

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
MA NO. 100/99
OA NO. 99/99

(A)

New Delhi, this the 24th day of August, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Sh. Jamal Ahmed,
S/o Late Sh. Fazal Ahmed,
Ex. Mobile Booking Clerk,
N.E. Railway,
Railway Station,
Farukhabad.
r/o 405, Gali No.26, Vijay Park,
Mozpur, Delhi. Applicant
(By Advocate: Sh. B.S.Mainee)

Vs.

Union of India through

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhawan, Raisina Road,
New Delhi.
2. The General Manager,
N.E. Railway,
Gorakhpur.
3. The Divisional Railway Manager,
N.E. Railway,
Izatnagar. Respondents
(By Advocate: Sh. B.S.Jain)

ORDER (ORAL)

By Mr. Justice V.Rajagopala Reddy,

Heard counsel for the applicant and the respondents.

2. The applicant filed the present OA seeking re-engagement as Mobile Booking Clerk relying upon the judgments of the Hon'ble Supreme Court in Parveen Kumar Srivastava's case ATR 1993 (1) CAT 185. As per the Railway Board scheme of 1992 the applicant has been engaged as Mobile Booking Clerk at the Railway Station at Farukhabad where he worked from 1.10.84 to 31.10.84. This scheme of the Railway Board has been withdrawn in the proceedings dated 17.11.86. Several Booking Clerks who

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have been working earlier and who are entitled for regularisation as per the earlier Railway Board scheme had approached the various Tribunals of the CAT and eventually the Hon'ble Supreme Court in Ms. Usha Kumari Anand and others Vs. Union of India and others ATR 1989 (1) 37 has directed the applicants in several OAs who have worked prior to 17.11.86 as Mobile Booking Clerks and to give certain benefits to them including regularisation of their services. Subsequently, when the judgment in Pardeep Kumar Srivastava (supra) was questioned before the Supreme Court, the Supreme Court modifying the judgment in the above OA in Union of India and others Vs. Pardeep Kumar Srivastava and others 1998 SCC (L&S) 1749 disposed of the appeals giving the same direction as were given in Usha Kumari Anand's case directing to examine the case of every respondent before it in accordance with the directions given in Usha Kumari Anand's case.

3. Subsequent to the above judgment, the Railway Board issued the proceedings dated 6.2.90 in which the Railway Board have taken a decision to consider the absorption against regular vacancies of the Mobile Booking Clerks engaged before 17.11.86. In its proceedings dated 12.8.92 the Railway Board directed that the re-engagement of the Mobile Booking Clerk would be kept only upto 30.9.92.

4. The applicant submits that he had made a representation on 20.8.92 and 26.8.93 seeking his reinstatement and regularisation prior to 17.11.86 as Mobile Booking Clerk. It is the contention of the learned counsel for the applicant that in view of the judgment of the Supreme Court in Usha Kumari Anand's case as well as the judgment in P.K.Srivastava's case (supra) the applicant is entitled for

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re-engagement on regular basis. Learned counsel for respondents submits that the applicant is not entitled for reinstatement as per Railway Board scheme as he was appointed only as a part time Mobile Booking Clerk.

5. We have given careful consideration to the contentions raised in this OA.

6. Before going into the merits of the case we have to dispose of the question of limitation. The applicant filed MA-100/99 for condonation of delay in which it was stated that after he made representations dated 20.8.92 and 26.8.93, he was assured by the respondents that his case would be considered after the case in supreme Court was decided. The Supreme Court decided the appeal in 1995. He made another representation on 9.3.96 but the respondents had not given any reply. On the other hand they had re-engaged Pradeep Kumar Srivastava and others ignoring the applicant's case.

7. We are afraid that the OA has to be dismissed on the ground of limitation. Applicants had not explained properly the reasons for the delay in filing this OA. The applicant has been disengaged on 31.10.84 as Mobile Booking Clerk. He has not made any grievance of the disengagement or sought for regularisation in 1984. Since the scheme has been discontinued on 17.11.96 several Mobile Booking Clerks came to CAT and eventually to the Supreme Court and the Supreme Court has directed re-engagement in Usha Kumari Anand's case which has been disposed of in 1989. The reliefs in the judgment of the Usha Kumari Anand were granted only to the applicant who were parties before the Supreme Court. Since the applicant has assured that his case would be considered after the case

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in Pardeep Kumar Srivastava which has been finally decided by the Suprme Court. Even assuming that the applicant had waited for disposal of the case, the said case has been disposed of on 27.7.95, thereafter the applicant states in the MA that he had made representation on 9.3.96. Even assuming that the applicant has justifiable reasons to wait till 1996, he could wait, for reply only for a period of 6 months and thereafter even if no response is received by the respondents he should have filed the OA within a period of one year after the expiry of 6 months. Infact the OA has been filed on 11.1.99. Section 21 of the AT Act obligates the Tribunal not to admit the OA unless it was filed within the period of limitation. Section 21 open with the words

"A Tribunal shall not admit an application 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."

8. Learned counsel for applicant relying upon K.C.Sharma and others vs. Union of India and others SLJ 1998 (1) SC 53 contends that the benefit given by the Tribunal in similar matter should be extended to all similarly placed employees. This question pertains to the calculation of overall emoluments regarding the renting allowance at the maximum limit. Considering the facts and circumstances of the case the Supreme Court in the above case had condoned the delay. Infact the benefit was extended by the Supreme Court in Usha Kumari Anand and Pardeep Kumar Srivastava only to the

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applicants. There was no direction that the benefit should be extended to all the similarly placed Booking Clerks. Learned counsel relies upon Rameshwar Prasad Sinha vs. Union of India and others in Civil Appeal No. 354/93 where it is observed:

"In view of the appellant's application having been entertained and disposed of later, the view of the Tribunal on the question of limitation is not correct. the claim of the appellant, therefore, should have been considered and decided on merits which has not been done. The matter is fit for remand to the Tribunal for decision on merits."

9. Learned counsel, therefore, contends that when notices have been issued the case has to be decided on merits and should not be rejected on the ground of limitation. But the present OA was not admitted. Before admission notices have been issued to the respondents and at the consent of the parties the OA was taken up for final hearing before admission. In our considered view since the OA has not been admitted the question of limitation has to be considered as per Section 21 of the AT Act. From the facts in Rameshwar Prasad Sinha (supra), It is not clear whether the case was admitted and disposed of later. The above judgment, therefore, cannot be an authority to say that limitation cannot be considered when once notices have been issued before admission or that after 'admission' of the case the question of limitation cannot be examined. the Supreme Court in Ramesh Chand Sharma etc. vs. Udhamp Singh Kamal and others, 2000 (2) AI SLJ 89, has categorically held that the Tribunal was not

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right in admitting an application under the AT Act and dispose of the application on merits, when the application was barred by limitation under Section 21 of the AT Act. Thus, it is clear, mere admission of the OA does not preclude the Tribunal to go into the question of limitation at the time of final hearing.

10. State of Karnataka vs. S.M.Kotrayya reported in 1996 (6) SCC 267 the Hon'ble Supreme Court has ruled that coming to know of the relief granted in other similar matter, was not a proper explanation to condone the delay. What was required to explain under sub-sections (1) and (2) was as to why the applicant could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). It was held that the Tribunal was wholly unjustified in condoning the delay. The judgment in Delhi Administration and others vs. Hira Lal and others JT 1999 (10) SC 128 is also to the same effect. Learned counsel for respondents also cites the judgment in Rajesh Kumar Saxena Vs. Union of India and others OA-1994/96 dated 4.12.97 and Biswánath Roy and others vs. Union of India and others OA-1862/97 dated 13.8.98 and other judgments in support of the view taken by us as regards limitation.

11. The OA is dismissed on the ground of limitation without going into the merits of the case. No costs.

(GOVINDAN S. TAMPI)
Member (A)
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(V.RAJAGOPALA REDDY)
Vice Chairman (J)

Andhra Pradesh