

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A.No.1379/88

DATE OF DECISION

26.7.91

SHRI RADHEY MOHAN SHARMA & Ors. ----- APPLICANTS

VS

UNION OF INDIA & Ors. ----- RESPONDENTS

CORAM

HON'BLE MS.USHA SAVARA, MEMBER (A)

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANTS

SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS

SHRI O.N.MOOLRI, COUNSEL

1. Whether Reporters of local papers may be *Y* allowed to see the Judgment?

2. To be referred to the Reporter or not? *Y*

JUDGMENT

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J))

Radhey Mohan Sharma and six others namely S/Shri P.K.Singh, Tulsi Das, Girija Shankar Tiwari, Uma Kant, Rama Shankar, Arjun Singh and another person Raj Kamal Virli (though these are seven and 8th is Radhey Mohan Sharma) but the application wrongly shows six others filed this joint application under Sec.19 of the Administrative Tribunals Act, 1985 against the verbal order passed by

(FO)

Station Superintendent, Northern Railway terminating the services of the applicant with effect from 19-2-1985 and also the letter dated 21-8-1987 of the Hon'ble Minister of State for Railways. The applicant have claimed the following relief:-

- (a) That this Hon'ble Tribunal may be pleased to quash the impugned orders and direct the respondents to reinstate the applicants in service;
- (b) That this Hon'ble Tribunal may be further pleased to direct the respondent to treat the applicants in service continuously from the date from which they have been discharged and treat the entire period from the date of termination to the date of reinstatement as continuous duty with all the consequential benefits;
- (c) That this Hon'ble Tribunal may be further pleased to direct the respondents to confer temporary status on the applicants as per rules/law and regularise them when they have completed three years' service;

(d) That any other or further relief which this Hon'ble Tribunal may deem fit under the circumstances of the case;

(e) That the cost of these proceedings may be awarded to the applicants.

2. The brief facts of the case are that the applicants were employed as temporary ticket collectors on daily wages rates at the Delhi Railway Station in the year 1983-84 and worked as such till February, 1985. The following chart makes the position clear:-

Radhey Mohan Sharma	17-08-83 to 14-03-84 = 211	481 days
	06-05-84 to 03-08-84 = 90	
	24-08-84 to 19-02-85 = 180	
Pavinder Kumar Saini	17-08-83 to 14-03-84 = 211	296 days
	23-05-84 to 20-08-84 = 59	
	25-01-85 to 19-02-85 = 26	
Tulsi Das	17-08-83 to 14-03-84 = 211	267 days
	30-05-84 to 24-07-84 = 56	
Girija Shankar Tiwari	17-12-83 to 15-03-84 = 120	209 days
	23-05-84 to 20-08-84 = 59	
	24-08-84 to 19-02-85 = 180	
Rama Shankar Singh	28-08-84 to 19-02-85 = 176 days	
Arjun Singh	24-08-84 to 19-02-85 = 180 days	
Raj Kamal Virli	18-08-83 to 14-03-84 = 209 days	

3. From the above chart it is clear that the applicant Tulsi Das did not work after 24-7-1984 and Raj Kamal Virli after 14-3-1984. The applicants have filed relevant dates of their working issued by the respondents agents (Annexure A-4). The applicants stated that their appointment was described by the respondents as on purely temporary basis for a period not exceeding three months but continued after the expiry of the said period. The applicants filed a copy of the letter dated 4-5-1984 (Annexure A-5) in which the name of the applicant Radhey Mohan Sharma only appears and the name of the other applicants did not appear. It is stated by the applicants that they have worked on the daily wages @ 14-00 (according to respondents @ 14.40) per day. The applicants stated that circular dated 12-7-1973 PC-72/R&T/69/3(1) lays down that railway employees who have worked continuously for four months should be treated as temporary and as per circular letter dated 4-6-1984 No.E(NG)II-83/CL/107 directed that all the casual labour having temporary status shall be entitled to all the rights and privileges admissible to temporary railway servant. After the applicants were discharged from service the applicants have sent a number of representations but this fact has been denied by the respondents in para 6.9 in their reply. The applicants also referred to the letter sent by Shri J.P. Aggarwal Member of Parliament to General Manager, Railway, regarding applicant Radhey Mohan Sharma only to be helped accordingly. The applicant also referred a letter sent by Shri Ram Dhan at that time Member, Railway Contention Committee to the Minister for Railways (Annexure A-9) but this letter only refers to one Mr. Satish Chand Singh. It is stated by the applicants that the applicants submitted further representation to the respondents but the respondents in their reply in para 6.9 asserted that no such representation was received in their office. It is also stated that the applicants also

addressed some letters to the Prime Minister of India but the respondents have also denied this fact for want of knowledge. The contention of the applicant is that the order of their discharge from the service is illegal, unconstitutional, arbitrary, discriminatory and void ab-initio.

4. The respondents contested the application and raised a number of objections firstly on the ground that the application is not properly presented. It is stated that the application appears to have been moved by Shri Radhey Mohan Sharma and six others but the memo of parties attached to the application shows the names of 8 persons. It is also stated that all the applicants have not signed the application nor they have verified it. It is also stated that the application has not been verified by all the applicants and it is nowhere stated that Shri Dadhey Mohan Sharma was authorised by other applicants to act on their behalf. It is further stated that the application under rule 4(5) of the Central Administrative Tribunal (Procedure) Rules, 1987 has not been verified by any of the applicants, and is only signed by the advocate. It is further stated by the respondents that the application is barred by time as the impugned order was passed in 1985 while the application has been moved after three years. It is stated that the

applicants were engaged temporarily on daily wages contract basis without proper selection by the competent authority. Selection is made only by passing written and Viva Voce test. In any way, according to the respondents the applicants were engaged for a period of three months. When sanction has been received for a further period, they were again given appointment. It is stated that Sec.25F of the I.O. Act is not applicable to the applicants. The respondents have also stated that no representation as alleged by the applicants has ever been received by them. It is further stated that the applicants have not come with clean hands and have filed copies of representations not actually submitted by them.

5. It is further stated by the learned counsel of the respondents that the application is not properly filed.

In the rejoinder filed by the applicants it is stated that the seven applicants are there but it is wrong narration.

The other point raised in rejoinder is denial of the pleas raised by the respondents in their reply.

6. We have heard the parties at length and have gone through the record of the case. Regarding the point of not exhausting the remedies before coming to the Tribunal there is only one letter (Annexure A-6) written by Shri J.P. Aggarwal, Member of Parliament to General Manager, Railways, Shri Datta requesting him to give necessary help to Shri Radhey Mohan Sharma. The alleged representation dated 15-4-86 (Annexure A-11

and another dated 23-7-1987 are denied to have been received by the respondents. Thus it makes clear that none of the applicants have made any representation when their services were terminated in February, 1985 or in 1984. Moreover in the application itself applicant Shri Tulsi Dass applicant No.3 and Shri Raj Kamal Virli applicant No.4 did not work after 14-3-1984 and 14-7-1984 respectively, so there is no order of 19-2-1985 in their cases. The relief claimed in their cases was to quash the order of verbal termination dated 19-2-1985.

7. The applicants have filed annexures to the application, one letter written to Shri Ram Dhan (Annexure A-7) in July, 1986 by Smt. Mohisina Kidwai but this pertains to only one Mr. Satish Chandar Singh who is not the applicant in this case but was applicant in another O.A.No.1735/87. Another communication dated 3-8-1987 between Shri Ram Dhan Member of Parliament and the Minister of Railways also does not refer to any of the applicants but only refers to Mr. Satish Chandar Singh who is not applicant in this case. (Annexure A-9) The other communication between Ashwani Kumar, Member of Parliament and the Minister of Railways concerned only Mobile booking clerks and did not refer to the applicants at all. It is, therefore evident that the applicants have not made any representation to the respondents before coming to the

16

Tribunal. The representation dated 15-4-1986 (Annexure A-11) does not show, whether it was sent by post or delivered by hand and there is no acknowledgement receipt either of posts or by hand delivery and no such endorsement had been received by the respondents in their office. The other copy of the representation does not bear any date and does not show where it was given on 1-3-1987. Similar is the fate of another representation sent to Prime Minister of India on 23-3-1987. In view of this fact this application is barred under Sec. 200bf the Administrative Tribunals Act, 1985 and in this case the reliance has been placed on the ↗ B.Parmeshwaran Rao vs. Div. Engr, Telecommunications Eluru, 1990 (11) ATLT, CAT 257 (normally the party should exhaust the statutory remedy).

8. An attempt was made by the learned counsel for the applicant to remove the defects by filing another application was but the same moved after the case was reserved for judgment. However the defects in the application cannot be cured because there is no authorisation from all the other applicants in favour of the applicant, Shri Radhey Mohan Sharma. There is no application duly signed by all the applicants under sub-rule (5) of Rule 4 of the Central Administrative Tribunal (Procedure) Rules, 1987. Thus the application is defective and is not maintainable on this account also. The application dated 4-7-1991 moved on 5-7-1991 after close of the case is not an amendment application and is not signed by all the applicants. This application therefore is not in order

and cannot be allowed. The applicants could have moved an application for amendment under sub-rules (6) of rule 12 to remove the defects in the application but they have not done so.

9. The respondents have also challenged the application on the point of limitation. The applicant No.3, Tulsi Das did not work after 24-7-1984 as a voluntary T.T.E. and so also the applicant No.4 Raj Kamal Virli did not work after 14-3-1984. The other applicants did not work after 15-2-1985. They have not filed any application under Sec.5 of Limitation Act nor they have made any other application nor they have filed any copy of the representation which they might have sent to the respondents. They could not explain the reason for coming late to the Tribunal i.e. in July, 1988 i.e. after more than 4 years.

10. The other applicants except applicants No.3&8 ceased to work with the respondent since February, 1985 and they did not come to the Tribunal in time. Except Shri Radhey Mohan Sharma, none of the other applicants have filed any copy of the representation which they have preferred to respondents. They remained silent through out. The representation made by Shri Radhey Mohan Sharma is denied to have been received by the respondents. In the alleged copy of the representation filed by the applicant as Annexure A-11 (collectively) there is no endorsement of receipt of the same by the

respondents nor any postal receipt of registered post has been filed. Thus the cause of action arose to applicant No.3 and 8 in March, 1984 and to other applicants in February, 1985 but they have not come to the Tribunal within time under Sec.21 of the Limitation Act.

11. Sec.21 of the Limitation Act specifically lays down-

21. Limitation-(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Sec.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;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Sec.20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

12. The learned counsel for the applicant is counting limitation from the judgment of Sameer Kumar Mukherjee reported in 1986 A.T.C. Vo.II page 7 but this judgment was delivered on 25th March, 1986 and the applicant of that case filed the application within time before the Tribunal while they were working as T.T.E. Moreover a judgment is irrelevant except that it is binding on the parties to the case. It has been observed in O.A.No.2255/88

decided on 18-7-1991 by Principal Bench (CAT) that only the parties to the judgment are effected by its decision and is irrelevant regarding strangers. The relevant portion is extracted below:-

"Relying on State of Bihar v. Radha Krishna Singh AIR 1983 SC 684 the learned counsel referred to paragraphs 132 and 133 of the said judgment. However, for better appreciation of the observation of their Lordships we also quote paragraph 130 of the said judgment in addition to paragraphs 132 and 133.

"130.... The Privy Council deprecated this practice of relying on judgments which were not inter partes in the sense that a judgment in which neither the plaintiff nor the defendant were parties, and in this connection Lord Russell observed thus:

"The learned President relied on this judgment "as very formidable support to the plaintiff's contention thatthere is likelihood of confusion"; but in their Lordship's opinion he was not entitled to refer to or rely upon a judgment given in proceedings to which neither the plaintiff nor the defendant was a party, as providing the facts stated therein."

(Emphasis supplied)."

131. We entirely agree with the observations made by the Privy Council which flow from a correct interpretation of Sections 40 to 43 of the Evidence Act."

132. Same view was taken by a Full Bench of the Madras High Court in Seethapati Rao Dora v. Venkianna Dora (1922) ILR 45 Mad 332: (AIR 1922 Mad 71) where Kumaraswami Sastri, J. Observed thus:

"I am of opinion that Sec.35 has no application to judgments, and a judgment which would not be admissible under Sections 40 to 43 of the Evidence Act would not become relevant merely because it contains a statement as to a fact which is in issue

or relevant in a suit between persons who are not parties or privies. Sections 40 to 44 of the Evidence Act deal with the relevancy of judgments in Courts of justice."

133. The cumulative effect of the decisions cited above on this point clearly is that under the Evidence Act a judgment which is not inter partes is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the decree passed and the properties which were the subject matter of the suit. In these circumstances, therefore, it is not open to the plaintiffs-respondents to derive any support from some of the judgments which they have filed in order to support their title and relationship in which neither the plaintiffs nor the defendants were parties. Indeed, if the judgments are used for the limited purpose mentioned above, they do not take us anywhere so as to prove the plaintiffs' case."

12. The learned counsel for the applicant has laid more stress on the fact that the Helpers T.T.E. were given the advantage in Samir Kumar Mukherjee's case (supra). However, the fact remains that the applicants have filed this present application in July, 1988 and as discussed above, they did not make any representation whatsoever to the authorities except one Shri Radhey Mohan Sharma who is applicant No.1. Radhey Mohan Sharma, too did not file any convincing proof of having made a representation to the respondents. In any case, the first representation was made by Radhey Mohan Sharma as per the copy of the said representation filed (Annexure A-11 collectively). He should have come to the

Tribunal one year after that. Even the judgment of Samir Kumar Mukherjee was delivered in 1986 but that will not give any cause of action to the applicant. In O.A.1614/89 decided on 1-7-1991 by the Principal Bench (CAT) the Hon'ble Chairman observed: "The question whether the decision of the Tribunal in case of some other person similarly situate would give rise to cause of action is extremely doubtful". The case of Satish Chand Singh, which we have already decided (O.A.No.1735/87) the applicants of that case had been representing to the respondents and through Members of Parliament, to the Minister of State for Railways, and the Hon'ble Minister of that State turned down the representations of the applicants of that case by a letter dated 4-8-1987. The applicants of this present case have also filed the copy of that letter (Annexure A-1) but that does not refer to any of the applicants in the present O.A. Thus the applicant cannot get any advantage of rejection of that representation of Satish Chand Singh. It is to be remembered that no iota of evidence has been filed by the present applicants to convince us on the point of having made representations individually or collectively for redress of their grievances of termination of service of the applicants on 19-2-1985 excepting those of applicants 3 and 8 whose services were terminated in March, 1984.

13. In the case of Satish Chand Singh (O.A.No.1735/87) we have considered the case also on merits after condoning the delay on the ratio of the case of Sandhya Rani Sarkar Vs. Sudha Rani (1978) 2 SCC P-116. However, in that case, the applicants' representation was turned down on 21.8.87. Thus, the present case is totally different from that of OA No. 1735/87, though in both the applications, the applicants sought the same relief. The applicants desired to take advantage of the representation of Satish Kumar Singh by filing various copies of the representations which Satish Kumar Singh had preferred through some Members of Parliament (Annexure A-6), but the applicants of the present case cannot take an advantage of that. In view of this, we find that the application is grossly barred by limitation and we rely on the judgement of S.S.Rathore Vs. Union of India reported in AIR 1990 SC p-10 as well as B.S.Raghavan Vs. Secretary, Ministry of Defence (1987(3) ATC P-602). Thus, on no account, is there any reason to come to a finding that the present application

23

is not barred by Sec.21(1) of the Administrative Tribunals Act, 1985 and the preliminary objection taken by the learned counsel for the respondent prevails.

15. In view of the above discussion, we are of the opinion that the application has not been properly filed and verified and is also in breach of sub-rule (5) of Rule 4 of the Administrative Tribunals Act (Procedure) Rules, 1987 and has been filed without exhausting the remedies under Sec.20 of the Administrative Tribunals Act, 1985 and is also hit by Sec.21 (1) of the Administrative Tribunals Act, 1985) and is, therefore, dismissed, leaving the parties to bear their own costs. However, the applicants shall be at liberty to make representation to the authorities.

J. P. Sharma
(J.P. SHARMA) 26.7.91

MEMBER (J)

Usha Savara
(USHA SAVARA)

MEMBER (A)