

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 131
T.A. No.

19890.

DATE OF DECISION 12. 11. 90

Shri Gopi Chand 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)

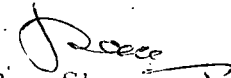
CORAM

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)
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-131/1990

Date of Decision: 12.11.90

Shri Gopi Chand

... 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 (Judl.).

JUDGEMENT

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

The applicant, a telephone Clerk/Operator in Dr.Ram Manohar Lohia 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 (T.O.) in clerical cadre in accordance with the judgement of the Central Administrative Tribunal in TA-713/85 decided on 21.11.1986 (Annexure A-2).

2. The applicant claimed the relief that he be allowed all the benefits granted to the applicant (who is similarly placed) in TA 713 of 1985 decided on 21.11.1986.

3. The applicant was appointed as Telephone Clerk/Operator on 14.11.1960 and since his date of joining he has not been granted any promotion whatsoever. Some of the colleagues in Lady Hardinge Medical College (for short, L.H.M. College), filed a writ petition No.1221/81 before the Hon'ble High Court of Delhi which stood transferred to the Tribunal and registered as TA-713 of 1985 and that was decided on 21.11.1986 by the Judgement (Annexure-II) wherein the following directions were issued:

"And direct that the petitioner should be merged
in the clerical cadre of LHM with effect from

1.1.1973 without any test and given the special pay of Rs.20/- with effect from the date so long as she works as 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 to....."

It is stated by the applicant that L.H.M College and Dr. R.M.L. Hospital both being sister hospital under the same employer, respondent No.1, it was expected that the benefit of the above judgement would be extended to the similarly placed employees in all the hospitals under the jurisdiction of respondent No.1 so that there was no arbitrariness or discrimination. Chief Administrative Officer The/L.H.M. College and Smt. S.K. Hospital, New Delhi by the Memo dated 26th July, 1989 (Annexure A-4), informed the Chief Administrative Officer, Dr. R.M.L. Hospital that the seniority of the Telephone Operators have been merged in the clerical cadre in this institution on the basis of the decision given by the Central Administrative Tribunal. The case of the applicant, therefore, is that he be also given the advantage of merger in view of the judgement given in TA-713/85 (Annexure A-2).

4. The decision of TA-713 of 1985 is dated 21.11.1986 and the present application has been filed by the applicant on 23.1.1990. The representation was made by the applicant (Annexure A-1) on 29.4.1989.

5. The respondents have contested the application and pointed out that the decision of TA-713 of 1985 was the judgement in personam and in any case the applicant has filed the present application beyond limitation. The relief claimed by the applicant is in view of the recommendations of the 3rd Pay Commission O.M. No.6(15)-E-III(B)/73 dated 20.9.1974 (Annexure B-1) and also on the basis of the decision of the Central Administrative Tribunal in TA-713/85 dated 21.11.1986. The applicant did not file any application for condonation of delay.

6. Shri Vishwa Nath Kalia, a Telephone Operator in Dr. R. M. L. Hospital also filed a similar application OA-2362/89 and that application has ^{been} decided today in which the applicant has been dismissed being barred by limitation. The facts of the present application are also the same.

7. 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 51. 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.

8. The learned counsel for the respondents also referred to R.S. Minakshi Vs. I.N. Menon 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 been in service, filed the present application on 23.1.1990, 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) 12.11.90.
Member (Judl.)

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