

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2362
T.A. No.

1989.

DATE OF DECISION 12. 11. 90

Shri Vishwa Nath Kalia Petitioner

Shri R.L.Sethi, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri M.L.Verma, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member(Administrative)

The Hon'ble Mr. J.P. Sharma, Member(Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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?

MGIPRRND-12 CAT/86-3-12-86-15,000

J.P. Sharma
(J.P. Sharma)
Member(Judl.)

(P.C. Jain)
Member(Admn.)

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Central Administrative Tribunal
Principal Bench: New Delhi.
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Regn.No.OA-2362/89

Date of Decision: 12.11.90

Shri Vishwa Nath Kalia

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

For the applicant

... Shri R.L. Sethi,
Advocate.

For the respondents

... Shri M.L.Verma,
Advocate.

CORAM: HON'BLE SHRI P.C.JAIN, MEMBER(ADMINISTRATIVE)
HON'BLE SHRI J.P.SHARMA, MEMBER(JUDICIAL)

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant, a telephone Operator in Dr. Ram Manohar Lonia Hospital(for short, Dr.R.M.L.Hospital), moved this application under Section 19 of the Administrative Tribunals Act,1985 being aggrieved by non-decision of his representation dated 29.4.1989 by the respondents, wherein he requested for the merger of cadre of Telephone Operator in clerical cadre in accordance with the judgement of the Central Administrative Tribunal in TA.No.713/85 decided on 21.11.1986 (Annexure A-2).

2. The applicant claimed the relief that the cadre of Telephone Operator should be merged in the clerical cadre w.e.f. 1.1.1973 without any test and he be given the special pay of Rs.20/- per month for the period he worked as Telephone Operator. It is further prayed that the respondents should be directed to prepare the seniority list of the Telephone Operator and the clerical cadre based on the continuous length of service and promotion to the post of UDC/Head Clerk/Superintendent be given in turn on the basis of the seniority prepared as said above.

3. The facts are that the applicant joined the service

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as Telephone Operator on 2nd August, 1955 and since then he was in the employment of the respondents and retired this year. Since the date of joining, the applicant has not been granted any promotion. It is stated that it has been held by the Hon'ble Supreme Court that there should be at least one or two avenues of promotion for a Government servant during his career in the service but in spite of that no promotional avenues have been provided and the representation to merge the cadre of telephone Operator in the clerical grade has not been considered favourably by the respondents. It is stated that in the sister Hospital, Lady Hardinge Medical College (for short, L.H.M. College), also under the control of respondent No.1, Principal Bench of the Central Administrative Tribunal in TA-713/85 decided on 21.11.1986 directed respondent No.1 that "the petitioner should be merged in the clerical cadre of L.H.M.C. with effect from 1.1.1973 without any test and given the special pay of Rs.20/- per month with effect from the date so long as he works at Telephone Operator. The respondents should interpolate the petitioner's name in the seniority list of the clerical cadre based on her length of continuous service as Telephone Operator....." The respondents have not adopted this procedure in the case of Dr.R.M.L. Hospital in which the applicant was serving and the present application is moved based on the aforesaid judgement (Annexure A-2).

4. In support of the contention, the applicant has filed the letter by the Chief Administrative Officer, Dr.R.M.L. Hospital, New Delhi to the Principal L.H.M. College (Annexure A-3) and its reply by the Chief Administrative Officer, L.H.M. College to Chief Administrative Officer, Dr.R.M.L. Hospital, New Delhi (Annexure A-4). This correspondence shows that in L.H.M. College, the cadre of Telephone Operator got merged in the clerical cadre and even some of them (T.O.) got promotion to the post of U.D.C. and Head Clerk.

5. The respondents in their reply contested the application. It is said that the applicant has never agitated for merger of his post into clerical cadre and payment of special pay. The recommendations of the 3rd Pay Commission have been accepted by the Government as is evident from the copy of O.M. No.6(15)-E-III(B)/73 dated 20.9.1974 (Annexure R-1). It is further contended in the reply that the Telephone Operators have been retained as a separate cadre due to administrative problems involving their non-functional as well as non-co-equal responsibility in terms of paras 2 and 4 of the above O.M. (Annexure-R-1). The above memorandum, according to the respondents, is an administrative order and it cannot amend or supersede the statutory recruitment rules for the post of Telephone Operators. It is further contended that the application is obviously barred by time. The applicant should have approached the court at the earliest and even the judgement in TA No.713/85 is of November, 1986 while the present application has been filed in 1989. It is further said that the applicant has claimed plural relief in the same application which is barred by Rules 7 and 10 of the Central Administrative Tribunals (Procedure) Rules, 1987. It is further stated that L.H.M. College and Dr.R.M.L. Hospital are two separate units and the rules governing recruitment to various posts have been framed in view of the prevailing circumstances in each of units on the guidelines issued by the Department of Personnel & Training, New Delhi.

6. We have heard the learned counsel for the parties at length and have gone through the records of the case. A preliminary objection has been raised by the learned counsel for the respondents regarding limitation. He has placed reliance on the authority Ranjit Krishan Bhattacharya Vs. Union of India, 1989(3) SLJ CAT 447. In the above case,

the claim of the applicant was dismissed on the point of laches. The applicant claimed benefit on the basis of a circular of 1967 and mentioned that he came to know of it only through a judgement of the Calcutta Bench of the Central Administrative Tribunal and also wanted limitation to run from the date of the said judgement. The Calcutta Bench held that it cannot be said that a circular issued in 1967 was not known to the applicant and further that some other party's case cannot extend limitation for the applicant therein. In the present case, the learned counsel for the applicant argued that the judgement of the Principal Bench in TA-713 of 1985 in the case of Smt. Swaran Baweja Vs. Principal, L.H.M. College and Others covers the claim of the applicant as Smt. Baweja was similarly posted as a Telephone Operator in L.H.M. College while the applicant has been posted as Telephone Operator in Dr.R.M.L. Hospital. The learned counsel for the applicant has claimed the same relief which was allowed to Smt. Swaran Baweja in the above TA. The learned counsel also placed reliance on the authority of A.K. Khanna Vs. Union of India reported in ATR 1988(2) CAT page 518. The Principal Bench held that the benefit of a judgement can be extended even to those who are not a party to the judgement, but are similarly placed as the petitioner therein and not extending similar benefit itself would amount to be a discrimination and violative of Articles 14 and 16 of the Constitution of India. In the present case the conditions of service are regulated by different rules than those which are prevalent in L.H.M. College. Thus, the ratio of that case cannot be applied to the present one.

7. The learned counsel for the respondents also referred to R.S.Minakshi Vs. I.N.Wenon AIR 1982 SC page 101 wherein it has been held by the Hon'ble Supreme Court that the party has to come at the earliest to avoid administrative complexities. In the present case the applicant who has since

retired on 31.10.1990, filed the present application on 20.11.1989 and he wants the benefit of the judgement in TA-713 of 1985 decided on 21.11.1986. The applicant made a representation (Annexure A-1) on 29th April, 1989. Thus, even from the judgement in TA-713 of 1985 which was delivered on 21.11.1986 the applicant has not come within ^{the} prescribed limitation as laid down under Section 21 of the Administrative Tribunals Act, 1985. Further, in R.N. Singhal Vs. Union of India, ATR 1986 Vol. I CAT 28, it has been held that the Tribunal cannot take cognizance of any grievance in respect of an order passed beyond three years next before 1st November 1985. The same view has been taken in Bimla Mukerji Vs. Union of India, 1987(1) ATR page 292 and Dr. Kumari K. Padmawally Vs. Union of India, ATR 1988(2) CAT page 148.

8. Thus, according to the respondents, the present application is hopelessly barred by time and any decision in the matter on merits may entail administrative complexities because the main thrust of the applicant is on the O.M. dated 20th September, 1974 of the Ministry of Finance, Department of Expenditure, wherein it was laid down that outside P & T Department, Telephone Operators may not be retained as a separate cadre but should be merged in the General Clerical Cadres, and in case the retention of a separate cadre is considered necessary by a department for administrative or other reasons, then direct recruitment should be made to the cadre in which case no special pay will be admissible. In the Dr. R.M.L. Hospital the direct recruitment for Telephone Operators is still held and there is no merger of Telephone Operators with clerical cadre.

8. The respondents in their counter have taken a specific plea that due to the administrative exigencies the merger of Telephone Operators in the clerical cadre was not adopted, and the applicant has never been aggrieved by retention of a separate cadre of Telephone Operators.

9. In view of the above discussion, we are of the view

that the applicant cannot be granted the relief prayed for
as the present application^{is}/hopelessly time barred and the
same is dismissed leaving the parties to bear their own costs.

J. P. Sharma

(J.P. Sharma) | 2.11.90.
Member(Judl.)

(P.C. Jain)
12/11/90

(P.C. Jain)
Member(Admn.)