

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 23/97

T.A. No.

199

DATE OF DECISION 28.01.1998

Kusum Malik & Ors. Petitioner
Sh. H. K. Gangwani Advocate for the Petitioner(s)
Versus
U. O. I. & Ors. Respondent
Sh. D. P. Kshatriya Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Dr. Jose P. Verghese, Vice-Chairman (J)

The Hon'ble Mr. S. P. Biswas, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

S. P. Biswas
(S. P. Biswas)
M(A)

Cases referred:

1. Indarpal Yadav & Anr. Vs. UOI & Ors. (1985 (2) SCC 648.
2. A. K. Khanna Vs. UOI & Ors. (ATR 1988 (2) CAT/PB 518.
3. Amrit Lal Berry Vs. Collector of Central Excise/
New Delhi (AIR 1975 SC 538).
4. L. Chandra Kumar Vs. UOI (1997 (3) Scale 40)
5. R. C. Samanta Vs. UOI (JT 1993 (3) SC 418)
6. State of Punjab Vs. Gurdav Singh (1991 (4) SCC 1)
7. P. K. Ramachandran Vs. State of Kerala and Ors
(JT 1997 (8) SC 189)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 423/97

New Delhi, this 28th day of January, 1998

Hon'ble Dr. JOSE P VERGHESE, VICE CHAIRMAN (J)
HON'BLE SH. S P BISWAS, MEMBER (A)

1. Kusum Malik & 11 Others
2. Raj Kumar
3. Manoj Kumar
4. Brijesh Kumar
5. Pawan Kumar
6. Anita Anand
7. Rajiv Saxena
8. K Kamal
9. S K Agarwal
10. Arun Kumar Sharma
11. Varinder Singh
12. Tajinder Kaur

(All working as Booking Clerks in the office of
Respondent No. 3)

*****Applicants.

(By Sh. H K Gangawani, Advocate)

Versus

Union of India through

1. The Secretary
M/o Railways, Rail Bhawan,
New Delhi.
2. The General Manager
Northern Railway
Baroda House, New Delhi.
3. The Divisional Railway Manager
Northern Railway, State Entry Road,
New Delhi.

***** Respondents.

(By Sh. O P Kshatriya, Advocate)

Hon'ble Sh. S. P. Biswas, ^{ORDER} Member (A)

The short questions that fall for determination
in this Original Application are as under: i) whether
the benefits arising out of the cases decided by the
Hon'ble Apex Court or Tribunal have to be offered to
others similarly placed like those who were parties in
the cases so decided earlier; and (b) whether the rules
laid down on the issue of limitation shall be applicable
in such cases?

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2. The applicants herein are challenging two orders at A-I dated 17.6.96 and 23.8.96 respectively by which respondents have refused to offer them back-wages from the date of their dis-engagement from 13.5.88 to the date of their re-engagement on 14.2.90. Consequently, they have paryed for issuance of directions to the respondents to pay them back-wages for the aforesaid period with all consequential benefits like seniority and continuity of service.

3. The admitted facts of the case are that the services of the applicants were terminated by a telegram dated 12.5.88 but they were re-engaged pursuant to the Hon'ble Supreme Court's order dated 18.3.88 and recall of the said order vide Hon'ble Supreme Court's order dated 30.9.88. The respondents railways in terms of their letter dated 28.11.90 issued instructions to all the Divisional Field Units to arrange payment to all the Mobile Booking Clerks (MBCs for short) from the date they were disengaged to the date they were re-engaged following this Tribunal's judgement dated 4.6.90 in OA 896/88 in the case of Mohinder Singh.

The applicants would contend that their claims are identical from all four corners to that of those who are parties in the case of Mohinder Singh and Others. They were assured time and again that their cases of payment of back-wages are under consideration and the benefit of judgement in OA 896/88 would be extended to the applicants because the order dated 4.6.90 passed by the Tribunal in the above OA is an order in rem and not in personam. However, it has not been done so far. The

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applicants have been subjected to hostile discrimination in as-much-as they were entitled to arrears of back-wages as has been given to their colleagues similarly placed. In support of their claims, the learned counsel for the applicants drew our attention to the decision of the Hon'ble Supreme Court in the cases of Inderpal Yadav & Another Vs. UOI & Others, 1985 (2) SCC 648, the case of A K Khanna Vs. UOI & Others, ATR 1988 (2) CAT/PB 518, and Amrit Lal Berry Vs. Collector of Central Excise / New Delhi, AIR 1975 SC 538. In all these cases it has been held that:

"benefit of judgement given in an earlier case is to be extended to persons similarly placed, though they were not a party of the earlier case. If the benefit is not extended it will be violative of the Articles 14 and 16 of the constitution."

4. The respondents opposed the claims and submitted that the benefits of back-wages cannot be given to the applicants as they were not a parties in OA 896/88. The counsel for the respondents, to add strength to his contention, cited the decisions of the Supreme Court in the cases of L Chandra Kumar Vs. UOI, (1997 (3) scale 40), R C Samanta Vs. UOI (JT 1993 (3) SC 418) and State of Punjab Vs. Gurdev Singh (1991 (4) SCC 1). In these cases it has been held that delay deprives the person of the remedy available in law, and a person who does not pursue his remedy within the prescribed time loses his right as well.

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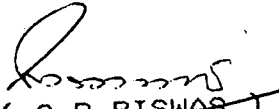
5. The fate of the present OA, therefore, hinges on the determination of the second issue.

We have carefully considered the submissions made by both the learned counsel on the question of limitation. It is relevant to note that in L Chandra Kumar's case (Supra), the Supreme Court has held that this Tribunal does not have the power to condone delay. In this connection, the learned counsel for the respondents drew our attention to the facts that the applicants were reengaged in early 1990 and did not bother to wake-up from their slumber till 11.6.1996 and 2.8.1996 when A-8 representations were made. It is highly a belated claim after six years. The applicants have also failed to file an application for condonation of delay. The learned counsel for the respondents would also submit that the scheme of employing MBCs has since been discontinued in the year 1987. The delay is written on the forehead of this Original Application. In this case of P K Ramachandran Vs. State of Kerala and Others, JT 1997 (8) SC 189, the Apex Court ordered that ^{the} Court has to record in writing that the explanation offered for the delay is reasonable and satisfactory. This is the pre-requisite for condonation of delays. We do not find any good reasons, much less convincing ones, that would persuade us to conclude that the applicants have pursued their remedies seriously, particularly in the matter of such claims. We also find that our view finds support in the decision of this Tribunal in OA 430/1992 decided on 5.5.1997.

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6. In the facts and circumstances of the case, we find that this application suffers from laches and delay and is hopelessly time barred. In the result, the O.A., fails and is accordingly dismissed. No costs.


(S P BISWAS)
MEMBER (A)


(DR. JOSE P VERGHESE)
VICE CHAIRMAN (J)

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