CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.100/4064/2013

New Delhi this the 25th day of November, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. P. K. Basu, Member (A)

Mahendra Pal Singh
S/o. Late Sh. Ishwari Singh,
R/o. Vill & P.O. Baragaon, Akbarpur
PS Lodha, Distt, Alligarh (U.P.) ...Applicant

(Argued by: Shri U. Srivastava, Advocate)

Versus

Union of India through,

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Divisional Railway Manager,
New Delhi, Estate Entry Road,
New Delhi. ...Respondents

(By Advocate : Shri Sat Pal Singh)

ORDER (ORAL)

Justice M. S. Sullar, Member (J):

Tersely, the facts and material, relevant for deciding the instant O.A, as claimed by the applicant, Mahendra Pal Singh, and exposited from the record, is that, his date of birth is 03.05.1959. He was engaged as casual labour by Northern Railway and was issued the casual labour card.

2. As per service particulars, (Annexure A-1 colly), the applicant was stated to have worked as Khalasi with effect from 15.11.1981 to 14.02.1982, 10.04.1982 to 20.04.1982, 22.04.1982 to 27.04.1982 and from 30.04.1982 to 02.06.1982. He was

disengaged from his service w.e.f. 03.06.1982 on completion of the work. Subsequently, he was again reengaged in service in July, 1982 and was lastly discharged on 05.07.1982. According to the applicant, thereafter, he has been approaching the respondents for reengagement in service as casual labour. Although, as per the circular dated 28.08.1987 (Annexure A-2), the respondents were required to include his name in live casual labour register but in vain. The applicant has been repeatedly approaching the respondents, to consider his case for re-engagement as casual labour and moved a representation allegedly dated 02.12.2012 (Annexure A-4), followed by personal visit to the office. But the respondents have neither included his name in the live causal labour register nor reengaged him, and illegally just ignored his claim.

3. Aggrieved thereby, the applicant has preferred the instant O.A., challenging the impugned action of the respondents, on the following grounds:-

> "5.1 That the applicant was duly engaged by the respondents as casual labourer on different spells during the period from 1981 to 1982 and has completed total 240 days of his services further the applicant has been serving with the respondents to the entire satisfaction of his superior officials and having an unblemished service records.
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> 5.2 That the applicant was disengaged from his services on completion of work with an assurance that the applicant will be considered for reengagement in services subject to availability of work but there was nothing.
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> 5.3 That it reveals from the face of record that in terms of para 9 of the aforesaid circular it was obligatory on the part of the respondents to include the name of the applicant in casual labour live register in definitely as the applicant was discharged from his services w.e.f. 05.07.82 i.e., much after 01.10.81.
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> 5.4 That the applicant has been approaching to the respondents time and again as per the tune of the concerned officials for re-engagement but there was nothing except the assurance.
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> 5.5 That the fact remains that the applicant is entitled for consideration of his claim for appointment as casual labour in terms of para 11 of the

circular issued by the respondents in the name of Live Casual Labor Register which reads as under :-

> "11. If no casual labour is available on leave live casual register and fresh intake has to be restored to (with approval of the competent authority which at present i.e. w.e.f. 03.01.91) preference should be given to those casual labourers who had earlier worked on Railway, but their name have been deleted from the live casual labour register as per extent instructions and if such labour is not available only then fresh labour should be recruited."

5.6 That the applicant has been approaching to the respondents time and again as per the tune of concerned officials of the respondents department through representations followed by reminders as well as personal visits too but till date there is nothing."

4. On the basis of the aforesaid grounds, the applicant seeks a direction to the respondents to consider and finalise his case for re-engagement as casual labour, in the manner indicated hereinabove.

5. Sequelly, the respondents refuted the claim of the applicant, and filed the reply, inter alia, pleading certain preliminary objections of maintainability of the O.A on the ground of limitation, cause of action and locus standi of the applicant. It was alleged that the applicant has filed the instant O.A after a period of 30 years (approximately) and did not even move any application for condonation of delay.

6. The case setup by the respondents, in brief, insofar as relevant, is that the circular dated 28.08.1987 has already become redundant, as, by now, earlier practice of engaging casual labour has been dispensed with and the regular recruitment to Group 'D' employees are made through Railway Recruitment Board (for short "RRB"). It was further submitted, that as the date of birth of the applicant is 03.05.1959 (57 years), so he has already crossed the age of engagement as Group 'D' in the department. The claim of the applicant on the

basis of alleged circular (Annexure A-2), is wholly misconceived. He never approached the respondents and the alleged representation was made after a lapse of 30 years.

7. Virtually acknowledging the factual matrix and reiterating the fact that the applicant has never worked after July, 1982, so the respondents have stoutly denied all other allegations and grounds contained in the O.A., and prayed for its dismissal.

8. Controverting the allegations pleaded in the reply of the respondents and reiterating the grounds contained in the O.A, the applicant filed the rejoinder. This is how we are seized of the matter.

9. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after considering the entire matter, we are of the firm view that there is no merit, and the instant OA deserves to be dismissed, in the manner & for the reasons mentioned hereinbelow.

10. Ex-facie, the argument of learned counsel, that since the applicant has moved representation dated 02.12.2012 (Annexure A-4), so the OA is within limitation, is not only devoid of merit, but misplaced as well.

11. As is evident from the record, that applicant has himself admitted that he has not worked with the respondents after 05.07.1982, whereas the instant OA was filed by him on 08.10.2013 in this Tribunal, which is hopelessly time barred.

Similarly, no implicit reliance can be placed on the illegible photostat copy of postal receipts (Annexure A-3), as it does not leads us to anywhere, to prove that, in fact, the applicant has sent his representation (Annexure A-4) through postal receipts (Annexure A-3). Moreover, there was no occasion for the applicant, to move alleged representation in the year 2012, whereas his services were already disengaged after 05.07.1982, in view of the ratio of law laid down by the Hon'ble Apex Court in case of ***D.C.S. Negi Vs. U.O.I. & Others (SLP (Civil) No.7956/2011 CC No.3709/2011***) decided on 11.3.2011 wherein it was ruled that repeated representation cannot enhance the period of limitation as contemplated under Section 21 of the Administrative Tribunals Act, 1985. The Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3).

12. Similar view has been reiterated by Hon'ble Apex Court in cases ***S.S. Rathore Vs. State of Madhya Pradesh AIR 1990 SC 10*** wherein it has been ruled as under:-

> "22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. **Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation"**.

13. Again the Hon'ble Supreme Court in case ***U.O.I Vs. M.K. Sarkar (2010) 2 SCC 59*** has ruled as under:-

> "14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115:
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> > "The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. **The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored**."
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> 15. When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the `dead' issue or time-barred dispute. **The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction.** Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.
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> 16. A Court or Tribunal, before directing `consideration' of a claim or representation should examine whether the claim or representation is with reference to a `live' issue or whether it is with reference to a `dead' or `stale' issue. If it is with reference to a `dead' or `state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. **If the court or Tribunal**

> **deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches.** Even if the court does not expressly say so, that would be the legal position and effect.

14. Therefore, it is held that the instant OA is hopelessly time barred and cannot legally be entertained.

15. There is yet another aspect of the matter, which can be viewed entirely from a different angle. According to the applicant, his services were finally disengaged on 05.07.1982 and he is claiming the relief of reengagement on the basis of instructions dated 28.08.1987 (Annexure A-2). Moreover, the specific case of the respondents, is that, the said instructions has already become redundant, as, by now, earlier practice has been dispensed with and the regular recruitment to Group 'D' employees are made through RRB. Even the applicant is not eligible for reengagement in service, as he has already attained the age of 57 years.

16. Moreover, the applicant is not entitled to reengagement as a back-door entry, without clearing the recruitment process of selection by RRB, as this will run counter to the ratio of law laid down by a Constitution Bench judgment of Hon'ble Apex Court in case ***Secretary, State of Karnataka Vs. Uma Devi (3) and Others (2006) 4 SCC 1***, which is not legally permissible.

17. In the light of the aforesaid reasons, and thus seen from any angle, the applicant is not entitled to any relief, at this belated stage. Therefore, as there is no merit, the instant

OA is hereby dismissed, as such. However, the parties are left to bear their own costs.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
25.11.2016

Rakesh