

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 891 of 1998 decided on 27.1.1999

Name of Applicant : Shri Sunil Kumar Sharma

By Advocate : Shri Sant Lala

Versus

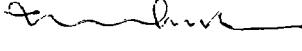
Name of respondent/s Union of India & others

By Advocate : Shri K.R. Sachdeva

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the -No other Benches of the Tribunal.


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 891 of 1998

New Delhi, this the 27th day of January, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Shri Sunil Kumar Sharma son of Shri Jagdish Prasad Sharma resident of Delhi-34, last working as casual labour (Mailman) on Daily wages under Head Record Officer/Supdt. RMS 'D' Dn. New Delhi-110002. Address for service of notices C/o Sh. Sant Lal Advocate. C-21(B), New Multan Nagar Delhi-56.

(5) 
-APPLICANT

(By Advocate Shri Sant Lal)

Versus

1. The Union of India, through the Secretary, Ministry of Communications, Deptt. of Posts, Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, Haryana Circle, Ambala Cantt-133001.
3. The Superintendent R.M.S. 'D' Division, Asaf Ali Road, New Delhi-110002.

(5) 
-RESPONDENTS

(By Advocate Shri K.R. Sachdeva)

O R D E R

By Mr. N. Sahu, Member(Admnv)

The prayer in this Original Application is for a direction to the respondents to supply the mark list to the applicant in respect of the test held on 28.5.1989 for which the result was declared on 10.3.1998. If the applicant did not qualify in the said test it is stated that the respondents be directed to grant temporary status to the applicant from the due date in accordance with the scheme with all consequential benefits. The applicant also seeks a direction to the respondents to permit him to work as a casual labour on daily wage basis forthwith.

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2. The applicant had also filed an MA for condonation of delay. Before the claim of the applicant is considered, the admitted facts are briefly narrated as under -

(16)

The applicant worked as a casual labour (Mailman) in the Office of the Head Record Officer 'D' Division RMS, New Delhi with effect from November 1982 upto 19.3.1990. He applied for appearing in the literacy test for recruitment to Group 'D' on 28.5.1989. He was not officially allowed to appear in the test but later on the directions of the Tribunal he appeared provisionally under Roll No.D-17. The counter states that the result of the said literacy test in respect of scheduled caste candidates was declared on 6.7.1989 but the result of other category candidates was held back for want of vacancies. It is stated that the applicant could not pass the literacy test held on 28.5.1989. The applicant did not attend duties as a casual labour from 20.3.1990. It was only in August, 1997 that he sent a legal notice whereupon he was informed by the respondents that he could not qualify the literacy test held on 28.5.1989. Admitting that the scheme came into force for temporary status with effect from 12.4.1991, the respondents removed the name of the applicant from the panel of casual labourers on the ground that he 'deserted' the department on 20.3.1990. Under the scheme, temporary status is conferred on the casual labourers in employment as on 29.11.1989 and 'who continue to be currently employed and have rendered continuous service of at least one

year'. Since the applicant was not in current employment as on 12.4.1991 when the scheme was promulgated, it was stated that he was not entitled to temporary status. It is also pertinent to mention that in para 4.2 of the counter it is stated that the applicant had rendered 266 days of service in 1983 and 255 days of service in 1988. This reckoning takes into account the paid holidays and weekly off.

(17)

3. The respondents contested the applicant's reasons for condonation of delay. They stated that the result was declared on 6.7.1989 to the extent of vacancies available for the year. As the applicant deserted the department after 19.3.1990, the scheme of grant of temporary status is not applicable to him. It is submitted that in response to the legal notice the applicant was informed that he was unsuccessful in the test held on 28.5.1989 vide letter dated 10.3.1998. As the candidate had to deposit the requisite fees for supply of marks and as the applicant applied for supply of marks on 11.3.1998, the mark sheet was supplied to him on 13.5.1998. It is further stated by the respondents that the O.A. is barred by limitation and if the result was not declared within three months as directed by this Court in its judgment dated 15.12.1989, the applicant could have filed a petition for contempt of court against the department before 15.3.1991.

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4. In the rejoinder it is stated that the scheme was given effect to from 29.11.1989. The applicant fulfilled the condition of rendering 240 days of service in one year. In fact he has rendered service of more than six years and 240 days service in each of two years. It is now settled that if the employee renders 240 days of continuous service in one year he would be entitled to temporary status even if he was not in employment on the date when the order of grant of temporary status was issued. For this purpose the applicant relied on two decisions of this Court in the case of Sh. Om Prakash Tiwari Vs. The Secretary, Staff Selection Commission. O.A. No.324 of 1997 decided on 21.4.1998 and Shri Subhash Chand Vs. Union of India and others. O.A. No.2764 of 1997 decided on 2.6.1998. It is further pointed out that under the orders of the DGP&T, New Delhi dated 19.2.1988 (Annexure-R-1) the applicant would be entitled to temporary status because he had completed 240 days in any two years and not preceding two years.

5. With regard to limitation the learned counsel for the applicant cited the following decisions - (i) Gautam C.Meshram Vs. Divisional General Manager, South-Eastern Railway, Nagpur and others 1991(1) ATJ 344 (CAT-Bombay) where in it was held that denial of appointment is a continuing cause of action) and (ii) R.D.Valand Vs. The Administrator of Union Territory of Daman & Diu and others, 1991 (2) ATJ 416 wherein it was held that as the representation of the applicant was entertained:

considered on merits and disposed of. Limitation would start from that date. (19)

6. I have carefully considered the submissions. I have verified the records. I find that the applicant had secured 5 1/2 out of 30 in Paper-I, and 15 out of 20 in Paper-II. It is noticed that the result was not declared for want of vacancies, although the marks were also tabulated. The file contained answer sheets of the applicant. I find that the applicant secured 5 1/2 marks out of 30 in Paper-I. The valuation in my view has been done correctly. This is a case where the applicant is guilty of laches and delay under the provisions of Section 21(3) of the Administrative Tribunals Act. 1985. The application filed after the period specified in Sub-section (1) or (2) can be admitted if the applicant satisfies the Tribunal that he has sufficient cause for not making the application within the permitted period. The reasons for not taking any action from 1990 to 1997 have not been explained. The silence of the applicant for a period of 7 long years cannot be overlooked. It stares at the face. In Bhoop Singh Vs. Union of India and others, (1992) 21 ATC 675 the Hon'ble Supreme Court observed that if the claim is belated, it would be inequitable to grant relief rather than being discriminatory to reject the claim. The applicant's representation in 1997-98 was considered by the respondents and replied to. Simply because a representation was replied to, it does not

ip-so-facto give rise to a cause of action. In High Court of Madhya Pradesh Vs. Mahesh Prakash and others, 1995 SCC (L&S) 278 their Lordships calculated the period of delay and laches in filing a writ petition under Article 226 of the Constitution from June, 1976 when the first representation of the Judicial Officer was considered by the Full Court and rejected. Even though, the second representation, made four years thereafter, was again considered by the Full Court and rejected. The ratio is that merely because a subsequent representation is considered by the authorities and rejected, limitation does not get extended, if the claim is already barred by limitation. In S.S.Rathore Vs. State of Madhya Pradesh, 1990 SCC (L&S) 50 a seven Judge Bench of the Hon'ble Supreme Court has held that repeated non-statutory representations will not extend the period of limitation. These observations were made with reference to Section 21 ibid.

7. In view of the above authorities of the Hon'ble Supreme Court, and particularly in view of the law enunciated in Ratan Chandra Sammant Vs. Union of India and others, (1994) 26 ATC 228, wherein the Apex Court held that the delay itself deprives a person of his remedy available in law. In the 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. If the claim of the applicant is to be allowed, then any aggrieved Government servant can file a representation for reviving an old closed event after a long lapse of

time. If the Government considers it on merits and disposes it of, then does it give a fresh cause of action; even though a decade passed out from the date the original cause of action had arisen? The Government as a responsible employer if it gives a reply as a matter of courtesy, will that be a fresh cause of action to the applicant? I am afraid in view of the Hon'ble Supreme Court's decision in Ratan Chandra Sammanta's case(supra) this plea cannot be entertained. The applicant appeared in the examination in 1989. I am satisfied after going through the record that he failed in one paper. The results were not declared because there was no post for candidates other than those belonging to the reserved category. Although the Tribunal directed declaration of the results, it would not have made any difference in the applicant's case. There might be a lapse on the part of the respondents in not complying with the Tribunal's order, but that was not agitated by the applicant well in time and no writ will now lie for enforcing the compliance.

8. With regard to the grant of temporary status, though the applicant had fulfilled the requisite conditions it is not possible to issue a direction because of delay and laches in approaching this Court. The delay of seven years is totally unexplained.

9. On the ground of delay and laches, this O.A. is dismissed. No costs.

N. Sahu
(N. Sahu)
Member(Admnv)