
(2019) 10 CAT CK 0086

In the Central Administrative Tribunal

Case No : Original Application No. 3165 Of 2019, Miscellaneous Application No. 3443 Of 2019

Sunita

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 31-10-2019

Acts Referred:

Administrative Tribunals Act, 1985 — 19, 21, 21(1)
Constitution Of India, 1950 — Article 14, 58

Citation : (2019) 10 CAT CK 0086

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : B.C. Nagar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the applicant at the admission stage itself.
2. By filing this OA, the applicant is seeking the following reliefs:-
 - (i) to quash impugned order dated 19.08.2019 passed by the Respondents.
 - (ii) to quash the illegal and impugned orders of removal from service dated 26/06/2019 and charge sheet dated 02.12.2008 passed by the Respondents as no such orders were acknowledged to the deceased railway employee Lt. Shri Raj Kumar.
 - (iii) to pass the orders to direct the Respondents to release all the retirement benefits to the Applicant widow of the Lt. Shri Raj Kumar, Ex-Parcel Portor.
 - (iv) to direct the Respondents to appoint the deceased Lt. Shri Raj Kumar's son on compassionate ground.
 - (v) any other relief, which this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case, may also be passed.

(vi) cost of the present case may be awarded in favour of the applicant and against the respondents.

3. Brief facts of the case are that applicant - widow of late Shri Raj Kumar, who was working as Parcel Porter, earlier filed OA No.3939/2014 challenging the chargesheet issued to her husband by the respondents on 12.7.2013 as well as claiming grant of family pension and other benefits and the said OA was disposed of vide Order dated 16.1.2019 with a direction to the respondents to dispose of Annexure A-7 application filed by her in the rejoinder filed in the said OA and in case any additional representation is given within 15 days, then the respondents may decide the same within six months from the date of receipt of such representation. Now the respondents, in compliance of the aforesaid Order of this Tribunal passed the order dated 19.8.2019. In the said OA, the respondents have clearly stated that chargesheet was issued to the husband of the applicant vide Letter No.C4-78-PP/DLI-2008 dated 2.12.2018 and he was removed from service on 26.6.2009 vide letter No.C-4-78-PP/DLI-2008 dated 26.06.2009 and the respondents also averred that the said chargesheet issued in 2013 was wrongly issued to her husband. In the order impugned in this OA, the respondents have clearly stated that her husband most of the time remained unauthorized absent from duty and hence, he was awarded the penalty of removal from service by his controlling officer in 2009 and chargesheet subsequently issued on 12.7.2013 was erroneously issued after his removal from service as there is no such rule to initiate D&AR proceeding to a Railway employee once he has been removed from service and further there is no provision of giving compassionate ground appointment to the ward and family pension to the family of any deceased staff, who expired after being removed from service.

4. During the course of hearing, query was raised to the learned counsel for the applicant as to how this OA is maintainable at this belated stage since applicant's husband was removed from service in the year 2009 and in the instant OA, the applicant is challenging the order dated 19.8.2019, in which the respondents have clearly stated as noted above, as also seeking quashing of chargesheet dated 2.12.2008 and order of removal passed on 26.6.2009, i.e., after expiry of 10 years. Counsel for the applicant submitted that order of removal from service was illegal and void as the same is violative of provisions of Railway Servants (Disciplinary and Appeal) Rules, 1968 because applicant's husband never acknowledged the said chargesheet, D&AR inquiry and notice of removal from service. Counsel for the applicant placed reliance on the decision of the Apex Court in the case of Civil Appeal No.1477/1993 (Union of India and others vs. Dinanath Shantaram Karekar and others) dated 30.7.1998 and contends that the Apex Court held that A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement not found?, it cannot be legally treated to have been served.?

5. So far on query raised to the learned counsel that multiple reliefs are claimed in this OA is concerned, counsel submitted that the same are interconnected and as such the same are maintainable.

6. Counsel further alleged that to utter surprise and shock of the applicant, respondents stated that her husband had been removed from service on 26.6.2009 while the respondents issued a charge sheet for absence from duty on 28. 10.2007 to up till date vide letter no.C-9, Parcel-33-2013 dated 12.07.2013 and therefore the act of the respondents not considering the request's of the applicant for appointment of her son on compassionate ground and releasing retirement benefits to her is totally unlawful, arbitrary and against the rules and regulations of D&AR.

7. Having heard learned counsel for the applicant, it is observed that the same applicant had earlier filed OA No.3939/2014 challenging the chargesheet issued to now deceased employee on 12.7.2013 and asked for the same relief as are being asked for in this OA, i.e., to grant her family pension and other benefits and in that matter, subsequently the said chargesheet issued to the deceased employee was itself withdrawn in 2013 itself as erroneously issued as explained by the respondents in earlier proceedings as noted above. Now therefore, by asking for the same relief, quite clearly the matter is barred from being raised again because the matter had already been decided by the respondents by acknowledging that they had erroneously issued the said chargesheet and hence, passed a detailed and reasoned order stating that the said chargesheet stands withdrawn. Hence, once the chargesheet issued on 12.7.2013 stand withdrawn in 2013 itself, there is no cause of action which survives in the matter.

8. Moreover, the reliefs sought are multiple in nature and the same cannot be said to be interconnected with each other as the respondents in earlier OA have clearly replied that applicant's husband was removed from service way back in 2009 and the said subsequent chargesheet in 2013 was inadvertently issued and the fact that they were not aware about the death of her husband in 2011. As such the question of grant of family pension and consideration for appointment on compassionate ground of his wards will only arise if/when the status of the applicant's husband regarding removal from service was re-considered, which cannot be allowed to be reopened at this belated stage, i.e. after a lapse of over 10 years from the date of passing the order of removal which was passed on 26.6.2009. Further we note that the applicant has herself acknowledged that deceased Govt. employee (her husband) expired on 15.2.2011 and had adequate time as per rules to file any representation against the order of removal but did not do so. Further no application for condonation of delay has been filed and further no adequate reasons for condonation of delay have been given.

9. The Apex Court while dealing with this issue of limitation and also on the point of delay condonation passed various judgments, some of which are mentioned below:-

(a) The Hon'ble Apex Court in D.C.S. Negi v. Union of India & others (Civil Appeal No.7956 of 2011) decided on 7.3.2011, condemned entertaining of the OAs by the Tribunal in disregard of the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985. In the said order, following observations were made:

Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the Applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21. Since Section 21 (1) IS COUCHED IN NEGATIVE FORM, IT IS THE DUTY OF THE Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under section 21 (3).?

(b) The Apex Court in the case of S.S. Rathore v. State of Madhya Pradesh, (1989) 4 SCC 582. In the said case, the Hon'ble Supreme Court has held thus:-

We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was-filed or representation was made, the right to sue shall first accrue.?

(c) In Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu, (2014) 4 SCC 108, the Apex Court has been ruled thus:

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 scrutinise 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?.

(d) In *A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others*, (2007) 2 SCC 725 following the earlier judgment in *U. P. Jal Nigam's case*, it was opined as under:

"40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

(e) In the case of *State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others*, 2013(6) SLR 629, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Relevant paragraphs from the aforesaid judgment are extracted below:

13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983.

In *C. Jacob v. Director of Geology and Mining and another*[1], a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the 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.?

14. In *Union of India and others v. M.K. Sarkar*[2], this Court, after referring to *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.

15. 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 Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another*[3], the 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 representations could not justify a belated approach.

16. In *State of Orissa v. Pyarimohan Samantaray*[4] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in *State of Orissa v. Arun Kumar Patnaik*[5].

17. In *Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others*[6], a three-Judge Bench of this Court reiterated the principle stated in *Jagdish Lal v. State of Haryana*[7] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. In *State of T.N. v. Seshachalam*[8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

....filing of representations alone would not save the period of limitation. 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.?

10. In the result, and for the foregoing reasons, we do not intend to interfere in this matter and the same is accordingly dismissed. There shall be no order as to costs.