

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2110/93
T.A. No.

199

DATE OF DECISION 15.10.93

Shri Ashish Chakraborty

Petitioner

Shri Anis Suhrawardy

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

None

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. B.K. Singh, Member (A)

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?

JUDGEMENT

(of the Bench delivered by Hon'ble
Mr. J.P. Sharma, Member)

The applicant alleged that he was engaged as Mobile Booking Clerk (M.B.C.) from 1.6.1985 to 15.7.1985 in the office of Assistant Commercial Officer (Reservation), New Delhi. He has not been engaged thereafter. He made a representation on May 28, 1992 and August, 1992 for the first time to D.R.M., Northern Railway, New Delhi, stating that he has worked for 32 days in the 1985 and in view of the circular of the Railway Board No.E(NG)/II/86/RC-3/87,

dated 31.5.1992 he be also considered for absorption as M.B.C. The applicant was informed by the letter dated 17.9.1993 that the competent authority considered his request dated 1.9.1993 for re-engagement as M.B.C., but he could not be absorbed in terms of the letter dated 12.8.1992.

2. The applicant has prayed for the grant of relief that the respondents be directed to immediately absorb him on the post of M.B.C. on which he was working prior to the date of discharge and the impugned order dated 17.9.1993 be quashed.

3. We have heard the learned counsel for the applicant on admission. The learned counsel has argued that in view of the judgement of the Tribunal as well as of the Hon'ble Supreme Court, the applicant is entitled to the relief prayed for. That is the only ground taken in the application. The judgement of the Tribunal in a bunch of cases in OA-896/88 (Shri Mahinder Kumar Vs. Union of India & Ors.) decided on 4.6.1990, and 16 other O.As. do not help the case of the applicant at all. The services of the petitioners of those cases who were working as MBCs, were terminated in view of the discontinuance of the scheme by the Zonal Railways as a result of Board's letter of 17.11.1986. The case of the applicant is not covered by the aforesaid discontinuance of the scheme by the Board's letter referred

to above. The learned counsel for the applicant has relied on the judgement of the Principal Bench in a bunch of cases delivered on 4.6.1990 referred to above, but that case only covers those petitioners who had worked for varying periods when their services were sought to be terminated under the aforesaid Board's letter of 17.11.1986 and actually the services were terminated by a telegram dated 15.12.1986 which reads as "All Mobile Booking Clerks working as yards, should be discharged forthwith as desired by the Board." It shall be relevant to refer to the policy of the Railway Board for initiation of the scheme for employment of volunteers from amongst the student sons/daughters and dependents of Railway employees during the period for peak rush hours on the pattern obtaining on some Railways, in consultation with their respective F.A. & D.A.D. This scheme was later decided to be discontinued on 14.8.1981. The Railway Board, however, on reconsideration of the matter, by the circular dated 21.4.1982, decided to absorb these MBCs against regular vacancies subject to the condition referred to therein. The Railway Board further issued a circular on April 20, 1985 that volunteers/MBCs engaged prior to 14.8.1981 and who have since completed three years' service, be also considered for regular absorption against regular vacancies on the same terms and conditions

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as stipulated in the circular dated 21.4.1982. Thus, the applicant does not fall in any of the categories to get the benefit of the judgement of the Principal Bench referred to above, decided on 4.6.1990.

4. The learned counsel also referred to the circular of the Railway Board dated February 6, 1990 (p.3), but this circular also does not apply to the applicant as in para.3 of the said circular, it is specifically stated that it applies to only those MBCs who were discharged consequent upon discontinuance of the scheme by the Zonal Railway as a result of Board's letter dated 17.11.86.

5. The respondents, in their reply to the applicant, have clearly informed him by the letter dated 17.9.1993 that the case of the applicant is not covered in terms of the office letter dated 12.8.1992.

6. We have given a careful consideration to all aspects of the matter. The grievance of the applicant has arisen when he was discharged as M.B.C. in July, 1985, after working only for 32 days. The applicant at that time should have assailed the matter in the competent forum and cannot wait for 8 years on the basis of certain decisions in particular cases. In accordance with Rule 2318 of the I.R.E.M., Casual Labourers are given temporary status after working for four months and on this basis, those MBCs who have worked for this period, were also

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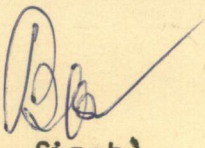
conferred the temporary status and this has also been observed in para. 14 of the judgement of the bunch of cases decided by the Principal Bench on 14.6.1990. Now, whether a person can come any time for redressal of his grievance, or he should approach within limitation, has been clearly held in a number of cases that even in service matters, one has to approach for judicial review of his grievance within the period of limitation. In July, 1985, the applicant was free to approach the competent forum, as at that time, the Central Administrative Tribunal had not been constituted. Even after the enforcement of A.T. Act, 1985, when the Benches of C.A.T. had been established, the applicant did not pursue the matter for redressal of his grievance. In the case of State of Punjab Vs. Gurdev Singh reported in 1991 (4) SCC 1, the Hon'ble Supreme Court held that the party aggrieved by an order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation since after the expiry of the statutory limit, the Court cannot give the declaration sought for. In the case of S.S. Rathore Vs. State of M.P., AIR 1990 S.C. 10, the Hon'ble Supreme Court also considered this matter of limitation under Section 21 of the A.T. Act, 1985 and held that the party

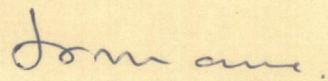
has to approach within the limitation prescribed of one year and if a statutory representation has been made, waiting for six months for the reply and then within one year thereafter. The judgement in any other case, does not give a fresh cause of action, as has been held by the Hon'ble Supreme Court in the case of Bhoop Singh Vs. Union of India reported in 'Judgement Today', 1992(3) S.C. 322.

7. Recently, the Hon'ble Supreme Court has considered the matter of limitation in the case of casual labourers in the Railways. In the case of Ratam Chand Sammanta and Others Vs. Union of India & Ors. reported in J.T., 1993 (3) S.C. 418, the Hon'ble Supreme Court held in para. 6 of the report at page 422, as follows:-

".....A writ is issued by this Court in favour of a person who has some right. And not for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well."

8. In view of the above facts and circumstances, the applicant has no prima facie case and the application, therefore, is not admitted as barred by limitation and is dismissed at the admission stage itself.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)