(16)

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

**OA NO. 2636/2003**

**New Delhi, this the 11th day of January, 2005**

**HON'BLE MR. S.K. MALHOTRA, MEMBER (A)**

Shri Mahinder Pal,
Khallasi,
S/o Shri Nathi Lal,
C/o Shri Mandan Lal Bansal,
DDA MIG Flat No. B-296,
Chitra Koot, Loni Road,
Shahdara,
Delhi – 110 093 ... **Applicant**
**(By Advocate : Shri P.S. Mahendru)**

**Versus**

1. Union of India Through
The General Manager,
North Eastern Railway,
Gorakhpur (UP)

2. The Chief Administrative Officer/
Constructions,
North Eastern Railway,
Gorakhpur (U.P.)

3. The General Manager,
Signal & Door Sanchar,
North Eastern Railway,
Gorakhpur (UP) ... **Respondents**

**(By Advocate : Shri Rajinder Khattar)**

**ORDER**

**BY HON'BLE MR. S.K. MALHOTRA :**

This OA has been filed by the applicant seeking to quash and set aside the alleged order of termination of his services and for directing the respondents to reinstate him as Khallasi with continuation of service and consequential benefits.

2. The brief facts of the case mentioned in the OA are that the applicant was initially engaged as a Khallasi and was posted in the Office of the Chief Project

Manager, Railway Electrification at Mathura where he worked from 16.7.1980 to 5.4.1983. Thereafter he was transferred to Lucknow where he was absorbed as Khallasi. He worked against this post from 16.11.1985 to 28.11.1986 when he fell seriously ill and was diagnosed as suffering from T.B. According to him, he took medical treatment from various places and was ultimately cured some time in 1992. He has been approaching various officers of his Department to allow him to resume duty but no response was received. Ultimately on 22.11.2002, he filed a mercy appeal and the same was forwarded by respondent No.3 to respondent No.2 vide letter dated 26.11.2002 (Annexure A/5). He served a legal notice also on the respondents but no reply was received. The applicant thereafter filed an OA No.1137/2003 in the Tribunal, which was disposed of vide order dated 9.5.2003 with directions to the respondents to dispose of his representation within a period of two months (Annexure A/8). This representation was disposed of by the respondents vide order dated 20.7.2003 (Annexure A/1) in which the main plea taken by the respondents was that the Certificate produced by the applicant for having worked in the Railways Electrification, Mathura from 16.7.1980 to 15.4.1983 based on which he had got himself employed in North Eastern Railway was a fake and forged document. He was, therefore, not found fit for reengagement/appointment in the Railways.

3. The applicant sent a representation dated 8.8.2003 against this order stating that he may be furnished a copy of the letter received by them from the Railway Electrification, Mathura. However, no reply has been received. It is contended by him that as he has completed 120 days of service, he is deemed to have acquired the temporary status and was thus eligible for regularization. Besides, as a serious charge of allegation of forgery has been levelled against him, his services could not be dispensed with without holding a proper enquiry and giving him an opportunity by issuing a show cause notice. This action on the part of the respondents is, therefore, illegal and in violation of principles of natural justice.

4. The respondents have filed a reply in which they have stated that the applicant was engaged from 16.12.1985 to 28.11.1986 as a daily rated casual labour and not as a Khallasi. This engagement was made on the basis of the Certificate issued by the Assistant S&T Engineer, Railway Electrification,

Mathura Junction to the effect that the applicant had worked as Khalasi from 16.7.1980 to 5.4.1983. However, on verification, it was found that no such person had worked during the aforesaid period and the Certificate was found to be a forged one. The applicant was, therefore, treated as discharged from service. It has also been contended by the respondents that the application is hopelessly barred by limitation as the same has been filed after a period of more than 14 years and is, therefore, not maintainable under the Administrative Tribunals Act, 1985. In this connection, a number of judgements have been cited by the respondents to the effect that delay deprives a person of the remedies available in law and the person who has lost his remedy by lapse of time also loses his right. In this connection, my attention has also been drawn to the observations made by the Tribunal in its order dated 9.5.2003 in respect of the earlier OA No.1137/2003 (Annexure A/8), filed by the applicant, as under:

> "I further observe that according to the applicant he has been absorbed as casual labour and after absorption also he has been working from 16.11.85 to 28.11.86 when he had fallen sick. So decision on the representation will not extend any period of limitation. This will not overcome the period of limitation. OA is disposed of with these directions and observations."

5. According to the respondents, the question of limitation was not decided by the Tribunal and was left open. It has been categorically stated by the respondents that the applicant was not conferred temporary status as he had been working only as a casual labourer on daily rated basis during the period 1985-86 when he left the job on his own. According to them, he had probably got a hint that he was being discharged from service due to the forged Certificate produced by him. It is further stated that during the period of his illness, the applicant had neither submitted any medical certificate nor any representation had been received from him as claimed by him.

6. I have heard both the learned counsel for the parties and have also gone through the material available on record.

7. During the course of arguments, the learned counsel for the respondents raised a preliminary objection that the application was not maintainable as it was

hopelessly barred by limitation. The applicant absented himself from 1986 till 1992 and is stated to have submitted an appeal only in 2002 and thereafter filed the present OA in October,2003. He stated that it is a settled law that repeated representations before the authorities cannot extend the period of limitation prescribed under Section 21(1) of the Act. In this connection, he relied upon the judgment of the Hon'ble Punjab and Haryana High Court in the case of **Ramesh Kumar Vs. UOI** decided on 13.5.2 (2004(1) ATJ 212 and also of the Tribunal (1995) 29 Administrative Tribunal Cases 1 and (1995) 30 A.T. Cases 707 in which it has been held that a communication in reply to repeated representation does not afford a fresh cause of action. In the instant case, there has been a delay of more than a decade in filing the OA after the cause of action had arisen in 1992 when he is stated to have approached the Department to allow him to join his service. The reason for such a long delay has not been explained at all. On the other hand, the learned counsel for the applicant took the stand that the cause of action had arisen only after his representation was rejected by the respondents vide order dated 24.7.2003.

8. In so far as the merit of the case is concerned, the main point raised by the learned counsel for the applicant was that the applicant had acquired temporary status after having worked for 120 days as per rules and as such his services could not have been dispensed with, without giving him an opportunity to explain his position. He also stated that unauthorized absence alone cannot entail the punishment of removal from service unless absence is established as wilful. In this connection, he referred to the judgement of the Tribunal in OA No. 84/2003 dated 8.3.2004 in case of **Satyawati Gupta Vs UOI and Ors.** 2004 (2) ATJ 44.

9. The learned counsel for the applicant also stated that the services of the applicant could not have been dispensed with without issuing a show-cause notice

to him or holding an enquiry and following the principles of natural justice. In support of his contention, he cited a number of judgements as mentioned below:-.

i) **Prithvi Nath Yadav and others Vs. State of Bihar and Others** reported in AISLJ 1992(1)

ii) **State of Orissa vs. Binapani Dei (Shah J.)** AIR 1967 SC 1269 (V 54 C 264)

iii) **Nar Singh Pal Vs. Union of India & Ors.** (JT 2000(3) SC 593);

iv) **Union of India Vs. Madhusudan Prasad** (2004(2) ATJ 180;

v) **Delhi Administration Vs. Ex. Constable Inderjit** (2003(3) SLR 288 Delhi High Court).

10. Besides the above, in terms of para 2001 of IREM Vol.II, the applicant who had worked for more than 120 days without break, is deemed to have been given temporary status. On the other hand the learned counsel for the respondents stated that the applicant was working on a project and he was required to have put in 360 days of continuous service before he could be considered for conferment of temporary status. The applicant was not conferred the temporary status as he did not fulfill the required condition for the purpose. He emphasized the point that the appointment of the applicant was made on a fake and forged document and as such there was no need for issue of any show-cause notice and initiating disciplinary proceedings against him before dispensing with his services. It is a well settled law that if the appointment made by the appointing authority is itself wrongly made de hors the rules, it has no validity and in such a case an employee cannot claim protection of the principles of natural justice. Such appointment can be terminated at the option of the employer by a letter simplicitor as has been held by the Apex court in **UOI Vs. M.S.**

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**Prasad** 1995 Supplementary 4 SCC 100 and also in other case of **K.V.S. and others Vs. Ajay Kumar and others**. JT 2002 (4) SL 464.

11. I have carefully considered the rival contentions of both the counsel. Firstly the case needs to be considered on the point of limitation raised by the respondents. There is no doubt that the applicant remained unauthorizedly absent on the ground of illness for a long period of 6 years from 1986 to 1992. Thereafter he is stated to have submitted a representation after getting cured "some time in 1992", a copy of which has neither been filed with the OA, nor the respondents had received the same. After another gap of 11 years, he filed the OA No.1137/2003 in which a decision was taken that his representation should be decided by the respondents. No explanation has been given for this delay of about 11 years after filing his representation in 1992. It is a well settled law that rejection of successive representations cannot justify entertaining of an application filed after expiry of the period of limitation (2003 (2) ATJ 509 – **UOI vs. CAT and Another)**. The Hon'ble Supreme Court in the case of **S.S. Rathore vs. State of MP** (AIR 1990 - SC 10 ) and another case of **UOI vs. Harnam Singh** has held that "the law of limitation may operate harshly but it has to be applied with all its rigors and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire." Same view has been taken in the Tribunal's judgement dated 21.5.2004 in OA No.1971/2002 in which full Bench judgement in the case of **Mahabir and Others vs. UOI & Ors.** to which a reference was made during the course of arguments, was also discussed. The OA filed by the applicant is hopelessly barred by limitation and on this ground itself, it deserves to be dismissed. However, I would still like to deal with the case on merit also.

12. In so far as merit of the case is concerned, it is observed that the applicant had been working as daily rated worker during the years 1985/86 for about one year. He was not conferred temporary status. The arguments advanced by the learned counsel for the applicant that after working for 120 days, he is deemed to have been acquired temporary status cannot be accepted. The respondents department have to satisfy themselves that the applicant fulfills all the requirements, including that of having worked for the specified period without any break and thereafter issue an order conferring temporary status. No such order has been produced by the applicant. The temporary status has to be conferred by the competent authority and cannot be presumed to have been acquired. Thus the applicant was only a daily rated worker when he is stated to have fallen ill in 1986. According to him, he was suffering from TB and was getting treatment for a period of about 6 years till 1992. No document has been produced in support of his illness. The applicant has also not produced any application, requesting for leave for such a long period of 6 years. The learned counsel for the respondents cited judgement of the Calcutta Bench of the Tribunal in OA No. 604/2001 in the case of **Phuleshwar Prasad Verma vs. UOI and Ors** (2003 (3) CAT 19), in which it has been stated that the Railway Manual provides that if the absence of an employee on medical ground is more than 4 days, medical certificate from Railway Medical Officer is mandatory. The applicant failed to produce any medical certificate, not to talk of certificate from Railway doctor for his long absence of 6 years during which he is stated to have been under treatment for TB. It can thus be concluded that he was unauthorisedly absent from duty after November, 1986.

13. The learned counsel for the applicant has cited a number of judgements as mentioned in para 9 above, in support of his contention that the

applicant should have been given a show cause notice and a regular enquiry should have been held against him, giving him an opportunity to explain his position, by following the principles of natural justice. I have gone through all these judgements, but I find the same pertain to regular Govt. employees and not to daily rated workers. Even the judgement of the Hon'ble Supreme Court in the case of **Nar Singh Pal** (supra) cited in para 9 pertains to a casual employee with temporary status, having put in 10 years continuous service. The benefits of these judgements cannot be extended to a daily rated worker. It may also be stated that according to para 2004 of the IREM Vol.II "no notice is required for termination of service of casual labour. Their services will be deemed to have been terminated when they absent themselves or on the close of the day." In the instant case, the applicant remained on an unauthorized absence for a long period of 6 years, without giving any application for leave or producing a medical certificate from a Railway doctor as required under the Rules for his illness and treatment. He cannot claim the privileges of a regular/temporary Govt. employee. No enquiry or show cause notice was required to be given in his case. Being a daily rated worker, his services are deemed to have been terminated at the end of the day, unless he is deployed again the next day, as provided in para 2004, referred to above.

14. Another point raised by the respondents is that he had produced a fake certificate of employment of having worked during the period 1980-83 for getting the appointment as a daily rated labourer in 1985. According to the learned counsel for the applicant, no show cause notice for producing fake and forged certificate was issued to the applicant. As mentioned above, the applicant was not a regular employee and had not even been conferred temporary status. It was not mandatory in such a case to issue a show cause notice for termination of

his service. The satisfaction of the respondents that he had produced a forged certificate is enough. In fact even if the charge of producing a fake certificate is not taken into consideration, his unauthorized absence for a period of 6 years, without producing a medical certificate from an authorized doctor, is quite sufficient to dispense with his services. As mentioned in para 2004 of the IREM Vol. II, the services of a daily wager is deemed to have been terminated for unauthorized absence or at the close of the day.

15. Thus both from the point of view of limitation as well as on merit and after taking into consideration the facts and circumstances of the case, the OA fails and I do not find any ground for interfering in the decision taken by the respondents in dispensing with the services of the applicant. The OA is accordingly dismissed. No costs.

**(S.K. Malhotra)**
**Member (A)**

**/pkr/**