
(2014) 04 JH CK 0043
In the Jharkhand High Court
Case No : W.P. (S) No. 5640 of 2012

Ganesh Prasad

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 21, 21(1)

Citation : (2014) 2 JLJR 523

Hon'ble Judges : R. Banumathi, C.J.;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Pradip Gangopadhyay, Advocate for the Appellant; Mahesh Tiwari, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, C.J.—The petitioner has filed this writ petition, challenging the order passed by the Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi in O.A. No. 129 of 2011(R), whereby the learned Tribunal dismissed the Original Application as time barred. The petitioner was appointed as Daily Rated Gangman on 30.11.1989 and he worked for a period of 259 days. During that period, 2nd respondent issued a notification calling for appointment of 280 Gangman vide notification dated 21.6.1990 and the petitioner also made an application on 22.6.1990 for his appointment as regular Gangman. On 24.6.1990, the petitioner alongwith a few others were sent for medical test and the petitioner was declared medically unfit in category B-1. Thereafter, the petitioner was not allowed to work even in the Daily Rated post of Gangman with effect from 27.2.1992. The petitioner alongwith similarly situated persons moved the Tribunal in Cuttack Bench in O.A. No. 373 of 1995 and on 19.11.1996, the same was disposed of with an observation that Cuttack Bench has no jurisdiction. Thereafter, the petitioner moved the Tribunal, Patna Bench in O.A. No. 799 of 1998 and the same was disposed of on 9.4.1999 with the direction to the petitioner to file suitable representation and with further direction to the

respondents to decide the matter. The petitioner's representation was rejected by the respondents.

2. In the meantime, in the case of one Gangman, Ghanshyam Giri, who was terminated on the same ground, the Orissa High Court passed an order dated 5.2.2003 in O.J.C. No. 4993/1999, directing the respondents to consider his case, following which the said case of Gangman, Ghanshyam Giri has been reinstated. The petitioner submitted fresh representation before the respondents on 7.11.2003 but the same was not considered. Thereafter, the petitioner filed O.A. No. 317 of 2004 and in the said petition, the Tribunal directed the respondents to consider the petitioner's representation keeping in view the observations made by the Tribunal. The 3rd respondent reconsidered the matter and rejected the case of the petitioner by the order dated 21.4.2005. The petitioner submitted various representations between 2006 and 2009 but there was no response from the respondents. In the meantime, in respect of other cases of non-selection of Gangman due to medical unfitness, the Tribunal passed the order in various original applications to provide alternative appointment to those candidates who were not selected due to medical unfitness. The petitioner filed representation dated 15.6.2010 for alternative appointment, but the respondents did not take any action. Thereafter, the petitioner filed O.A. No. 129 of 2011 and the learned Tribunal disposed of the same holding that the application is time barred.

3. Being aggrieved by the dismissal of the Original Application (O.A. No. 129 of 2011), the petitioner filed this writ petition.

4. Mr. Pradip Gangopadhyay, learned counsel appearing for the petitioner, has submitted that after 3rd respondent rejected the petitioner's representation on 21.4.2005, the petitioner submitted his repeated representations trying to make the respondents to understand the spirit of the order passed in O.A. No. 317 of 2004 and has also communicated the orders directing "alternative appointment" of several other persons passed in the meantime. It was further submitted that the Tribunal has not kept in view that one Ghanshyam Giri, who was appointed as a Gangman at Dangoaposi under Chakradharpur Division was also not allowed to work on the ground of unfitness and unsuitability in category B/1 in the year 1992 as in the case of petitioner and subsequently in the case of Gangman-Ghanshyam Giri vide order dated 5.2.2003 passed by the Orissa High Court in O.J.C. No. 4993 of 1999, the respondents were directed to consider the case of said Gangman-Ghanshyam Giri, following which the said Ex-Gangman has been reinstated and the petitioner being similarly situated ought to have been considered. It was further submitted that the petitioner is unemployed and has not been taken in job in the meantime and, therefore, the case of the petitioner is to be considered for employment. The learned Tribunal was not right in rejecting the claim of the petitioner on the ground of delay in filing the application.

5. Mr. Mahesh Tiwary, learned counsel for the respondents submitted that

pursuant to the order passed in O.A. No. 317 of 2004 dated 15.12.2004, the case of the petitioner was considered and rejected on 21.4.2005 and thereafter, after a lapse of six years the petitioner has filed O.A. No. 129 of 2011 and in view of Section 21 of the Administrative Tribunals Act, 1985 the same was barred by limitation and the learned Tribunal rightly dismissed the application on the ground of limitation. In support of his contention, the learned counsel for the respondents has relied upon the decision rendered in the cases of P.K. Ramachandran Vs. State of Kerala and Another, and Commandant, TSP and Ors. vs. Easwaramoorthy ((1999) SCC (L & S) 643).

6. We have considered the submissions of the learned counsel for the parties and perused the order of the Tribunal as well as the materials on record.

7. The petitioner was appointed as a daily rated Gangman on 30.11.1989. As per Railway norms a daily rated casual labour should be medically examined before grant of temporary status. As such, the petitioner was sent for medical examination for granting temporary status and he was declared unfit in B-1 category on 5.7.1990. Earlier the petitioner had moved Central Administrative Tribunal in Original Application in the year 1998 (O.A. No. 799 of 1998) and again O.A. No. 317 of 2004 seeking reinstatement in service with all benefits. O.A. No. 317 of 2004 was heard and disposed of by the order dated 15.12.2004, directing the respondents to reconsider the matter in the light of the observations made by the Tribunal and further directed the respondents to complete the exercise within a period of three months from the date of receipt of copy of the order. In compliance of the order dated 15.12.2004 passed in O.A. No. 317 of 2004, the Railway Administration has passed a reasoned and speaking order dated 21.4.2005 rejecting the claim of the petitioner. O.A. No. 129 of 2011 was filed after a lapse of six years.

8. As per Section 21(1) of the Administrative Tribunals Act, in a case where a final order as such 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. In the instant case, final order having been passed on 21.4.2005, the petitioner ought to have challenged the same within a period of one year. The Original Application filed after lapse of six years was barred by limitation.

9. To contend that delay and laches cannot be ground for dismissal of the application, the learned counsel for the petitioner relied upon a decision of the Hon''ble Supreme Court rendered in the case of The State of Madhya Pradesh Vs. Bani Singh and another, . In the said case, the disciplinary proceeding was initiated against the officer after more than 12 years. O.A. No. 102 of 1987 was filed by the officer against the initiation of departmental inquiry proceeding and issue of charge-sheet on 22.4.1987 in respect of certain incidents that happened in 1975-76. In the said facts and circumstances of the case, the Hon''ble Supreme Court held that there was no satisfactory explanation for the inordinate delay in issuing the charge memo. In the said case, delay in filing the application

before the Tribunal was due to pendency of representation before the Government and hence the Hon"ble Supreme Court held that the delay was not a ground for dismissal of the application.

10. The case in hand stands on different footing. As pointed out earlier, the representation of the petitioner was rejected by the 3rd respondent on 21.4.2005 and if the petitioner had any grievance, he ought to have challenged the same before the Tribunal within a period of one year. The Tribunal rightly dismissed the Original Application on the ground of delay and laches.

11. In the case of C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, , while dealing with the concept of representations and the directions issued by the court or tribunal to consider the representation and the challenge to the said rejection thereafter, the Hon"ble Supreme Court has expressed thus:--

Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations cannot furnish a fresh cause of action or revive a stale or dead claim.

12. In Union of India (UOI) and Others Vs. M.K. Sarkar, , the Hon"ble Supreme Court, after referring to the case of C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

13. From the aforesaid authorities, it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, , the Hon"ble Supreme Court took note of the factual position and laid down that when nearly for two decades the Respondent-workmen therein had remained silent mere making of representation could not

justify a belated approach.

14. In the case of P.K. Ramachandran Vs. State of Kerala and Another, , the Hon"ble Supreme Court has held that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds.

15. As noticed above, the petitioner was appointed as Daily Rated Gangman in the year 1989 and he worked only for a period of 259 days when he was declared medically unfit. In compliance of the direction issued by the learned Tribunal dated 9.4.1999 in O.A. No. 799 of 1998, the petitioner submitted a representation, which was rejected by the respondents. Subsequently, in view of order dated 5.2.2003 in O.J.C. No. 4993 of 1999 passed by Orissa High Court, the petitioner submitted a fresh representation on 7.11.2003, which was rejected by order dated 21.4.2005. The petitioner thereafter approached the Tribunal in the year 2011, that is, after a lapse of six years. In view of the authoritative pronouncement of the Hon"ble Supreme Court, we do not find any reason, warranting interference with the order of the learned Tribunal. The writ petition is, accordingly, dismissed.