

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On:26th July, 2010
Judgment Delivered On:2nd August, 2010

+ **W.P.(C) NO.1785/2004**

S.C.CHUGH Petitioner
Through: Mr.G.D.Gupta, Sr. Advocate with
Mr.S.K.Sinha, Advocate

versus

UOI & ORS. Respondents
Through: Mr.A.K.Bhardwaj, Advocate with
Ms.Jagrati Singh, Advocate for UOI

Mr.S.K.Taneja, Sr.Advocate with
Mr.Rajesh Gupta, Mr.Puneet
Taneja, Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Having lost the battle before the Central Administrative Tribunal when, vide impugned judgment and order dated 7.10.1998, the Tribunal dismissed OA No.1510/1994 filed by the petitioner; denying to him the claim of being treated as an employee of the Central Government hence denying a declaration that petitioner is entitled to be paid wages and emoluments as an employee of the Central Government as also pension; the petitioner tries his luck by fighting another round of litigation before this Court by and

under the instant writ petition which is being disposed of by the present judgment.

2. At the outset it may be noted that the instant writ petition challenging the impugned judgment and order dated 7.10.1998 was filed on 14.1.2004 i.e. after a delay of 5 years and 3 months.

3. Rather than explain the delay and latches in filing the writ petition by making averments in the writ petition, the petitioner filed CM No.1526/2004 stating therein that after the Tribunal decided the matter he made representations on various dates because the issue of his absorption under NTPC remained undecided and thus he was constrained to file the writ petition as he got no response.

4. Without notice to the respondent, the application was allowed on 12.7.2004. The respondents sought review of the said order by filing RP No.439/2004 which was disposed of vide order dated 12.8.2005 by recalling the order dated 12.7.2004, but without restoring CM No.1526/2004, clarifying however, that the issue of delay and latches in filing the writ petition would be decided at the time the writ petition was finally heard.

5. To appreciate the contention of the petitioner justifying the belated filing of the writ petition i.e. his making representations since the issue of his absorption under NTPC (as alleged by him) was not decided by the Tribunal, it would be necessary to note the relevant facts which gave birth to OA No.1510/1994.

6. It was the year 1967; it was the time when the Government of India was struggling to create infrastructure in the country which included augmenting the power sector and irrigation sector. On 11.5.1967 the petitioner was appointed

as an instructor in temporary capacity by the Central Government and was assigned in the Central Water Power Commission, a Department of the Government of India. His services were thereafter utilized at TTC Nagarjunasagar and TTC Kakarapur; units under the administrative control of the Central Water Power Commission. While at Kakarapur he was declared quasi permanent with effect from 29.4.1970 and his services were placed at the disposal at TTC Nangal, a unit under the Central Government and probably under the administrative control of the Central Water Power Commission.

7. It is apparent that the petitioner was an employee of the Central Government and had acquired a quasi permanent status.

8. There being no work available, probably for the reason the various projects were completed, post held by the petitioner being rendered surplus and hence abolished, the services of the petitioner were liable to be terminated as the necessary consequence of the post being abolished.

9. Indeed, Mr.G.D.Gupta, learned senior counsel appearing for the petitioner conceded that it would have been open to the Central Government to have terminated the services of the petitioner.

10. The date of the notice not being brought on record, a notice terminating the service of the petitioner on account of the post held by him being abolished on account of no work was issued and served upon the petitioner.

11. There were a large number of employees whose services became liable to be terminated on account of no work and posts held by them being abolished. The union of the employees at TTC Nangal took up the matter with the Government and it was decided to deploy at different units

under the Central Government all such staff which had become surplus and a job was identified for the petitioner at the Badarpur Thermal Power Station and accordingly on 28.2.1974 the notice terminating the service of the petitioner was withdrawn and he was transferred to the Badarpur Thermal Power Station.

12. He joined without demur, and probably with a smile on his face, for the reason faced with the bleak future of unemployment, the petitioner gained employment.

13. On 31.3.1978, Badarpur Thermal Power Station was taken over by the National Thermal Power Corporation (NTPC) a public sector undertaking. The takeover was on as is where is basis.

14. Technically, in law, qua the employees at Badarpur Thermal Power Station, it was impermissible to do so for the reason the Central Government could not change their employer and being the employees of the Central Government, these employees could certainly claim that their status could not be relegated to the employees of a public sector undertaking. It may be noted that there was a qualitative and a quantitative difference in the service conditions of the employees of the Central Government in the Power Sector and the employees of NTPC, the most important being that employees of NTPC were covered by the Contributory Provident Fund Scheme and those of the Central Government were covered by the Pension Rules. Further, the wages of the Central Government employees were to be the ones which were determined and implemented upon acceptance of the Pay Commission Reports and those of NTPC employees as per the wage structure determined by the Board.

15. The employees union at the Badarpur Thermal Power Station raised an issue and it was decided that till the matter was sorted out, the employees at Badarpur Thermal Power Station would be treated as on Foreign Service under NTPC.

16. Negotiations were held and on 31.8.1978 an agreement was arrived at between the employees union, the management of NTPC and the Central Government as per which it was agreed:-

“Every regular and work-charged workman posted exclusively at Badarpur **without any lien on an outside organization** shall be given an offer of transfer/absorption in their respective regular and work-charged status along with the terms and conditions agreed to herein. Those who opt for transfer/absorption on the said terms shall become regular and work-charged employees as the case may be of NTPC with effect from April 1, 1978. The workmen **who do not so opt for transfer/absorption on the said terms shall be reverted to the Government who will deal with their cases as deemed appropriate.**”

17. There is some issue between the parties as to what happened thereafter. As per NTPC, on 20/21.11.1978 the management of NTPC wrote a letter to all the employees of Badarpur Thermal Power Station informing them as under:-

“For an on behalf of National Thermal Power Corporation Limited, New Delhi, I have great pleasure in making you this offer of absorption in the regular establishment of the Company on terms and conditions set out in Annexure I, enclosed hereto. In case the offer together with the terms and conditions is acceptable to you, please exercise your option for absorption in NTPC and communicate acceptance of the offer by filling up the form at Annexure II so as to reach this office on or before 31st December, 1978.

In the hope that you would accept our offer and opt for absorption in this up and coming organization, may I

take this opportunity to wish you a long and happy career as an important Member of the NTPC family in the years ahead.”

18. As per NTPC this letter was issued to the petitioner as well and was received by him evidenced by the acknowledgement under the signatures of the petitioner on the office copy with NTPC. The petitioner denies having received any such letter and even in the instant writ petition, in para 3.6 thereof, has categorically averred that he never received any such letter.

19. We note at this stage that much turns on the aforesaid controversy for the reason it is not in dispute between the parties that there is no response of the petitioner to the aforesaid letter. What will turn on proof of the fact that the petitioner did receive the letter in question but did not respond thereto, would be that notwithstanding petitioner not filling up the requisite form exercising option for absorption but not responding thereto and continuing in service leading to a presumption that the petitioner acquiesced in his continued service under NTPC.

20. Before the Central Administrative Tribunal, the record was produced by NTPC which contained, in the file of the petitioner, the office copy of a letter dated 20/21.11.1978 addressed to the petitioner on which under the signatures of the petitioner was the endorsement: ‘*Received*’.

21. The petitioner denied that the letter in question was ever received by him but rendered no explanation of the signatures and the endorsement on the office copy of the letter in question with NTPC.

22. The Tribunal has opined as under:-

“7. In this connection, respondents have placed on record a photocopy of D.P. letter dated 20/21.11.78

from the Personal Manager, NTPC Ltd. addressed to Shri S.C.Chugh, Foreman Gr.III welcoming his absorption in the regular Estt. of the Company. Below the words Foreman Gr.III is the 'Received' written in long hand and the signature 'S.C.Chugh' with the date given '7.12.78'. Applicant vehemently denies that the letter was addressed to applicant and received by him on 7.12.78 in token of which he put his signatures and he, therefore, knew fully well that he stood absorbed in NTPC w.e.f. 1.4.78.

8. It is not applicant's case that there were other persons with the name of S.C.Chugh, who were absorbed in NTPC as Foreman Gr.III at that point of time and prima facie the signature on the body of the letter dated 20/21.11.78 is very similar to applicant's own signature on the OA. If indeed applicant's signature on the letter dated 20/21.11.78 was not his own and was forged, no convincing reasons have been given by him as to why anybody would want to commit the aforesaid forgery."

23. The aforenoted is a finding of fact rendered by the Central Administrative Tribunal and is a reasonable and a probable view of the matter and in our opinion the petitioner cannot question the same in writ jurisdiction, being a finding of fact which cannot be labeled as perverse or irrational.

24. Not only that. It has been noted by the Tribunal in para 9 of the impugned order as under:-

"Respondents along with MA No.4084/1994 have also filed a copy of CEA's letter dated 4.7.81 (Annexure-R4 to the MA) intimating no objection to the permanent absorption of all the employees of Badarpur based staff in NTPC as per enclosed list in which applicant's name finds mention at Sl. No.1 amongst Foremen Gr.III."

25. Thus, without proceeding ahead as to what happened thereafter one can safely conclude at this stage that the services of the petitioner under the Central Government were of a quasi permanent nature when Badarpur Thermal

Power Station was entrusted to NTPC. Large number of such employees were affected. The Union took up the issue and benefit of permanent absorption under NTPC was given to the employees. The petitioner received the letter dated 20/21.11.1978 but did not respond (according to us with mala fide intent to keep an issue alive and then predate on the same), probably many other employees did the same and ultimately it was the Union which gave a consent on behalf of its members intimating no objection to be permanently absorbed in NTPC and enclosed a list under cover of Union's letter dated 4.7.1981 and in which list at serial No.1 was the name of the petitioner. Thus, it is too late in the day for the petitioner to have questioned his absorption under NTPC.

26. Let us note the further events. The petitioner continued to work under NTPC and received wages without any demur or protest. On 1.7.1989 he earned a promotion and accepted the same, but raised the issue of his permanent absorption under NTPC, to which he received a response from NTPC under cover of a letter dated 19/23.11.1989 addressed to the petitioner by Sh.H.S.Mishra Senior Manager, NTPC, informing the petitioner as under:-

“This is with reference to your application dated 16th October, 1989, addressed to General Manager, Badarpur Division, regarding your absorption in the services of NTPC vide Officer Order No.BTPS/04/39/3658 dated 26th May, 1989.

In this context, we wish to inform you the following facts:

1.0 As per service records, you were appointed as Instructor in the scale of Rs.205-350/- at TTC, Nagarjun Sagar Dam w.e.f. 29/4/1967 in officiating and temporary capacity. You were subsequently transferred to TTC, Kakrapur on 3/3/1969 and then TTC, Nangal, Punjab on 4/6/73. You were declared

Quasi-permanent in the grade of Instructor w.e.f. 29/4/1970.

2.0 On closure of TTC, Nangal and being declared surplus, you were served notice of termination and subsequently, pending withdrawal of the same orders, you were relieved from TTC, Nangal vide Order No.Closure/TTCN-74/863-82 dated 28th February, 1974 to report to Central Supdt., BTPS, Badarpur.

3.0 You joined BTPS on 1/3/1974 vide Officer Order No.12/13/73-O&M/2846-51 dated 18th March, 1974, as Charge hand in the scale of Rs.210-380/- as there was no scale similar to the scale last drawn by you.

4.0 Thereafter on re-structuring of scales by Govt. of India, Badarpur Thermal Power Station, taking into consideration the qualifications you were placed in the scale of Rs.425-700/- w.e.f. 20/11/1975 as Foreman Gr.III since you were not possessing diploma.

5.0 You joined BTPS on being declared surplus at TTC, Nangal and did not have any lien with any other department of the Govt. You can neither be treated as deputationist nor can seek repatriation to any Government Department (including CEA) as there was no post for you either in CW&PC or in the CEA and on joining BTPS you had become a Badarpur based employee. Your absorption in the services of the NTPC is as per the terms and conditions of the settlement between NTPC and BTPS Project Employees Union (BTPPEU) before the Conciliation Officer dated 31/8/1978 with regard to the absorption of Badarpur based employees and no objection for the same duly conveyed by the CEA. As per the settlement dated 31/8/1978, you had been given an offer of absorption vide our letter dated 21/11/1978 but as you had failed to exercise the same, we have issued the absorption order to you in line with the terms of the Agreement dated 12/4/1978 with the Govt. of India, Memorandum of Agreement dated 31/8/1978, Section 25 FF of the Industrial Disputes Act and the no objection of the CEA thereto. You have been absorbed in the services of the NTPC on terms and conditions offered to similar category of employees in the past and the terms and conditions are not inferior to or less favourable than

those enjoyed by the said employees on 31/3/1978 as contemplated by the Agreement between NTPC and Union of India. Vide the said absorption of your service in NTPC you have been given all benefits of past service as admissible to you as per the provisions of the Rules.

6.0 Consequent upon your absorption in the services of NTPC w.e.f. 1/4/1973 as Foreman Gr.III you were promoted to the post of Foreman Gr.II w.e.f. 1/1/1981, Foreman Gr.I w.e.f. 1/1/1985 and Sr.Foreman w.e.f. 1/1/1989.

7.0 Since you have been absorbed in the services of NTPC w.e.f. 1/4/1978, you are not entitled for the pay and allowances as per the Fourth Pay Commission. Therefore, your pay has been fixed as per NTPC Rules and arrears are being prepared by Finance Deptt., which will be released to you."

27. If not earlier, a cause of action accrued to the petitioner who does not deny having received the aforesaid letter, to have sought legal redressal if he still maintained that his absorption in NTPC was illegal. He did not do so and continued to remain in service till he was about to retire when he filed OA No.1510/1994 praying that a declaration be granted in his favour that he is a Central Government employee with further directions that he be paid wages applicable to Central Government employees w.e.f. 1.3.1974 and he be promoted at par with those who earned promotions under the Central Government.

28. The Tribunal has rejected the claim for the reasons recorded in paras 7, 8 and 9 of the impugned decision, contents of which paras have been noted by us in paras 22 and 24 above.

29. The same contentions which were advanced before the Tribunal were advanced before us with further submissions

on the issue of delay and laches in preferring the instant writ petition.

30. As noted by us hereinabove, vide CM No.1526/2004 the petitioner justifies delay of 5 years and 3 months in challenging the order of the Tribunal by pleading that his absorption under NTPC was not decided by the Tribunal and the issue being undecided he kept on making representations to the concerned Minister.

31. We wonder as to wherefrom the petitioner can plead so. From a perusal of the impugned order passed by the Tribunal, it is apparent that the Tribunal has categorically opined that it is a case of the petitioner being permanently absorbed under NTPC and in any case it was too late in the day for the petitioner to challenge the said absorption. What more clarity on this issue can be found if we read the concluding 2 paragraphs of the decision of the Tribunal. In para 12 and 13 of the impugned order which are the penultimate and the last paragraph of the impugned order, the Tribunal has concluded as under:-

“12. Under the circumstances, even if applicant did not give his unconditional option for absorption in NTPC w.e.f. 1.4.78, it is clear that NTPC treated him as one who had been permanently absorbed in their organization with effect from that date and applicant by his own conduct acquiesced in such treatment right from that date onwards, and is therefore, estopped at this late stage after considerable delay and laches from challenging the same and claiming to be treated as a Central Govt. employee.

13. The OA therefore warrants no interference and is dismissed. No costs.”

32. We accordingly hold that there was no occasion for the petitioner to believe that the issue of his permanent absorption in NTPC has not been decided by the Tribunal.

Indeed, this was at the core of the controversy and even a fool would know that this was at the core of the controversy. It is apparent that the petitioner wrote useless and frivolous letters which cannot be countenanced as the reasonable conduct of a reasonable person upon a reasonable belief of the issue decided by the Tribunal and thus the petitioner cannot claim benefit of the same to explain delay and latches.

33. Thus, we conclude by holding that the instant writ petition is highly belated and requires to be dismissed on unexplained delay and latches.

34. Even on merits we concur with the reasoning of the Tribunal that the cause of action accrued to the petitioner when on 19/23.11.1989 a categorical response was given to him by the Senior Manager NTPC that as regards NTPC the issue was concluded that the petitioner was treated as permanently absorbed under NTPC. It was too late in the day for the petitioner to have questioned the same in the year 1994 when he filed OA No.1510/1994. Further, we concur with the reasoning of the Tribunal that the conduct of the petitioner evidences his acceptance of being permanently absorbed under NTPC.

35. We may only add that assuming that the petitioner did not receive the letter dated 20/21.11.1978 (in respect whereof there is ample proof that he did receive the same) it is difficult to believe that the petitioner did not know about the same for the reason there were a large number of similarly situated employees who had admittedly received the said letter and many had responded. It is not possible to believe that this issue was not discussed amongst the staff and thus could have escaped the knowledge of the petitioner. Lastly, it is not the case of the petitioner that he was not a member of

the Badarpur Thermal Power Station Staff Union and hence it is difficult to believe that in respect of such employees who did not respond to the issue of permanent absorption under NTPC, the Union gave the confirmation of absorption under cover of the Union's letter dated 4.7.1981. We have already noted hereinabove that name of the petitioner was included in the list of employees whose permanent absorption under NTPC was consented to on behalf of the Union. It is a settled legal position that on issues involving employees as a group settlements arrived at between their Union and the management binds the employees. We may further add that the petitioner appears to be fighting a battle under a wrong legal advice. Assuming we were to hold in favour of the petitioner. What would happen? Having retired under NTPC and received even the employer's share in the Contributory Provident Fund Account in the name of the petitioner and having earned wages as an employee of NTPC, no direction can be issued against him to return the money to NTPC on the principle of quantum meruit. Sending him back under the Central Government would mean to relegate his status as that of a quasi permanent employee facing retrenchment for the reason status quo ante would have to be restored. It would be then open to the Government to turn back and say that since we have abolished the post we declared the petitioner surplus and terminate his service. In response thereto the petitioner cannot urge that he should be treated to be in deemed service and paid the wages for the reason the petitioner cannot earn wages for the same period from two employers.

36. We dismiss the writ petition as not only barred by delay and laches. We also dismiss the same holding that claim under OA No.1510/1994 was itself barred by limitation,

delay and latches. We also dismiss the writ petition holding that even on merits the petitioner has no claim. We also dismiss the writ petition for the reasons stated in para 35 above. We clarify that the dismissal of the writ petition on all the four counts is independent of each other and to succeed the petitioner had to overcome each of the four grounds, which the petitioner has not.

37. On the issue of costs, notwithstanding that the petitioner is a retired employee, but evidenced by the fact that he has been availing the services of a senior counsel and presumably has paid him the fee charged by senior counsel, we would be justified in drawing a presumption that the petitioner is a man of means and thus in a position to recompense the opposite party for continuing litigation on a worthless cause. We thus impose cost in sum of Rs.10,000/- against the petitioner and in favour of the contesting respondent i.e. NTPC.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

AUGUST 02, 2010
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