

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

15-9-92

DA 1753/92

15.09.1992

Shri Anil Sharma
vs.
Union of India & Anr.

...Applicant
...Respondents

CORAM :

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant ...Shri O.P.Gupta, Counsel
For the Respondents ...Shri R.Santhanakrishnan,
Proxy Counsel for
Shri S.Uday Kumar Sagar,
Counsel

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

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

The applicant, Shri Anil Sharma, working as Senior Clerk under the General Manager, Northern Railway, New Delhi, is aggrieved by the non implementation of the Railway Board's Circular dt. 18.6.1981 read with Headquarter office's letter dt. 25.6.1982 annexed as Annexures A and B to the application. The case of the applicant is that he should be given the benefit of that circular and there are a catina of judgements in which the benefit has already been given to similarly situated employees, i.e., Graduate Clerks. But the benefit has been denied to the applicant on the ground that he was not one of the parties in those decided cases. The learned counsel for the applicant has particularly referred to the case of Bipin Kumar Jha vs. General Manager (DA 383/88)

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decided on 3.4.1992 and Lal Chand Mishra & Ors. Vs. Union of India & Ors. (OA 1039/90) decided on 14.2.1992. The photocopies of the judgements have been filed as annexures to the application. Before coming to this Tribunal, the applicant appears to have made certain representations to the Union sometimes in 1989 and that has gone before the P.M.H. for consideration, as is evident by Annexure E filed alongwith the application. When this matter was not ~~heeded~~ to by the respondents, the applicant also made further representations in April and May, 1992, enclosed as Annexures F to H to the application. The respondents, however, did not give any benefit of the said circular dt. 18.6.1981. Hence the present application has been filed on 17.7.1992 on which the notices were issued to the respondents for 3.9.1992 and after the service has been effected, Shri S.Uday Kumar Saqar appeared for the respondents on the date fixed and prayed for time. The reply has not been filed even today, i.e., the adjourned date fixed for admission/hearing. The learned counsel for the applicant argued that this is a matter fully covered by the earlier judgements of the Tribunal and what is required in this case is that only the circular of the Railway Board dt. 18.6.1981 be implemented in the case of the applicant and it shall be discriminatory as well as arbitrary if the juniors to the applicant are given that benefit in supersession of the case of the applicant.

The circular of 1981 ~~probably~~ lays down that 13-1/3%

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of the total posts of Senior Clerks in the pay scale of Rs.330-560 will be filled from amongst the graduate clerks already serving in the earlier grades after allowing them the age relaxation already in force. These vacancies will be filled by competitive examination, to be held by the Railway Service Commission. In the event of graduate clerks not being available from among the serving employees to fill this quota, the residual vacancies will be filled by direct recruitment through the Railway Service Commission over and above the 20% quota referred to in the earlier part of the circular. That lays down that there shall be direct recruitment of graduates to the post of Senior Clerks in the pay scale of Rs.330-560 to the extent of 20% of the total strength. The direct recruitment will be made through the Railway Service Commission. However, these orders will take effect from 1.10.1980. No arrears shall be payable on this amount. The pay of an employee appointed to the upgraded post may be fixed proforma from 1.10.1980, but the actual payment of emoluments in the higher post should be allowed only from the date he takes over charge of the upgraded post.

The case of the applicant is that he has been duly promoted according to the said circular on 7.10.1985 and took charge of the post of Senior Clerk, but he has not been given the benefit of the scale as per the said circular dt. 18.6.1981.

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The learned counsel has also referred to the authority of Satish Kumar & Ors. Vs. U.P.S.C. & Ors., reported in ATR 1986(2) 427 where it has been laid down that the persons who are similarly situated may also be given the benefit of a judgement by a model employer like Union of India.

However, the question here is that the applicant has not come at the proper time. Even in service matter, one has to come for the redress of his grievance within the period of limitation prescribed. Judgements inter parties do not extend the period of limitation, though imposes an obligation on the respondents to give benefit to similarly situated employees in the same grade and in the same service. The respondents, however, cannot take the excuse that the applicant was not a party because they have given the benefit by implementing the same judgement to the juniors to the applicant. In that case, the action of the respondents shall be arbitrary as well as discriminatory and violative of the inherent right of the employee of ~~being punished~~ to get equal pay without an enquiry by getting lesser emoluments than his juniors.

In view of this fact, since it is a recurring cause of action available to the applicant, the hurdle of limitation will not arise. The limitation in this case is not extended by virtue of the judgements in similarly situated persons, but because of the fact that every time the applicant is getting lesser pay than his juniors and so recurring cause of action

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has commenced in his favour on promotion as Senior Clerk since 7.10.1985. In the case of P.L. Shah vs. Union of India,

in which the matter of withholding of the ~~suspension~~ allowance of an employee was involved, the Hon'ble Supreme Court, of course, to some extent approved the judgement of the Tribunal, but remanded the matter on the ground that so much of the amount which falls within the ~~considered~~ period of limitation, that may be ~~allowed to the applicant~~ through

In the present case, the applicant has made representation to the ~~organisation~~ ^{union} in 1989 and that representation has been disposed of by the impugned order dt. 25.6.1992. The applicant can claim, therefore, the benefit of three years prior to the representation by the Union, i.e., from 1986 and not from 17.10.1985.

The respondents have not contested this application for the reasons best known to them and they did not care to file the written reply to the various averments made in the application, which stood unrebutted. May be because the case is covered by other judgements passed in similar cases by the Tribunal in its various Benches all over India.

In view of the present facts and circumstances, the application is partly allowed and disposed of with the direction to the respondents to give the benefit of the

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circular dt. 18.6.1981 to the applicant by fixing a proforma notional pay in the grade of Rs.330-560 w.e.f. 1.10.1980. But the actual payments on the basis of proforma fixation shall be paid to him from 7.10.1986, i.e., one year after his promotion to the post of Senior Clerk. In the circumstances, the parties shall bear their own costs.

J. P. Sharma, 15.9.92
(J.P. SHARMA)
MEMBER (J)
15.09.1992