

**Central Administrative Tribunal
Madras Bench**

MA 310/00569/2018 & OA/310/01330/2018

Dated the 9th day of October Two Thousand Eighteen

P R E S E N T

**Hon'ble Mr. R. Ramanujam, Member(A)
&
Hon'ble Mr. P. Madhavan, Member (J)**

G. Vijayakumar
No. 3/944, Pilliyarkoil Street
Mettupakkam, Thorapakkam Post
Chennai – 79.

.. Applicant

By Advocate **M/s. P. Ulaganathan**

Vs.

1. Union of India rep by
The Secretary
Department of Legal Affairs
Ministry of Law and Justice
Shastri Bhawan
New Delhi – 110 011.

2. The Additional Legal Adviser
Department of Legal Affairs
Ministry of Law and Justice
III Floor, Shastri Bhawan
26, Haddows Road
Chennai – 600 006. .. Respondents

ORAL ORDER

Pronounced by Hon'ble Mr.R.Ramanujam, Member(A)

Heard. The applicant has filed this OA seeking the following reliefs:-

- “i. To call for the records on the file of the second respondent in connection with the order in F.No. C-18014/1/2013 Admn II(LA) dated 18.7.2018 passed by the Deputy Secretary in the office of the second respondent and set aside the same;
- ii. To direct the second respondent to reinstate the applicant into service as a peon with all consequential benefits; and
- iii. To pass any other order or direction or grant any other relief.”

2. It is submitted that the applicant was appointed as a peon on an adhoc basis in the respondent Secretariat on 01.07.2004 for a period of six months. His appointment was extended for periods of 6 months at a time thereafter and the last extension was dated 07.07.2006. During the period of last extension he was arrested in connection with the murder of his father and a FIR was filed under sections 302, 201, 120(b) of IPC as also the relevant provisions of the NDPS Act. However, Principal Session Court, Virudhunagar District Srivilliputtur by its order dated 18.11.2009 held that the charge against the applicant had not been proved beyond reasonable doubt. Thereafter, the applicant's attempt to get reinstated in service did not yield fruits and, therefore, he filed OA 7/2012 which was dismissed for default by an order of this Tribunal dated 17.07.2014.

3. The applicant filed Annexure A8 representation dated 07.05.2018 as also another OA to direct the respondents to consider his representation. This Tribunal in OA 741/2018 by an order dated 19.06.2018 directed the respondents to consider the representation and take an appropriate decision. Annexure A10 impugned order dated 18.07.2018 rejecting the applicant's claim to be reinstated in service had been passed in pursuance thereof. Aggrieved by the order, the applicant is before this Tribunal.

4. The applicant has also filed MA 569/2018 seeking condonation of delay in the matter.

5. Learned counsel for the applicant would argue that the applicant having been acquitted by the criminal court could not have been kept out of service as he was entitled to all the rights of a civil servant even as an appointee on adhoc basis. OA 7/2012 had been dismissed in default for which the applicant was not responsible as he had not been informed by his counsel. Accordingly he would submit that the delay was fully explained, and therefore, there is every reason for this Tribunal to entertain this OA.

6. We have considered the submission. It is not in dispute that the applicant was an adhoc appointee from 01.07.2004 and his appointment was for a period of 6 months at a time. The last extension granted to him was on 07.07.2006. However, following his arrest in connection with the criminal case, he was not allowed to join duties on 08.09.2006. Thus the cause of action for the applicant had arisen on that date as his main grievance is that the respondents could not

refuse to let him join duty without passing an appropriate order. Even assuming that he was justified in waiting for the result of the criminal case, it is seen that the charge against him was held not proved beyond reasonable doubt in the order of the Principal Session Court, Virudhunagar dated 18.11.2009.

7. When the applicant filed OA 7/2012, notice was issued to the respondents and a reply had also been filed on their behalf. As the pleadings were complete the applicant could and ought to have pursued the case, if he felt that his grievance was genuine and well founded on law. However, it is submitted that it is not the applicant's fault but only that of the counsel in not appearing before the Tribunal as a result of which the OA was dismissed.

8. A perusal of the order of this Court dated 17.07.2014 in the said case would show that neither the applicant nor the counsel was present even on second call, not only on the date of dismissal but even on several occasions before. Even after the dismissal in default on 17.07.2014, the applicant took no action to have it restored through the same counsel or any other counsel. On the other hand, he submitted another representation dated 07.05.2018 to the respondents and sought a direction from this Tribunal in OA 741/2018 to have it considered. Although the Tribunal directed the respondents therein to consider the representation of the applicant dated 07.05.2018 and take an appropriate decision, it was made clear therein that the Tribunal had not gone into the substantive merits of the case either on facts or on law. As such, the mere fact that such a direction was given to the respondents would not be tantamount to condonation of delay or absolve the

applicant of his lapses as all options were open before the respondents while taking a decision in the matter.

9. In the Annexure A10 impugned order dated 18.07.2018, the respondents have referred to the dismissal for non prosecution of OA 7/2012. They have further explained that the applicant was involved in a criminal case and was arrested on account of which he was not allowed to join duties. It is the respondents' stand that the CCS (CCA) Rules, 1965 would not be applicable in the case of the applicant as he was only an adhoc appointee and the adhoc appointment automatically came to an end on the expiry of the period of adhoc appointment unless extended.

10. In the facts and circumstances of the case, we are of the view that the applicant has failed to satisfactorily explain the delay on his part after the order passed by the Principal Session Judge, Virudhunagar. It is also not the applicant's case that persons who were similarly appointed along with the applicant on an adhoc basis on 01.07.2004 or later had been continued in service and are serving as on date with or without their services being regularised. Unless it is established that all persons appointed similarly as the applicant had been continued in service notwithstanding their initial appointment being of an adhoc nature, we are of the view that there is no *prima facie* case for the applicant to seek reinstatement into service at this distant point in time. Further, the applicant had been appointed for six months only or till the vacancy existed whichever was earlier. There is no evidence to show that the vacancy still exists for the applicant to be reinstated.

11. In view of the above, we are not inclined to admit the OA. OA is dismissed as misconceived and barred by latches. MA 569/2018 for condonation of delay stands disposed of accordingly.

(P. Madhavan)
Member (J)
AS

09.10.2018

(R.Ramanujam)
Member(A)