

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1679 of 1993

New Delhi this the 24th day of September, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

(17)

Shri Vinod Kumar Sharma
S/o Late Shri B.R. Sharma
Quarter No. Z-573, Timarpur,
Delhi-110 054.

... Applicant

By Advocate Shri S.M. Rattanpaul.

Versus

1. Union of India through the Secretary,
Department of Personnel & Training,
Ministry of Personnel, Pension and
Public Grievances,
North Block,
New Delhi.
2. The Secretary,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi.
3. The Director/Deputy Secretary (Admn.),
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi.
4. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
5. The Deputy Secretary (Establishment),
Ministry of Defence,
C-II, Hutmants,
Dalhouse Road,
New Delhi.

... Respondents

Shri P.H. Ramchandani, Sr. Counsel for the respondents.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant was a Puncher under the respondents and on the basis of his application to Clerks Grade Examination of 1981-82 (for Group 'D' staff) conducted by the Staff Selection Commission which was duly forwarded by

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the respondents, he was declared successful in the said examination. The Department of Personnel, namely, respondent No.1 thereupon duly nominated him for appointment as Lower Division Clerk in the Ministry of Labour and Rehabilitation, Department of Labour and he joined the said post w.e.f. 5.12.1983. When the proposal for fixation of pay in the cadre of LDC was referred to respondent No.1, it was detected by them that he was not eligible to appear in the aforesaid examination as he was already Group 'C' official working as Puncher in the Ministry of Defence. Thereupon, respondent No.1 directed his parent department to revert him to his original post of Puncher and accordingly, the applicant was reverted and he joined back as Puncher on 31.5.1985. Another junior official to the applicant by name Shri Lila Dhar was also similarly situated and he was also after being appointed as LDC in the Ministry of Defence, suffered the same fate and he was also duly reverted to his original post of Puncher. Shri Lila Dhar approached the Tribunal against his reversion. The Tribunal allowed his application and directed the respondents to reinstate him as Lower Division Clerk which was complied with by the respondents and he was duly reinstated by their order of 9.7.1992. In the light of the relief given to Shri Lila Dhar in compliance with the judgment of the Tribunal, applicant also prays that he is similarly situated as Shri Leela Dhar and is also entitled to be covered by the benefits of the judgment and has, therefore, prayed for a direction to the respondents to reinstate him as LDC with effect from the same date from which Shri Lila Dhar, his junior

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was reinstated with all the consequential benefits. (9)

2. The main ground taken by the applicant is that the respondents having recommended his application to the aforesaid examination and he having been successful in the said examination and consequently got nominated to the post of LDC, cannot revert him in violation of the principles of natural justice and he was reverted without any show cause notice and without providing him opportunity to make his submissions against reversion.

3. The respondents main contention in the reply is that the mere fact that his application was forwarded and accepted by the Staff Selection Commission and that he had qualified in the examination, did not ipso facto confer claim for appointment on him, if it was found at a later stage that he was not eligible to appear at the examination. They assert that his selection for appointment was ab initio null and void. They also aver that if the appointment was continued in favour of the applicant as LDC, it would have resulted in the quota reserved for Group 'D' being reduced adversely affecting the promotional avenues of the deserving Group 'D' employees. They also submit that it was not as though the applicant does not have any promotional avenue in the department as he could be promoted to higher post in Group 'C' like Assistant Supervisor, Store Keeper etc. Respondents also assert that the order of the Tribunal in favour of Shri Lila Dhar was an order in personam and is not applicable to the applicant.

4. We have heard the learned counsel for the parties and have perused the record.

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5. The applicant was reverted by the respondents order dated 29.1.1985 and he had filed this application on 16th August, 1993. Even his representation against the reversion was made only in November, 1992 after judgment of the Tribunal in Lila Dhar's case became available in May, 1992. Shri Lila Dhar had, in fact, challenged his reversion in the Civil Court of Senior Sub Judge as early as in August, 1985 itself which was transferred to the Tribunal after it was constituted. The applicant apparently had accepted his reversion from 1985 to 1993 and had not challenged the order of reversion in any judicial forum till the outcome of the case filed by Shri Lila Dhar. The delay and laches in pursuing his legal remedy cannot be overlooked.

6. The learned counsel for the applicant relied on a few decisions of the Apex Court and Tribunal in support of his contention that the benefit of the judgment in Lila Dhar's case should be extended to the applicant also. We have seen the decision in Civil Appeal No. arising out of SLP (C) No. 11126 of 1995 in **Shiv Charan Lal and Others Vs. Union of India and Others**. In that case, the Apex Court noted from the judgment of Santok Singh and Others Vs. U.O.I. that the applicants therein were given the same benefit as was given to the parties in the judgment of M.P. High Court relied upon by him and accordingly extended same benefits to the appellants before the Apex

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Court. This was a specific direction in that particular case and has no general application. Counsel also referred to the decision in **Collector of Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, AIR 1987 SC 1353** to stress that a liberal approach has to be adopted in the matter of treatment to be accorded to litigants who are similarly placed if necessary and for this purpose there should be no presumption that delay in seeking relief is not, occasioned deliberately or on account of culpable negligence or on account of mala fides. In the aforesaid case, the Apex Court was satisfied that there was sufficient cause for delay in claiming relief in the particular case. In the instant case, the applicant though reverted in 1985 filed this application only in 1993 and till that time, he had no cause for grievance but only when the case was decided in Lila Dhar's favour, he choose to bring up the matter before the judicial forum although nothing prevented him from agitating his grievance when he was reverted initially when he had the right to do so. In consonance with the ratio of the Apex Court's decision in the case of **R.C. Sammanta and Others Vs. U.O.I. & Others, JT 1993 (3) SC 418**, the Government servant who sleeps over his rights including the right to legal remedy, loses the right as well. The learned counsel for the respondents on the other hand submits that where there is a declaration of law by the court, it can be applied uniformly to others and has submitted that in the case of Lila Dhar, however, the judgment of the Tribunal does not declare any law and does not, therefore, give rise to a cause of action for

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the applicant. We are inclined to agree with this view as, in Lila Dhar's case (Supra), the Tribunal taking into account the facts and circumstances of the case including the fact that Lila Dhar was reverted ~~was reverted~~ retrospectively and also the fact that there was also considerable delay of 7 years in deciding this case which was originally filed in the Civil Court and was transferred to the Tribunal gave the relief to the applicant by ordering his reinstatement. In the circumstances, we are of the view that the judgment in Lila Dhar's case does not give rise to a cause of action for the applicant so belatedly.

7. In the light of the above discussion, we do not find sufficient ground to interfere with the impugned orders of the respondents. The application is, therefore, dismissed but without any order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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