

(2012) 01 AHC CK 0130

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44105 of 2001

Hasan Khan

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2012) 01 AHC CK 0130

Hon'ble Judges : Rakesh Tiwari, J; Dinesh Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard counsel for the parties and perused the record. The petitioner has prayed for quashing of the judgment and order dated 12.4.2001 passed by the Central Administrative Tribunal, Allahabad in Original Application No. 1169 of 1997 as well as issuance of a writ of mandamus commanding the respondents to re engage the petitioner and regularize his service with consequential benefits.

2. Petitioner Hasan Khan, claimed to have worked for 546 days as casual labour with the Railways in broken spells of periods i.e. from 28.7.1977 to 18.9.1977, 21.5.1978 to 18.9.1979, 3.10.1980 to 18.4.1981 and 26.9.1981 to 18.3.1982. He filed claim vide Original Application No. 1169 of 1997, before CAT Allahabad on 28.10.1997, praying for a direction to the respondents to re engage him and regularize his services.

3. Submission of the petitioner applicant before the Tribunal was that as the applicant had worked for a long time as casual labour, his name was required to be mentioned in Live Casual Labour Register and his non engagement is a continuing cause of action, therefore, the Tribunal has wrongly dismissed the OA as being time barred.

4. Claim of the petitioner before the Tribunal was vehemently opposed by the

department on the ground of limitation as highly belated having been filed after 15 years from the date the cause of action arose. The case of the department before the Tribunal was that in view of the limitation prescribed u/s 21 of the Central Administrative Tribunals Act, 1985, claim of the petitioner was liable to be dismissed on the ground of limitation alone.

5. It was also stated by the respondents that old records were not available and the working days claimed by the petitioner therefore cannot be verified from the record.

6. After hearing the parties and considering the case laws cited by them, the Tribunal has held thus:

"Under section 21 of Administrative Tribunals Act 1985, law prescribes " Period" of limitation within which OA should be filed before the Tribunal. In the present case, cause of action arose to the applicants in each case before ten years, In some cases even before 13-14 years. There is no explanation for this long and inordinate delay in approaching the Tribunal. The legal position is well settled that limitation for filing the claim in court or Tribunal starts running from the date of cause of action. Running of limitation cannot be stopped by filing representation before the authorities and waiting decision of the same for long time or for any period at the choice of the applicant. If the representation is filed long after expiry of the limitation and the representation is rejected that will not revive the period of limitation for the cause of action which had arisen long back.

After considering the facts and circumstances, I have no doubt that the present OA has been filed long after the period of limitation and the applicants are not entitled for any relief. The OA is dismissed as time barred. However, there will be no order as to costs."

7. On the question of delay in filing the OA before the Tribunal, learned counsel for the petitioner submits that as juniors to the petitioner were reinstated after the judgment dated 10.12. 1996 passed by the Tribunal in OA no. 1550 of 1992(Prahlad and others Vs. Union of India and others), he therefore made a representation dated 23.3.1997 for his reinstatement which was not decided by the department, hence there was no delay in filing the original application before the Tribunal. According to the counsel, the question of limitation would not arise in the present case as there is continuing cause of action and that the action of the respondents is in violation of Article 14 and 16 of the Constitution of India.

8. In support of his submission, the learned counsel has relied upon the decisions rendered in Union of India and Others Vs. Basant Lal and Others, as well as the decision of the Delhi High Court in C.W.P. No. 5071 of 1999, Shish Pal Singh and others Vs. Union of India.

9. In Basant Lal's case (supra), the Apex Court has held that casual labour employed by railways continuously working for over 120 days, is entitled to be granted temporary status and it cannot be denied to him on the ground that the

workman had been appointed as casual labour on a project work.

10. In Shish Pal Singh's case (supra), the Delhi High Court, held that application for re -engagement cannot be rejected on the ground of limitation and the matter was remitted to the Tribunal for fresh disposal.

11. Per contra, stand taken by the counsel for respondent is that the petitioner did not acquire temporary status as provided in paragraph 2005 of Indian Railway Establishment Manual. To acquire a temporary status, 350 days" continuous working by a casual labour, is a condition precedent for calculation of 120 of continuous working as half of the period excluding Sunday and holiday worked is to be counted for this purpose. According to him, since the petitioner has not worked 350 days continuously without any break in any division or sub division, he cannot acquire temporary status.

12. It is further submitted by the counsel for respondent that as original application filed by the petitioner before the Tribunal in the year 1997 was highly time barred, the Tribunal has rightly dismissed it on this ground. The principle, that law help those who are vigilant of their rights, is undisputed. In the present case, the petitioner was lastly engaged on 18.3.1982 and since then he did nothing for his re-engagement. It was only after judgment dated 10.12. 1996 was passed by the Tribunal in OA no. 1550 of 1992(Prahlad and others Vs. Union of India and others), that the petitioner thought of moving a representation in 1997 i.e. after expiry of 15 years w.e.f. 18.3.1982 the date of his disengagement and thereafter filed OA in the same year, claiming discrimination with the applicants who had filed OA before the Tribunal in the year 1992.

13. In Bhoop Singh Vs. Union of India and others, this aspect of the matter has been taken care of by the Apex Court and it was held thus :

"There is another aspect of the matter. Inordinate and unexplained delay or latches 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 reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. 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 22 years, without any cogent explanation for the inordinate delay merely because others similarly dismissed had been re-engaged as a result of their earlier petitions being allowed. Accepting the petitioners contention would upset the entire service jurisprudence and we are unable to construe Dharam Pal in the manner suggested by the petitioner. Article 14 of 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.

14. After consideration of the submissions made by the learned counsel for the parties and the case laws cited before us, we affirm the view taken by the Tribunal that limitation starts running from the date of cause of action and the limitation cannot be extended by fling representation. In the instant case, the representation as well as OA itself was moved by the petitioner after a lapse of 15 years from the date of his last engagement without any plausible explanation for the inordinate delay. The representation filed by the petitioner was an afterthought i.e. after decision of the Tribunal in OA no. 1550/1992 on 10.12.1996. The petitioner had chosen to remain silent about his right for almost 15 years, for which there is no explanation at all.

15. In view of facts and circumstances of the case and the law laid down by the Apex Court in Bhoop Singh's case (supra), we are of the view that the order impugned does not suffer from any illegality or infirmity warranting interference in extra ordinary powers under Art. 226 of the Constitution. For all the reasons stated above, the writ petition fails and is accordingly dismissed. No order as to costs.