

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**Original Application Nos. 290/00078/2015 and
290/00079/2015**

RESERVED ON :08.08.2019
PRONOUNCED ON :23.08.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

OA No.78/2015

Arjun Singh s/o Shri Mohar Singh, aged about 51 years, Resident of Village Ram Nagala Garh, Post Bhadanwara, District Mathura (Uttar Pradesh, at present working on the post of Regular Mazdoor in the office of SDOT, Suratgarh, District Sri Ganganagar (Raj.)

...Applicant

(By Advocate: Shri Deepak Nehra)

Versus

1. The Bharat Sanchar Nigam Limited through the Chief Managing Director, Bharat Sanchar Bhawan, Janpath, New Delhi.
2. The Chief General Manager, Office of the Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur.
3. The Divisional Engineer (Administration), Office of the General Manager Telecom District, Bharat Sanchar Nigam Limited, Sri Ganganagar

...Respondents

(By Advocate: Shri Rajesh Shah)

OA No.79/2015

Radhey Shyam Mishra son of Shri Rajit Ram Mishra, aged about 53 years, Resident of Village & Post Rahari, Tehsil Bikapur, District Faizabad (Uttar Pradesh), at present working on the post of Regular Mazdoor in the office of SDE (GE), Gharsana, District Sri Ganganagar (Raj.)

...Applicant

(By Advocate: Shri Deepak Nehra)

Versus

1. The Bharat Sanchar Nigam Limited through the Chief Managing Director, Bharat Sanchar Bhawan, Janpath, New Delhi.
2. The Chief General Manager, Office of the Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur.
3. The Divisional Engineer (Administration), Office of the General Manager Telecom District, Bharat Sanchar Nigam Limited, Sri Ganganagar

...Respondents

(By Advocate: Shri Rajesh Shah)

ORDER

Per Mrs. Hina P.Shah

Since a common question of law and facts involves in these OAs, therefore, these are being decided by this common order. For the sake of convenience, we are taking pleadings of OA No.78/2015.

2. Applicant in this OA has prayed for the following reliefs:-

"That this Hon'ble Tribunal may kindly be pleased to accept and allow the present original application and Hon'ble Tribunal may kindly be pleased to issue direction to the respondents department to grant the status of regularisation to the applicant from the date of regularization of other similar situated persons vide order dated 10.08.1992 (Anx.A/2) and to direct the respondents to allow and grant all consequential benefits after such regularization of service as prayed for;

The Hon'ble Tribunal may kindly be pleased to issue directions to the respondents to modify the order dated 19/06/2007 (Anx.A/8) up to the extent it grants regularization of the applicant's service from the date of his joining as Regular Mazdoor instead of from the date of regularization of other similar situated persons vide order dated 10.08.1992 (Anx.A/2)"

3. Brief facts of case, as stated by the applicant, are that he was appointed as casual labour (Mazdoor) against the permanent and sanctioned post on 4.8.1981. He did not remain present for some time due to his illness and after producing medical certificate he was allowed to join his duties. Then all of sudden, his services were terminated w.e.f. 1.7.1988 against which a dispute was raised by the General Secretary, Bhartiya Mazdoor Sangh before the Government of India, which was referred to the Central Industrial Tribunal (CIT), Jaipur for adjudication and the same was registered as CIT No.9/1990. The CIT vide judgment dated 13.3.1992 declared the termination as illegal and directed the respondent to deem the services of the applicant as continuous with all consequential benefits. The said judgment was challenged by the respondents by filing SB Writ Petition No.7400/1992, which was dismissed

vide judgment dated 23.11.1992. The office of Telecom District Engineer, Sri Ganganagar has issued order dated 10.08.1992 by which services of casual labours who completed 10 years or more service as on 31.12.1991 and approved by the D.P.C. were regularised, but the case of the applicant was not considered as during the relevant point of time due to pendency of the Writ Petition before the Hon'ble High Court. The applicant was otherwise entitled for regularisation as he was engaged in the department on 4.8.1981 and therefore, had completed 10 years of service at the relevant point of time. Other similarly situated persons were regularised by the respondent department vide order dated 10.8.1992 (Ann.A/2).

After passing of order by the CIT and then by the Hon'ble High Court, the applicant was allowed to join his duties vide order dated 24.11.1992 (Ann.A/3) subject to final decision of Special Appeal to be filed by the respondents before the Division Bench of the Hon'ble High Court. The wages of the applicant from the date of termination till the date of resuming back on duty were also paid to the applicant (Ann.A/4). The Special Appeal (Writ) No.12/1993 was also dismissed by the Division Bench of the

Hon'ble High Court vide judgment dated 18.02.2003. After passing of the above judgment, the respondent No.3 directed the SDO(T) Suratgarh to grant temporary status to the applicant. Accordingly, the applicant was granted Temporary Status of Mazdoor (TSM) w.e.f. 1.10.1989 vide order dated 4.11.2004 (Ann.A/7).

The applicant avers that he is entitled for regularization of his services w.e.f. the date on which the other similarly situated persons were regularized vide order dated 10.08.1992 but the respondents vide order dated 19.6.2007 have regularized the services of the applicant from the date of his joining as Regular Mazdoor. This order is passed w.r.t. to the applicants in both the OAs and on account of belated grant of permanent status giving the reason of pendency of litigation. Therefore, aggrieved by the action of the respondents, applicants have approached this Tribunal praying for the aforesaid relief.

4. By way of filing reply, stated that the post of casual labour was neither permanent nor sanctioned. They have further stated that the case of the applicant is not similar to other candidates who were regularized vide order dated 10.08.1992. On recommendations of the Departmental

Promotion Committee (DPC) casual labours with temporary status were regularized vide order dated 10.8.1992, who have completed minimum 10 years of service as on 31.12.1991. The applicant has not completed minimum 10 years of service as on 31.12.1991, which was a condition for regularization of his services. The applicant was engaged as Casual Labour on muster roll w.e.f. 1.10.1981 and not from 4.8.1981. The applicant did not perform his duties as casual labour on muster roll w.e.f. 1.5.1984 to 31.12.1987 (i.e. 3 years and 7 months). He was again engaged as casual labour w.e.f. 1.1.1988 after submitting medical certificate and his services were subsequently terminated w.e.f. 1.7.1988. Against his termination, he has approached the CIT, Jaipur and the CIT has ordered for reinstatement of the applicant w.e.f. 1.7.1988 and payment of back wages were ordered vide order dated 13.3.1992. The order of the CIT has been fully implemented and the applicant was taken back on duty as casual labour and he was paid back wages of Rs. 59,593.25 for the period from July, 1988 to December, 1992. Thereafter, the applicant was granted Temporary Status of Mazdoor (TSM) vide order dated 4.11.2004 w.e.f. 1.10.1989. After sanction of Regular Mazdoor Post, the DPC regularized the services of the

applicant vide order dated 19.6.2007 (Ann.A/8). Therefore, according to the respondents, the applicant has filed the OA without any valid reason and the OA is liable to be dismissed on this ground alone.

The respondents have further stated that the applicant was granted temporary status vide order dated 4.11.2004 w.e.f. 1.10.1989 as per the instructions of DOT, New Delhi dated 7.11.1989 (Ann.R/1). In point No.5 of the order dated 18.10.2005 (Ann.A/3) it is clearly mentioned that such casual labours who acquire temporary status will not however be brought on to the permanent establishment unless they are selected through regular selection process for Group-D post. After sanction of regular mazdoor post, DPC regularized the applicant's service vide order dated 19.6.2007. (Ann.A/8)

5. No rejoinder has been filed by the applicants in both the OAs.
6. We have heard the learned counsel for the parties and perused the material available on record.
7. The applicants in the present OAs were terminated from 1.7.1988 and they were re-engaged and given back wages in compliance of the Central Industrial Tribunal's

order dated 13.03.1992, which was affirmed by the Hon'ble High Court. Thereafter the applicants were given temporary status in the year 2004 and 2005 and after sanction of post of Regular Mazdoor vide order dated 19.6.2007 (Ann.A/8 & A/4) their services were regularised after recommendations of the DPC. After regularisation of their services, they have accepted the position of granting temporary status in the year 2004 and 2005 and regularisation vide order dated 19.6.2007 and did not raise any grievance at that juncture. It is only in the year 2014, they suddenly woke up from a deep slumber and sent a notice for demand of justice dated 17.6.2014 (Ann.A/9 & A/5). Thereafter they have filed these OAs claiming similar benefit of regularisation of their services as has been extended vide order dated 10.08.1992 from the date of regularisation of other similarly situated persons and accordingly seek direction for modification of order dated 19.6.2007. The applicants are claiming the benefits of regularisation as has been given to other persons vide order dated 10.8.1992 by filing these OAs in the year 2015. The dispute raised before the Central Industrial Tribunal was regarding their dis-engagement, which was decided vide award dated 13.3.1992 and thereafter the Writ Petitions filed before the Hon'ble High

Court were also dismissed. Thereafter they were taken back in services and back wages were also given to them. The applicants being satisfied did not bother to raise their grievance at the time of their joining back in service. They also did not raise their grievances at the time of granting temporary status and regularisation. It is well settled law that a person who claims equity must enforce his claim within a reasonable time. In support of this view, it will be relevant to refer to the ratio of some of the judgments of the Hon'ble Apex Court in this regard.

In Chennai Metropolitan Water Supply and Sewage Board and Others v. T.T.Murali Babu, AIR 2014 SC 1141, The Hon'ble Apex Court observed as under:-

"13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others[6] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp[7], which is as follows: -

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon

principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

14. In State of Maharashtra v. Digambar[(1995) 4 SCC 683], while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

15. In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc.[AIR 1987 SC 251] the Court observed that it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. It has been further stated therein that if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the

greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

In [S.S. Balu v. State of Kerala](#) [(2009) 2 SCC 479],

the Hon'ble Apex Court observed in the following terms:-

"18. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage."

The Hon'ble Apex Court in [New Delhi Municipal Council v. Pan Singh](#), [(2007) 9 SCC 278], observed as under:-

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time.

They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction.”

In **State of T.N. v. Seshachalam**, (2007) 10 SCC 137, while testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefits, Hon’ble Apex Court ruled that:-

“....Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

8. Thus, if the matter is viewed in the light of the above ratio decided by the Hon’ble Apex Court in the above referred judgments, we find no reason to interfere in the matter at this stage and the OAs are liable to be dismissed.

9. Even otherwise, if the matter is considered from different angle, the applicants were not able to establish that they were having 10 years of services with temporary status on the above mentioned cut-off date for claiming parity with the persons regularised vide order dated

10.8.1992. Their case could not be considered earlier for regularisation as they were not having 10 years or more service with temporary status as on the cut-off date of 31.12.1991. The applicant in OA No.78/2015 started working as casual labour on muster roll w.e.f. 1.10.1981 and he has not performed services as casual labour w.e.f. 1.5.1984 to 31.12.1987 i.e. for about 3 years and 7 months. He was again engaged as casual labour w.e.f. 1.1.1988. In OA No. 79/2015, applicant started working as casual labour on muster roll w.e.f. January, 1982 and he has not performed his services as casual labour w.e.f. 1.11.1983 to 31.12.1984 i.e. 4 years and 2 months. Though the applicant in this OA has stated that he was engaged on 1.2.1976, but the respondents have denied and stated that the applicant started working from January, 1982. The applicant has not filed any rejoinder to controvert this aspect of reply of the respondents. It is noted that while issuing the order 10.8.1992, the applicants were not holder of temporary status with 10 years of service as on 31.12.1991, which was the requirement for regularisation of services of a casual labour as provided in the letter dated 3.1.1992 (Ann.R/2). Therefore, their case could not be considered for regularisation at the relevant

point of time. The persons regularised vide order dated 18.8.1992 (Ann.A/2) were having temporary status and also had 10 years or more service on 31.12.1991, hence, they were regularised. Since the applicants were neither having 10 years' service nor holder of temporary status and also that their cases were not approved by the DPC for regularisation, in these circumstances, no infirmity can be found in the action of the respondents.

10. In the result, both the OAs are dismissed with no order as to costs.

**(ARCHANA NIGAM)
ADMV. MEMBER**

**(HINA P.SHAH)
JUDL. MEMBER**

R/