Axis Bank, at the rate of the Minimum Wages Act, and in support of his contention, he has filed Annexure A/2 (Colly).

4. His grievance is that even though many of his juniors, and similarly situated persons working as Substitute Safaikarmachari/Substitute Swachchhata Karmachari were considered for regularization vide order dated 07.01.2009, his case for regularization had not been considered, in an arbitrary and discriminatory manner. It was further submitted that the respondents had initially issued an order dated 12.02.2009 for the regularization of his services, in which his name was shown at Sl.No.294, but, at the end of the said order, it was stated that on scrutiny it was found that the files of the applicant, and others from Sl.No.222 to 305 of that list,

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had been found to have bogus/forged signatures of the concerned officials, and the name of the applicant was blacklisted, without affording any opportunity of being heard to him. The applicant even submitted a representation on 03.03.2009 to the respondents, alleging that the bogus/forged signatures of the concerned officials in his file have not been made by him, because his file had not been given to him, and it was not under his control, but the respondents did not consider even this plea of the applicant favourably. In his representation, the applicant had also submitted that the bogus/forged signatures of the concerned officials have been done with a malicious intention, and that file has not been given or shown to him till date. The respondents had, vide office order dated 17.09.2009, converted many of the left out Substitute Swachchhata Karmacharies into Daily Wager Swachchhata Karmacharies with immediate effect, on the basis of the information/documents submitted by the Zonal Sanitation Superintendents, which were duly verified and recommended by the Zonal Committees, and approved by the Competent Authority. But the name of the applicant was still left out, and not even considered for such conversion. Thereafter, the respondents issued another Office Order dated 20.07.2010, and considered the regularization of 46 more Substitute Swachchhata Karmacharies, in which a few of his juniors were also regularized, but the respondents neither considered his representation, nor paid heed to the legal notice served upon the respondents through his counsel.

5. The applicant has, therefore, assailed the actions of the respondents on the ground of those actions being arbitrary and illegal, because no reasonable opportunity of hearing has been given to him, before blacklisting his name on the MCD Website. He has submitted that the alleged

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bogus/forgery committed is dormant and ambiguous, as there is no such allegation against the applicant, and the claim of the applicant for regularization is established and lawful, which has been denied to him due to inconsistency and arbitrariness of the respondents. It has been further submitted that the actions of the respondents are totally illegal, unjust and un-Constitutional, particularly in violation of Articles 14, 16 & 21 of the Constitution, and against the principles of natural justice. In the result, the applicant has prayed for the following reliefs:

“(I) to direct the respondents to regularize the applicant since the date of regularization of his juniors considering the representations of the applicant.

(II) to direct the respondents to produce the entire relevant records before the Hon’ble court.

(III) to award exemplary cost on the respondents for causing undue harassment.

(IV) to pass any other order or orders which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”.

6. The respondents filed their counter reply on 07.11.2013, denying each and every contentions, allegations and the averments made by the applicant, in general, and took a preliminary objection that the applicant has not come before this Tribunal against any particular adverse order, but has only made vague submissions in order to try to create a cause of action and, therefore, the O.A. is not maintainable, in the present form, as it does not comply with the essential criteria, prescribed under the Act and the Rules, for filing of OAs before this Tribunal.

7. It was further submitted that the applicant has never made any representations to the respondents on the lines of this OA, and, therefore, the present OA is barred by Section 20 of the A.T. Act, 1985. It was further

submitted that the present OA is also barred by limitation, and is contrary to Section 21 of the A.T. Act. It was further submitted that the O.A. suffers from delay and latches, as the Office Orders referred to were issued in January and February, 2009, while the present O.A. had been filed in April 2013.

8. The respondents had further invoked the Hon'ble Apex Court's judgment in **D.C.S.Negi vs. Union of India & Others** [Civil Appeal No.7956/2011 in SLP (Civil) CC No. 3709/2011 decided on 07.03.2011], and submitted that this Tribunal is duty bound to first consider as to whether the application is within the prescribed period of limitation, and that an application can only be admitted, if the same is found to have been made within the prescribed period of limitation, or sufficient cause is shown for not doing so within the prescribed period.

9. It was further submitted that the OA is also hit by the ratio of **S.S.Rathore vs. Union of India & Others**, AIR 1990 SC 10, in which it has been held that repeated representations do not extend the period of limitation. Shelter had also been sought from the ratio of **Karnataka Power Corporation Ltd. Through its CMD and Another vs. K.Thangappan and Another** 2006 (4) SCC 322, in which it has been held that mere making of representations cannot justify the delay. Shelter had also been sought from the ratio of **Shri Bhoop Singh vs. Union of India & Others** (1992) (3) SCC 136, in which it has been held that inordinate and unexplained delay or latches is by itself a ground to refuse the relief to the petitioner, irrespective of the merit of his claim. If a person entitled to the relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the minds of others that he is not interested in claiming that relief.

Further shelter had been sought from the ratio of **Union of India & Others vs. M.K.Sarkar** 2010 (2) SCC 58, in which it has been stated that a dead or stale issue or dispute cannot be revived, by making repeated representations. Shelter had also been sought from the ratio of **P.K.Ramachandran vs. State of Kerala & Another** JT 1997 (8) SC 189, in which it has been held that the aspect of limitation has to be applied with all its rigour, and the Courts have no power to extend the period of limitation on equitable ground. Further shelter had been sought from the ratio of **State of Karnataka vs. S.M.Kotraya** 1996 (7) SCALE 179, in which it has been held that it is the duty of the Court to see whether the delay has been properly explained by a person who is approaching the Court after inordinate delay, and merely filing of an application praying for condonation of delay does not entitle a person to claim such condonation of delay. Shelter had also been sought from the ratio of **Ramesh Chand Sharma vs. Udham Singh Kamal** [2000) SCC (L&S) 53], in which it has been specifically laid down that an O.A. is not maintainable, and it should be dismissed on the ground that the applicant has not filed any Miscellaneous Application for condonation of delay, and that a proper application under Section 21(3) of the Act for condonation of delay should be filed, and having not done so, the petitioner of the O.A./first respondent before the Hon'ble Supreme Court, cannot be permitted to take such contention, at this belated stage, and it was held that the OA filed before the Tribunal, after the expiry of three years, could not have been admitted, and disposed of on merits, in view of the statutory provisions contained in Section 21(1) of the A.T.Act, citing the ratio of **Secretary to Govt. of India vs. Shivram Mahadu Gaikwad** 1995 Supp (3) SCC 231.

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10. It was further submitted by the respondents that the applicant has been charged with serious allegations of forgery, files being tampered with/bogus documents introduced, which matter was pending before the Vigilance Department for further scrutiny and investigation.

11. It was further submitted that Zonal Committees had been formed for the Zones of the then unified Municipal Corporation of Delhi, for scrutinising the muster rolls of Substitute Safai Karmacharies, and their eligibility for regularization, and after such scrutiny it was found that 658 case files had either been tampered with, or bogus records and documents had been produced or introduced in them, including in the case file of the applicant, and therefore, those employees were not recommended for regularization. Thereafter, the cases relating to 622 Substitute Safai Karmacharies, including the case file of the applicant, were transferred to the Vigilance Department of the Respondent-South DMC in July 2012, after trifurcation of the erstwhile MCD.

12. It was further submitted that the applicant has always been notorious in his conduct, and also not sincere towards his duties, and even the Zonal Committee concerned had not given clearance with regard to his regularization. It was further submitted that the respondents have in no manner been unjust, or arbitrary, and have rather acted diligently after noticing the forgery in the concerned files, which is a serious crime. It was, therefore, prayed that the OA may be dismissed with costs.

13. The applicant filed a rejoinder on 18.11.2013, more or less reiterating his contentions, as raised in the OA, and had denied the contentions of the respondents that he had not exhausted his remedies, and had claimed that the OA was not barred by limitation. It was submitted that the respondents

have been making wrong allegations of the applicant committing forgery. It was further submitted that the applicant regularly appears before the respondents for duty, but sometime he gets duty, and sometimes he does not get duty, though he is duty bound to come to the office. It was further submitted that the respondents have only considered their favourites, and denied others regularization, by way of making false allegations. It was, therefore, prayed that the OA may be allowed with costs.

14. Heard. We have given our anxious consideration to the facts of the case. The entire case of the applicant is based upon Annexure A-2 (colly), which was purportedly prepared sometime in October 2006. Also, the applicant has assailed the regularization of many of his so-called juniors, who had been regularised through Annexure A/9 dated 17.09.2009. Even the order dated 12.02.2009 (Annexure A-5) which the applicant has assailed, contained the list of 305 employees, in which the name of the applicant appears at Sl.No.294, in respect of which it was stated that the files concerned have been found with bogus/forged signatures of the concerned officials. Thereafter, when 39 Substitute Safai Karmacharies were regularized through Annexure A-7 (colly) vide order dated 19.03.2009, and another list of persons so regularized was issued on 13.05.2009, the applicant had made representations on 06.04.2009 and 27.05.2009 (Annexure A/8 (colly)). Even the Office Order dated 17.02.2009 (Annexure A-9), through which another set of 56 Substitute Safai Karmacharies had been regularized, was duly verified and recommended by the Zonal Committees, and approved by the Competent Authority.

15. The applicant has not been able to substantiate his claim that he had regularly worked with the respondents since 1994, and has not been able to

repel or effectively controvert the contentions of the respondents that his name was one among the 658 similar cases, in which the files of the Substitute Safai Karmacharies had been found to have been tampered with/ forged documents introduced containing forged signatures. The applicant has desperately tried to make out his case that he has regularly been giving representations to the respondents. But, as was pleaded by the Respondents, it has been held by the Hon'ble Apex Court in **Union of India vs. M.K.Sarkar** (supra) that a dead or stale issue or dispute cannot be revived by making repeated representations. In this case, the cause of action, if any, had arisen in favour of the applicant in February-March 2009, while he had chosen to file the present OA only on 01.05.2013. It is, therefore, obvious that the claim of the applicant for regular employment with the respondents cannot be sustained only on the basis of single paper at Annexure A-2 of the present OA, in which it has been shown that the applicant had been engaged as Substitute Safai Karmachari with effect from 01.01.1994, and which the respondents claim to be a forged document.

16. The present application is, therefore, hit by both the aspects, on delay and laches, as well as due to lack of any merits in the OA, and the same is liable to be dismissed. Therefore, the OA is dismissed.

17. However, it is made clear that if after completion of Vigilance Enquiry in respect of the 658 persons, whose files are being examined by the Vigilance Section of the Respondent-Corporation, including the applicant, at a later stage, it is found to have been established that the applicant had not forged any documents, especially the document at page 18 (Annexure A-2(Colly)), the applicant would then be at liberty to re-agitate the matter on the basis of such conclusions of the Vigilance Department of Corporation in

his favour, in case the respondents themselves do not then provide relief to the applicant on their own, after his exoneration after the Vigilance Enquiry.

18. There shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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