

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA

In the matter of :

O.A. No. 418 of 2013

An application under Section 19 of
the Administrative Tribunals Act
1985;

And

In the matter of :

Munshi Mahfuz Hossain son of
Munshi Mahaboob Hossain, of
Village Bhaslia (Bajitpur), Post
Office - Bhaslia, Police Station
Deganga, Pin Code - 743423,
District North 24 Parganas, West
Bengal.

... Applicant

- Versus-

1. Union of India, through the
Secretary, Ministry of Defence,
South Block, New Delhi - 110001.

2. The Chairman, Ordnance
Factory Board, having its office at
10A, Shaheed Khudiram Bose Road,
Kolkata - 700001.

3. T.P. Narayanmoorthy, Staff
Officer/Headquarters, having his
office at 10A, Shaheed Khudiram
Bose Road, Kolkata - 700001.

4. Manoj Kumar, Director/
Headquarters, having his office at
10A, Shaheed Khudiram Bose Road,
Kolkata - 700001.

...Respondents

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O.A/350/418/2013

Date of order: 2.2.2018

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
 Hon'ble Ms. Jaya Das Gupta, Administrative Member

For the Applicant(s) : Mr. J.R Das, Counsel
 For the Respondent (s): Mr. L.K Chatterjee, Counsel
 : Mr. B.P Manna, Counsel

ORDERPer Ms. Jaya Das Gupta, Administrative Member:

The applicant Sri Munshi Mahfuz Hossain has approached CAT under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

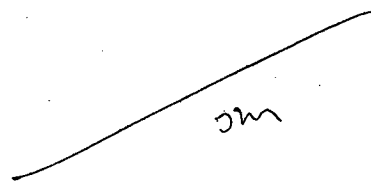
" (a) The applicant be forthwith absorbed in an appropriate post under the permanent service scheme in accordance with the service applicable rules with the Ordnance Factory Board pursuant to the Government of India instruction bearing No. 347/A/A dated 25th June, 1984.

(b) Issue direction upon respondent authorities to quash/set/aside/cancel/rescind/recall and/or not to give effect to the impugned letter bearing No. 1023/HQ/NG dated 4th December, 2012 issued by the Staff Officer/Headquarters on behalf of and for Director General Ordnance Factories, rejecting the applicant's representation for regularization of casual workers at office of Ordnance Factory Board, Kolkata. "

2. It is the contention of the applicant that he along with 41 other persons were serving as casual worker since 1981 to 1983 under the office of Ordnance Factory Board Headquarter. He received daily wages during the aforesaid period. On or about March, 1982 a police verification of the casual workers, including the applicant, was carried out by the respondent authorities.

It is the further submission of the applicant that on 05.01.1984 the Government of India issued an order, where according to the applicant casual labourers/workers were proposed to be absorbed into the permanent service in the various departments in the posts of Group-D at the said Ordnance Factory Board.

Pursuant to the above circular, it is the submission of applicant that five persons out of the said 41 casual workers were absorbed into the permanent service. However,



the applicant was not absorbed and he made a number of representations to that effect expressing his grievance to the respondent authorities but to no avail.

It is his further contention that as a follow up of the said order of the respondent authorities dated 05.01.1984 the Government of India issued further instructions in the year 1998 and 2001 regarding the absorption of casual labourers into permanent service. Even though several representations was made including on 2nd March, 1998 and 17th March, 1998 addressed to the Chairman, Ordnance Factory Board, reply was only received on 08.11.2011 enclosing reference to a judgement of the Hon'ble Supreme Court in the matter of Union of India -Vs- Kartick Chandra Mondal . However, on 25th July, 2012 he received the final rejection letter of his prayer for regularisation intimating that the date on which regularisation of casual workers as one time measure was to be effected i.e 07.05.1985, the applicant was not on the roll as a casual labourer in his office. Accordingly, his request was not tenable to be considered favourably.

Against such rejection letter, the applicant has filed the present case on 13.05.2013 asking for the reliefs as given above.

3. We note that the O.A file 418/2013 is a stale application, as the cause of action has arisen on or about 1983. It is the order of the Hon'ble Apex Court that filing of repeated representations against any order which should be challenged on time does not save the matter from the issue of limitation. This application is hopelessly time barred and we also note that no M.A application had been filed along with the O.A explaining the delay and praying for condonation of such delay.

Hon'ble Apex Court in (2008 Vol- 2 SCC (L&S) 961), C. Jacob -Vs- Director of Geology and Mining and Another has held that *'the department itself can reject a stale case on the ground of delay alone without examining merits. Reply given to an individual does not give rise to fresh cause of action or acknowledge of jural relationship'*.

The Hon'ble Apex Court also held in (1990 SCC (L&S) 50), S.S. Rathore -Vs- State of Madhya Pradesh that *'repeated representations cannot extend the cause of action'*.

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In 2008 Vol-8 SCC, 648 Union of India and Ors -Vs- Tarsem Singh has held that 'if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained'.

Hence, right at the beginning this O.A could have been dismissed but as a measure of justice, we are dealing also this case on merits.

4. The order of DoPT 7th May, 1985 on which the applicant relies heavily is set out below:

No. 49014018084-Estt.(G)

Government of India,
Ministry of Personnel & Training
Administrative Reforms and Public
Grievances and Pension
(Department of Personnel and Training)

New Delhi, the 7th May, 1985.

OFFICE MEMORANDUM

Subject: Regularisation of service of casual workers in Group 'D' posts -
Registration of Employment Exchange Procedure.

The undersigned is directed to say that services of casual workers may be regularised in Group 'D' posts in various Ministries Departments etc. subject to certain condition, in terms of general instruction issued by this Department. One of these conditions is that the casual workers concerned should have been recruited through the employment exchange. Sponsorship by the employment exchange being a basic and essential condition for recruitment under the Govt. it has been repeatedly been brought to the notice of the various administrative authorities that recruitment of casual workers should always be made through the employment exchange. It has, however, come to the notice of this Department that in certain cases these instructions were contravened and casual workers were recruited otherwise than through the employment exchange. Though these persons may have been continuing as casual workers for a number of years, they are eligible for regular appointment and their services may be terminated anytime. Having regard to the fact that casual workers belong to the weaker section of the society and termination of their service will cause under hardship to them, it has been decided, as a onetime measure, in consultation with the DoPT, that casual workers recruited before the issue of these instructions may be considered for regular appointment to Group 'D' posts, in terms of the general instructions even if they were recruited otherwise than through the employment exchange provided they are eligible for regular appointment in all other respects.



It is once again reiterated that no appointment of casual workers should be made in future otherwise than through the Employment Exchange. If any deviation in this regard is committed, responsibility should be fixed and appropriate departmental action taken against the official concerned.

Sd/- (A. Jayaran)

DIRECTOR (E) "

However, the order dated 25.07.2012 rejecting the case of the applicant which is set out below amply proves that the applicant himself was not on the roll as a casual labourer at the relevant point of time and hence could not be considered according to the prevailing Government orders at that point of time.

"To

Dated 25th July, 2012

Shri Munshi Mahafus Hossain,
S/o Munshi Mahaboob Hossain,
Vill- Bhaslia (Bajitpur), O.O-Bhaslia,
P.S- Deganga
Dist.- North 24 Parganas,
Pin - 743423
West Bengal

Sub: Regularisation of Casual Workers at Ordnance Factory Board
HQrs., Kolkata.

Ref : Representation of Shri M.M Hossain dated Nil

With reference to your representation date Nil addressed to the Chairman, OFB HQrs, it is intimated that the case has been further re-examined with reference to existing instruction of Government of India on the above subject.

02. In this context, it is intimated that, no new point has been brought out in the said representation and hence it is reiterated that on the date on which regularization of Casual Labourers as one time measure was to be done (i.e 07.05.1985), you were not on the roll as a Casual Labourer in this office. Accordingly, your request is no tenable under extant Government of India instruction.

(Manoj Kumar)

Director / HQrs

For Director General Ordnance Factories "

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5. It appears from the reply filed in this O.A that the applicant has worked as a Casual Labour during the period of 1981-1983 and was decasualised from April, 1983. In 1985, as a onetime measure, Government of India, Ministry of Personnel and Training Administrative Reforms /Pension vide O.M No. 4914/18-84 Estt.(C) dated 07.05.1985 issued an order that **all the casual workers who were on the working rolls would be regularized as Gr 'D' staff, subject to certain stipulations.** Since the applicant was not on the working roll on the stipulated date of issue of Order i.e dated 07.05.1985, his case could not be considered.

It is the contention of the applicant that there was no case for his decasualisation because he was not sponsored by the Employment Exchange. However, at that point of time the applicant had neither represented to the authorities regarding his grievance of decasualisation to the authorities or to the court and when, much time has already elapsed, this court cannot go into that question now as that issue is barred by limitation.

The respondents have further mentioned in their reply that two persons namely Shri K.C Mondal and Shri Swapan Chakraborty, who were similarly circumstanced as the applicant, had filed an O.A 903/2000 before the CAT Calcutta Bench. CAT had given an order dated 11.03.2000: *" to absorb the applicants in any suitable post commensurate with their qualifications within 6 months from the date of communication of the order."*

Against that order, the respondent authorities preferred a Writ Petition before the Hon'ble High Court, Calcutta in WPCT No. 517 of 2004. However, vide order dated 17.08.2005, the Hon'ble High Court, Calcutta was pleased to dismiss the said Writ Petition thereby upholding the order of CAT directing the petitioners to absorb the respondents in any suitable post commensurate with their qualifications within 6 months. Aggrieved by the judgement and order dated 17.08.2005 passed by the Hon'ble High Court, Calcutta in WPCT No. 517/2004, the respondents filed SLP before



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Hon'ble Supreme Court. Vide order dated 15.01.2010, the Hon'ble Apex Court was pleased to order that:


"the respondents i.e Shri K.C. Mondal and Shri Swapan Chakraborty have not been working at any point of time after 1983. There is also a continuing ban on recruitment due to which there was no recruitment or appointment in the Gr. 'D' posts of the Ordnance Factory Board. In view of the aforesaid discussions and conclusions arrived at, we are of the considered opinion that this appeal should be allowed, which we hereby do. We set aside the orders passed by the Tribunal as also by the High Court. There will be no order as to costs."

6. The Id. counsel for the applicant had strenuously submitted that the orders of this Hon'ble Apex Court as cited above should not be taken as an order in REM and should not apply to the case of the applicant at present. Also now there is no ban on recruitment as has been referred to by the Hon'ble Apex Court.

We, however, do not agree with such submissions because the fundamental fact is that when the Government order dated 07.05.1985 was issued, no retrospective fact could be given to such Government order. It is a fact agreed to by both the parties that by January 1984 the applicant was not on the roll of Ordnance Factory Board, and hence, he cannot take advantage of the stipulations of the Government order. Further the stale application is barred by limitation as explained above.

7. Accordingly, the case deserves to be dismissed, and is dismissed. No costs.

(Jaya Das Gupta)
Member (A)


(Bidisha Banerjee)
Member (J)