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Court : Central Administrative Tribunal Principal Bench New Delhi

Decided On : May-08-2014

Judge : The Honourable Mr. G. George Paracken, Member (J) &Amp;amp; the Honourable Mr. Shekhar Agarwal, Member (J)

Appeal No. : O.A.No. 1171 of 2014

Appellant : Pawan Kumar

Respondent : Union of India Through General Manager, Northern Railway and Another

Judgement :

Oral:

G. George Paracken, Member (J)

The Applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

(i) Declare the termination of the Applicant null and void and also illegal as taken by the Respondents.

(ii) To direct the Respondents to take him in service with all consequential benefits.

(iii) To direct the Respondents to pass a reasoned and speaking order in to illegal termination.

(iv) To direct the Respondents to decide the representations of the Applicant with reasons and speaking order, within stipulated period.

(v) To pass any such order/orders which this Tribunal may deem fit and proper.

2. According to the Applicant, he worked for 235 days during the period from December, 1983 to August, 1984. Further according to him, in the year 1983 the Respondents have issued a Scheme for granting Temporary Status to the casual labourers. According to the said Scheme, the casual labourers except those who were working on projects, were entitled for grant of temporary status on completion of 120 days of continuous service. However, the Applicant was not granted any such temporary status. Applicant has also submitted that as per the relevant rules and labour laws, casual labour whether employed on open lines or constructions of Railway projects or in workshops if retrenched, the conditions required under Section 25-F of Industrial Disputes Act, 1947 are to be complied with otherwise retrenchment order would be invalid and casual labour would be treated as in service till such conditions are fulfilled. However, the Applicant was disengaged on 18.08.1994 without following the aforesaid rules.

3. Further according to the Applicant, he made a verbal request to the Respondents in the year 1984 for his reengagement. He has also stated that in the year 1986 some of his juniors have been regularized in service. Again, according to him, he made a representation to the Divisional Railway Manager in the year 2010 followed by another representation dated 27.08.2013 to reengage him in service.

4. We have heard the learned counsel for the Applicant Shri Lalta Prasad. Admittedly, according to the Applicant himself, he was disengaged on 18.08.1984 and it is after 30 years he has filed this Original Application which is hopelessly

barred by limitation. The Apex Court in Karnataka Power Corporation Ltd. through its Chairman and Managing Director and Others Vs. K. Thangappan and Another in 2006 (4) SCALE page 56 has held as under:-

œIt has been pointed out by this Court in a number of cases that representation would not be adequate explanation to take care of delay?.

The Apex Court again in the case of Ratan Chandra Sammanta and Ors vs. Union of India and Ors (JT 1993 (3) SC 418) wherein it was held that delay deprives the person of the remedy available in law. A person, who has lost his remedy by lapse of time, loses his right as well. The relevant part of the said judgment is as follows:-

œThe petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned Counsel for petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. And not for the sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well?.

5. In yet another recent judgment -D.C.S. Negi Vs. U.O.I. and Others (SLP (Civil) No.7956/2011 CC No.3709/2011) decided on 11.3.2011 the Apex Court held as under:-

œBefore 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, which reads as under:-

œ21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is 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;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) 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) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the

prescribed period. 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).

In the present case, the Tribunal entertained and decided the application without even adverting to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant? .

6. In view of the above position, we do not find any merit in admitting this OA. Accordingly, the same is dismissed on the ground of delay and laches. There shall be no order as to costs.

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