

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No. 1785/94

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New Delhi this the 13th day of July, 1998.

Smt. Sushila Prashar ... Applicant

(By advocate Sh. B.S. Mainee, advocate)

versus

U.O.I. & Ors. ... Respondents

(By advocate Sh. P.S. Mahendru, advocate)

Coram:-

The Hon'ble Shri T.N. Bhat, Member(J)
The Hon'ble Shri S.P. Biswas, Member(A)

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

(S.P. Biswas)
Member(A)

Cases referred:-

1. Pradeep Kumar Srivastava & Ors. Vs. U.O.I. & Ors. (ATR 1993(1) CAT 185.
2. U.O.I. Vs. Ratam Chandra Samanta, JT 1993(3) SC 418.
3. Ramesh Babu & Ors. Vs. U.O.I. (OA-1896/89) decided on 2.7.91.
4. S.S. Rathore Vs. State of M.P., JT 1989(3) SC 530.
5. Amrit Lal Berry Vs. Collector of Central Excise, 1975(4) SC 714.
6. Girdhari Lal & Ors. Vs. UOI arisen out of SLP(C) No. 14005 of 92 decided on 3.1.96.
7. K.C. Sharma & Ors. Vs. UOI, 1998(1) SLJ 54.
8. A.K. Khanna Vs. UOI, ATR 1988(2) 518.
9. Jagdish Lal & Ors. Vs. State of Haryana & Ors., JT 1997(5) SC 387.
10. S.V. Pansulkar Vs. Bank of India, 1997 SCC (L&S) 1662.
11. State of Haryana & Ors. Vs. Ajay Walia(Ms.), 1997 SCC (L&S) 1445.
12. Sri Malaprabha Co-Operative Sugar Factory Ltd. Vs. UOI & Anr. (1994) SCC 648.
13. P.K. Ramchandran Vs. State of Kerala & Anr., JT 1997(8) SC 189.

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Hon'ble Sh. T.N. Bhat, Member (J)
Hon'ble Sh. S.P. Biswas, Member (A)

Smt. Sushila Prashar,
W/o Sh. Ajay Prashar,
R/o CA56-C, Janta Flat,
Hari Nagar Depot,
New Delhi. Applicant

(through Sh. B.S. Maine, advocate)

versus

1. Union of India through
the Secretary,
Railway Board (Ministry of
Railways), Rail Bhawan,
New Delhi.
2. The General Manager,
Central Railway,
Bombay.
3. The Divl. Railway Manager,
Central Railways,
Jhansi. Respondents

(through Sh. P.S. Mahendru, advocate)

ORDER

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

The applicant alleges respondents' failure to extend the benefit of the judgement in the case of Pradeep Kumar Srivastava & Ors. Vs. U.O.I. & Ors. (ATR 1993(1) CAT 185 decided on 29.11.92. That was the case wherein connected matters in yet another O.A. (2313/91) filed by Kumari Neera Tandon was also decided by a common order. The applicant was initially engaged as a enquiry-cum-reservation clerk (E&RC for short) but also worked as social guide from 22.9.82 to 30.4.85

following the Railways Scheme of August 1973 to cope with the increased passenger traffic. The applicant claims that her case is similar to that of Kumari Neera Tandon who got the relief arising out of decision of this Tribunal in Pradeep Kumar Srivastava's case (supra). In this case, the Hon'ble Tribunal held that the period of services rendered by the applicants as Mobile Booking Clerks (MBCs for short) which expression includes volunteers, ticket selling agents, booking clerks, additional booking clerks, ticket collectors, coaching clerks and social guides, is irrelevant for the purpose of their engagements.

(A)

The respondents have resisted the aforesaid claim. It has been submitted that the present O.A. is highly barred by limitation. The applicant had worked with the respondents upto the end of April 1985 whereas the present O.A. has been filed in 1994 after a lapse of 9 years. Relying upon the decision of the Hon'ble Supreme Court in the case of U.O.I. Vs. Ratam Chandra Samanta, JT 1993(3) SC 418, the respondents have argued that the O.A. deserves to be dismissed on the point of limitation alone.

The fate of this case depends on the determination of the issue of limitation. Before we examine the issue of limitation, we consider it apposite to mention a few glaring infirmities in the applicant's case.

4. It is contended (at para 4.25 of the O.A. at page 7) that after Ms. Neeru Tandon's appointment as announcer at Ballabghar on 29.12.93, she had represented her case vide A-9 application since her case was similar to Ms. Tandon's case. A-9 is dated 14.1.92 and hence it could not be after A-8 dated 29.12.93. Obviously, this is a wrong date. It has to be a date after 29.10.92 when Pradeep Kumar Srivastava's case (supra) was decided. That apart, A-9 could not be a representation pursuant to A-8. This is because A-9 lacks the real details advantageous to the applicant which are available in A-8. It is thus obvious that what has acted as the cause of action is A-8 dated 29.12.93 pursuant to this Tribunal's order dated 29.10.92 in Pradeep Kumar Srivastava's case (supra). It appears that the applicant had even no knowledge of this Tribunal's order dated 2.7.91 as in A-7 i.e., the case of Ramesh Babu & Ors. in OA-1896/89. This is evident since her two representations dated 14.1.92 and 5.6.92 are silent about details of A-7 order.

5. Secondly, in M.A. (3920/94) for condonation of delay she claims to have made a representation on 7.1.94 following this Tribunal's order dated 29.10.92. That representation would have been enough to take care the bar of limitation. But this claim is without any supporting document.

6. Again, we find contradiction in applicant's stand in respect of the date when the cause of action really arose. In M.A. No. 3020/94 she submitts that the "fresh cause of action has arisen to the applicant on 29.10.92 when this Tribunal had given the judgement in favour of her colleagues in Kumar Neera Tandon's case on 29.12.93 when her colleague has been appointed in pursuance of the said judgement". This is as per para 5 of the aforesaid M.A. This contradicts yet another submission made by the applicant as at para 4.14 of the O.A. wherein she has claimed that there is only one scheme though such employees have been designated differently in different zones and has accordingly based her claim in the light of the decisions in Ramesh Babu & Ors. Vs. U.O.I. in OA-1896/89 decided on 2.7.91. It is thus evident that the cause of action had arisen in July 1991 and not in October 1992. The applicant's claim in this case goes against the law laid down by the Apex Court in the case of S.S. Rathore Vs. State of M.P., JT 1989(3) SC 530. In this case, the apex court held that "cause of action first arises when remedies available to the public servant under the relevant service rules as to redressal are disposed of".

7. Besides the three infirmities afore-mentioned, the O.A. is badly hit by limitation. The applicant should have agitated

early 1994 immediately after 18 months from 5.9.92 or soon after September 1993 i.e. after the extended period was over. She did neither. (20)

8. In the M.A. for condonation of delay the reason given is that "if there is found to be any delay in approaching this Tribunal, this Tribunal may be condoned the said delay in the interest of justice". Such a bald reasoning can hardly serve the purpose of condonation of delay. Reasons for condonation of delay has to be cogent explaining the circumstances for which the applicant could not agitate the issues in time. This is badly lacking in the M.A.

The applicant would then depend that her case for consideration of re-engagement cannot be hit by limitation in the light of the law laid down by the Hon'ble Supreme Court in the following cases:-

Amrit Lal Berry Vs. Collector of Central Excise, 1975(4) SC 714.

Girdhari Lal & Ors. U.O.I. arisen out of SLP(C)No.14005 of 92 decided on 3.1.96.

K.C. Sharma & Ors. Vs. U.O.I., 1998(1) SLJ 54.

A.K. Khanna Vs. U.O.I., ATR 1988(2) 518.

These were the cases where it has been laid down that applications filed by the similarly situated placed persons should not be rejected for bar of limitation.

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Union of India are to treat such persons alike and grant them the same benefits instead of driving each one of them to litigation in course of which the U.O.I. itself is required to spend considerable public money. The applicant was, therefore, not required to approach the respondents for getting the benefits of earlier orders of either of the Apex Court or of the Tribunal.

9. The learned counsel for the respondents took the plea of limitation in course of hearing with great tenacity and fervour and cited the following judicial pronouncements in support of his contention simultaneously praying that the case be dismissed on this basis alone.

- i) 1989(3) JT 530, S.S. Rathore Vs. State of M.P.
- ii) Jgdish Lal & Ors. Vs. State of Haryana & Ors., JT 1997(5) SC 387.
- iii) S.V. Pansukar Vs. Bank of India, 1997 SCC (L&S) 1662; and
- iv) State of Haryana & Ors. Vs. Ajay Walia (Ms.) 1997 SCC (L&S) 1445.

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10. As per respondents the present application is hit by limitation because the applicant should have approached this Tribunal in early 1994 after a passage of 18 months from 5.6.92 or soon after September 1993.

11. We find that the reliance of the learned counsel for the applicants on the judicial pronouncements/orders of the Tribunal are misconceived. The orders in the case of A.K. Khanna can not render any help to the applicant since the fact that the two sets of employees therein were similarly placed in every respect was not denied by the respondents in that case. The present case is different. The respondents have submitted that "it is wrong to allege that the applicant is placed under similar circumstances". The respondents have even denied of having received A-6 representations. It is true in the case of ^{h.c.} Amril Lal Berry (supra) their Lordships held that equality of opportunity in a matter relating to employment implies equal treatment to persons similarly situated or in the same category as the petitioner. But the Apex Court also mentioned that "it does not exclude justifiable discrimination". In other words, it is incumbent upon the Government servant/petitioner to disclose not only the rule said to have been infringed but also how the two sets of circumstances are identical in all respects. As already mentioned, the circumstances are not similar.

12. It will be equally wrong to place reliance in the case of K.C. Sharma (supra). That was the case where their Lordships, in a Constitution Bench, were examining issues pertaining to clubbing of running allowance for the purpose of calculation of average emoluments in determining pension for the "running staff" officials of the Railways who retired as Guards during 1980-1988. In that case, the Full Bench of the Tribunal had given certain reliefs to the petitioners in O.A.No. 395-403 of 1993 decided on 16.12.1993. Similarly placed persons appealed for extension of the same reliefs by filing OA-774/94 which was denied by another Bench of this Tribunal. The Tribunal refused to condone the delay in the filing of the said application i.e. "774/94". The correctness of the decision of the Full Bench of the Tribunal was affirmed by the Apex Court in the case of Chairman, Railway Board & Ors. Vs. C.R. Rengadhamaiyah & Ors., Civil Appeals Nos. 4174-4182 of 1995. It was held by the Apex Court in K.C. Sharma's case that the Tribunal should have also decided the issues on merits instead of the basis of technicalities of limitation. (23)

13. When we go into the merits of the present case, as brought out in paras 4 to 6 aforementioned, we notice contradictions in submissions as well as lack of good grounds for condonation of delays. We are not in doubt that the applicant woke up from the slumber only after A-8 communication dated 29.12.93 whereas the cause

of action had even earlier arisen on 2.7.91 as indirectly admitted by the applicant herself. We, therefore, find some force in the submission of respondents as in para-10 aforementioned.

12. As per the law laid down by the Apex Court in Boop Singh Vs. U.O.I. & Ors., AIR 1992 SC 1414, it has been held that unexplained delay is by itself a good ground to refuse relief to the petitioner, irrespective of the merit of the claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled up promptly. A person cannot be permitted to challenge the termination of his/her service after sufficient period of time, without any cogent explanation for inordinate delays, merely because others similarly dismissed had been reinstated as a result of their earlier petitions having been allowed. We find that the same view has been reiterated ⁱⁿ the decisions of Hon'ble Supreme Court in Jagdish Lal & Ors. Vs. State of Haryana & Ors., JT 1997(5) SC 387; U.O.I. Vs. R.C. Samanta (supra) and Hamsaveni & Ors. vs. State of Tamil Nadu, 1994(6) SCC 51 wherein it has been laid down that long inordinate delay extinguishes right as well as the remedy. The

observations of Lord Camden that:-

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"that the law does not lend its arms to those who have not been vigilant of their rights", has received the approval of highest Court in the Country."

(5) Thus, in Sri Malaprabha Co-Operative Sugar Factory Ltd. Vs. U.O.I. and another, (1994) SCC 648, the Hon'ble Supreme Court has pointed out that no orders should be made without considering the impact of such orders on public administration. We are confronted with a similar situation here.

(6) We find that Section 21(3) of the Administrative Tribunals Act also comes in the way of the applicant's plea in the M.A. for condonation of delays. It stipulates:-

"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.

(7) We have given our due considerations to the pleadings and facts and circumstances of the case and we are not in a position to persuade ourselves to accept the reasons advanced for condonation of delays. The applicant while seeking condonation of the delays has not come out with the

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extenuating circumstances for which the applicant could not agitate the issues earlier. We also find a direct support in respect of our views in the judgement of the Hon'ble Supreme Court in the case of P.K. Ramchandran Vs. State of Kerala & Anr., JT 1997(8) SC 189. It has been held therein that the Court has to record in writing that the explanation offered for the delay was reasonable and satisfactory. This is the pre-requisite for the condonation of delays. After having perused the records, gone through the arguments and details of the facts and circumstances of the case. We find no good reasons, much less convincing ones, that could satisfy us with explanation for the delays offered by the applicant.

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18. In the result, the application is dismissed as it is devoid of merits and as also as hit by limitation. No costs.

S. P. Biswas
(S. P. Biswas)
Member (A)

T. N. Bhat
(T. N. Bhat)
Member (J)

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