

(2011) 10 DEL CK 0200

In the Delhi High Court

Case No : Writ Petition (C) No. 7395 of 2011 and CM No"s. 16775-76 of 2011

Ajay Kumar Verma (Guard) and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20(2), 21, 21(3)
Constitution of India, 1950 — Article 136, 14

Citation : (2011) 9 AD 729

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Anis Suhrawardy, for the Appellant; R.V. Sinha and Mr. R.N. Singh, Advocates., for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners, have challenged the order dated 1st November, 2010 passed in O.A No. 1689/2010 by the Central Administrative Tribunal, Principal Bench, New Delhi titled as "Ajay Kumar Verma (Guard) & Ors v. Union of India through the General Manager and Anr." dismissing their original application challenging the order dated 29th June, 2009 rejecting the representation of the petitioners for grant of temporary status and regularization as Mobile Booking Clerks. The Tribunal held that the original application is not maintainable on the ground of jurisdiction as well as limitation.

2. Relevant facts for adjudication of the present petition are that according to the petitioners, they were appointed as Mobile Booking Clerks on different dates from 1979 onwards on daily wage basis and they were paid on an hourly basis. The petitioners alleged that they continued to work on daily basis for a considerable period. By a letter dated 9th December, 1983 the Station Superintendents of Moradabad and Dehradun, as well as, other Station Masters of the Division were informed that the selection process would be organized for the regularization of Mobile Booking Clerks on the basis of a written test and an

oral test. The daily wagers who had been working for three years as on 31st August, 1983 were eligible for consideration for selection to the regular post of Mobile Booking Clerks. Pursuant to the process of selection undertaken in 1985 the petitioners were appointed on regular basis to the post of Coaching Clerks.

3. That though the petitioners had been appointed as Coaching Clerks, however, they sought grant of temporary status and regularization after a period of three years, as according to them, they were recruited in 1979 and relied on a decision of the Tribunal dated 4th June, 1990 in the matter of Sh.Mohinder Kumar & Ors v. Union of India & Ors. The petitioners also relied on the order dated 30th April, 2004 in an original application being O.A No. 551/2002 wherein the Mobile Booking Clerks were directed to be treated as regularized after completion of three years of continuous service from the date of those employees who had initially joined as Mobile Clerks. The petitioners had made a representation seeking grant of temporary status on completion of four months of continuous service since the day they were appointed as daily wagers and to regularize their service on completion of the three years period, though they had only been appointed to the regular post of Coaching Clerks in 1985 through proper selection. The representation of the petitioners was not considered, entailing the filing of an original application No. 870/2009 seeking direction to the respondents to consider and decide their representation. The original application No. 870/2009 was decided by the Central Administrative Tribunal by an order dated 9th April, 2009 directing the respondents to dispose of the representation of the petitioners as per law. The respondents through its Divisional Railway Manager decided the representation of the petitioner by letter No. 729-E/ET-1/Coaching/AKV dated 29th June, 2009. The respondents rejected the representation and observed that the petitioners were recruited directly as Coaching Clerks through the Railway Service Commission, Allahabad and Muzaffarpur in the year 1985, though they had also worked as Mobile Booking Clerks for a certain periods but they had not been regularized from the post of Mobile Booking Clerks to Coaching Clerks and consequently, the benefit of circular dated 24th August, 1990 issued by the Headquarters Office could not be extended to the petitioners. The respondent in their order dated 29th June, 2009 observed as under:-

It is found that applicants of this OA were recruited directly as Coaching Clerk through Railway Service Commission, Allahabad, and Muzaffarpur in the year 1985. They had although worked as MBC for certain period but had not been further regularized from the post of MBC to Coaching Clerk. Hence, the benefit of circular dt.24.08.90 issued by Hd.Qrts.Office cannot be extended to these applicants.

4. The petitioners also filed an application for getting their service record under the Right to Information Act, 2005. According to the petitioners, the record was not supplied to them. Thereafter, the petitioners filed an original application being O.A No. 1689/2010 contending, inter-alia, that the order passed by the

Tribunal in the case of Mohinder Kumar & Ors. v. Union of India & Anr. dated 4th June, 1990 is applicable to them, and that it contemplates grant of temporary status with all attending benefits after completion of 4 months of service as Mobile Booking Clerks in accordance with the terms of their engagement and consequently, the attending benefits of the petitioners would commence from the date of completion of 4 months upto the date of granting temporary status as Mobile Booking Clerks. The petitioners asserted that their appointment as Coaching Clerks in 1985 would not deprive them of their right for regularization after three years of their appointment as Mobile Booking Clerks from 1979 onwards especially as the respondents have granted similar benefits to a number of other persons similarly placed as the petitiones.

5. The claim of the petitioners before the Tribunal was contested by the respondents who filed a counter reply dated 12th August, 2010 contending that the original application filed by the petitioners in 2009 for seeking grant of temporary status and regularization on account of their employment in 1979 on the basis of a judgment of the Tribunal dated 4th June, 1990 and the circular dated 24th August, 1990 is barred by time. The respondents contended that no sufficient cause had been shown by the petitioners for filing a petition seeking temporary status after 21 years and relied on the judgment of Ratan Chandra Sammanta and others Vs. Union of India and others, . The respondents also contended that the petitioners had not disclosed the relevant particulars as to who had appointed them as Mobile Booking Clerks, where they were posted as Mobile Booking Clerks and the date on which they had completed 120 days of continuous service. The respondents also contended that the petitioners have not produced any documentary evidence in support of their claim that they were appointed as Mobile Booking Clerks from 1979 onwards. Regarding the applicability of the policy instructions dated 24th August, 1990 issued by the General Manager (P), Northern Railway it was contended that the said circular contemplates grant of temporary status to those Mobile Booking Clerks who had completed 4 months of continuous service and for their further regularization as Coaching Clerks after completion of three years of service. Since the petitioners were appointed directly as Coaching Clerks through the Railway Service Commission, Allahabad and Muzaffarpur in the year 1985 in accordance with the recruitment rules, vide para 128 of IRE Manual, Vol.I and later regularized on the post of Coaching Clerk, it was contended that the policy instruction dated 24th August, 1990 is not applicable to the petitiones.

6. The Tribunal considered the pleas and contentions of the parties and held that the petitioners have sought grant of temporary status and regularization on the basis of their alleged appointment as Mobile Booking Clerks in 1979 and the circular dated 24th August, 1990, however, no explanation or sufficient cause had been made out for filing the original application in 2010, almost after 30 years from the original cause of action. The Tribunal relied on State of Karnataka & Ors. v. S.M. Kotrayya & Ors. , 1996 SCC (L&S) 1488 holding that the explanation that the original applications were filed immediately after coming to

know that a similar claim had been granted by the Tribunal was not a proper explanation to justify condonation of delay. Relying on *Ratan Chandra Sammanta and others Vs. Union of India and others*, it was held that delay deprives the person the remedy available in law. The Tribunal also noticed and took into consideration that no application as contemplated u/s 21(3) of the Administrative Tribunals Act, 1985 was filed by the petitioners and relying on *Secretary to Government of India and Ors. v. Shivram Mahadu Gaikwad*, 1995 Supp. (3) SCC 231 dismissed the original application of the petitioners. Aggrieved by the dismissal of their application, the petitioners have filed the present writ petition contending, inter-alia, that the relief claimed in the case of Mobile Booking Clerks was granted to other employees by virtue of the judgment and the order dated 4th June, 1990 passed in O.A No. 896/1988 titled as "*Mohinder Kumar and Ors. v. U.O.I. & Ors.*". In the instant case, the petitioners had claimed regularization on the ground that they were engaged prior to 17th November, 1988 and were entitled for absorption against the regular vacancies on completion of 3 years and not on completion of 1095 actual working days. Reliance by the petitioners was also placed on the Railway Board's letter dated 21st April, 1982 and 20th April, 1985. The petitioners asserted that the Tribunal failed to consider that the order dated 4th June, 1990 envisaged grant of relief to all the Mobile Booking Clerks who were appointed prior to 17th November, 1988 and as such they are also entitled for grant of temporary status after 120 days of continuous service and for regularization after completion of 3 years of service. The learned counsel, Mr. Anis Suhrawardy relied on the decision of the Central Administrative Tribunal in O.A No. 1174/1986 titled as "*Neera Mehta & Ors. v. Union of India & Ors.*" decided on 28th August, 1987 and various other O.As including O.A No. 896/1988 titled as "*Mohinder Kumar and Ors. v. U.O.I. & Ors.*" decided by order dated 4th June, 1990 to contend that these decisions are judgments in rem and that the petitioners are entitled for grant of temporary status after 120 days of service and regularization after 3 years of service.

7. Since the counsel for the respondents was present on advance notice we have heard the counsel at length. The Tribunal has categorically dismissed the claim of the petitioners on the ground that the petitioners could not have filed the petition after 30 years of their alleged appointment in 1979 as Mobile Booking Clerks in respect of which they have not even given the exact particulars as to when they were appointed as Mobile Booking Clerks, in which divisions they were appointed, who had appointed them and where they were posted. The fact that the petitioners were appointed to the regular post of Coaching Clerks in 1985 pursuant to a regular selection done by the respondents is not denied by the petitioners.

8. Section 21 of the Administrative Tribunals Act, 1985 provides for limitation contemplating that a Tribunal shall not admit an application in a case where a final order as mentioned in clause (a) of sub Section (2) of Section 20 has been made in connection with the grievance, unless the application is made, within one year from the date on which such final order has been made. Sub Section

(3) of Section 21 also contemplates that notwithstanding anything contained in sub Section (1) or sub Section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub Section (1), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. In *State of Karnataka & Ors. v. S.M. Kotrayya & Ors.*, 1996 SCC (L&S) 1488 the Supreme Court had held that the explanation given by an applicant that he had come to know of the relief granted by the Tribunal in August, 1989 and thereafter, he filed the petition immediately thereafter was not a proper explanation at all. It was held that an applicant is required to explain under sub Section (1) and (2) as to why he could not avail the remedy of redressal of his grievance before the expiry of period prescribed under sub Section (1) and (2). In the circumstances, the Supreme Court had held that the action of the Tribunal in condoning the delay was unjustified.

9. In *Bhoop Singh Vs. Union of India and others*, the Supreme Court had held that it is necessary to avoid dislocating the administrative set up, if it has been functioning on a certain basis for years, and that a Government employee who has a legitimate claim should approach the Court/Tribunal within the period of limitation and in case limitation is not provided then within a reasonable period. The petitioners are also placing their claim on the decision of the Tribunal given in O.A No. 896/1988, *Mohinder Kumar and Ors. v. U.O.I. & Ors.* holding that Mobile Booking Clerks who were engaged prior to 17th November, 1988 would be entitled for absorption against regular vacancies on completion of three years service and not on the basis of 1095 actual working days. The direction of the Tribunal in the said case was, however, subject to fulfillment of other conditions as provided in the Railway Board's letters dated 21st April, 1982 and 20th April, 1985.

10. The learned counsel for the petitioners is unable to give any justifiable and sufficient reason for not approaching the Tribunal, even if they had some rights within the period of limitation from 4th June, 1990. Although, in terms of the decision of the Supreme Court in *State of Karnataka & Ors. Vs. S.M. Kotrayya & Ors.* (Supra) this could not be a sufficient reason for seeking temporary status after 120 days on account of alleged appointment as Mobile Booking Clerks in 1979, yet neither any sufficient explanation has been given in the original application filed in 2010, nor was any application as required u/s 21(3) of Administrative Tribunals Act, 1985 filed with the original application. Even in the writ petition filed in this Court no reasonably, satisfactory explanation which would constitute sufficient cause for condonation of the delay as contemplated u/s 21(3) of Administrative Tribunals Act, 1985 has been made out. In *Bhoop Singh v. Union of India* (Supra) the Supreme Court in paras 7 and 8 at page 141 had observed as under:-

7. It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the

administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by lateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement. It was clear to the petitioner latest in 1978 when the second batch of petitions were filed that the petitioner also will have to file a petition for getting reinstatement. Even then he chose to wait till 1989, Dharampal's case also being decided in 1987. The argument of discrimination is, therefore, not available to the petitioner.

8. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal in the manner suggested by the petitioner. Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned Counsel for the petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under Article 136 of the Constitution.

11. In the circumstances, the decision of the Tribunal impugned before this Court that the claim of the petitioners is barred by limitation cannot be faulted, nor has the learned counsel been able to show any illegality or irregularity in the decision of the Tribunal.

12. Even on merits, the learned counsel for the petitioners, Mr. Suhrawardy is unable to explain as to how after getting a regular appointment in 1985 pursuant to a regular process of selection, appointing the petitioners as Coaching Clerks, they can claim grant of temporary status after 120 days of their alleged appointment from 1979 onwards. The petitioners have not even given the exact particulars as to when they were appointed as Mobile Booking Clerks, at which place and who had appointed them, as even according to the allegations of the petitioners they were appointed on daily basis and they were paid on hourly basis. No document has been filed by the petitioners which would substantiate even prima facie any of the allegations made by them in respect of their alleged appointment on daily basis as Mobile Booking Clerks. In absence of any particulars, the petitioners were not even entitled for any information from the respondents pertaining to their application under the Right to Information Act. The stand of the respondents is that the petitioners were appointed as Coaching Clerks directly pursuant to a regular process of selection in 1985. In the circumstances, on the basis of their bald allegations, the respondents are not expected to produce any record of their alleged appointment on daily basis in the year 1979. In the circumstances, the petitioners have failed to make out any case which would entitle them for any relief in the facts and circumstances. The writ petition in the facts and circumstances is without any merit.

13. Therefore, in the totality of facts and circumstances and for the foregoing reasons the writ petition is dismissed. All the pending applications are also disposed of. Considering the facts and circumstances, the petitioners shall also be liable to pay a cost of Rs. 10,000/- to the respondents. The cost be paid within four weeks.