

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

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Original Application No. 166 of 1996

this the 21st day of March, 1996.

HON'BLE MR D.C. VERMA, JUDICIAL MEMBER
HON'BLE MR D.S. BAWEJA, ADMN. MEMBER

Nand Lal Shukla, S/o Sri Jai Shree Shukla, R/o
Village Langari, P.O. Lehani, Via Bodarwar,
District Padrauna

Applicant

By Advocate : Sri B. Tiwari

Versus

Union of India through Secretary, Ministry of Railway,
Government of India, New Delhi.

2. General Manager, North Eastern Railway, Gorakhpur.

Respondents

By Advocate : Sri Prashant Mathur

O R D E R

D.C. VERMA, MEMBER(J)

Nand Lal Shukla has filed this O.A. for appointment upon concession basis under the railway being son of an employee, who did not participate during the strike held in May, 1974.

2. The facts of the case in brief is that Sri Jai Shree Shukla father of the applicant was a

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railway employee. In May 1974 a tool down strike was declared by all the railway Unions and its members in respect of their demand. The said strike continued for a long period. The department issued orders to provide concession in the appointment to the children of the railway employee, who have not participated in the railway strike. Father of the applicant had declined to participate in the strike and worked successfully till his date of superannuation, as Head Cook, on 30.9.1986. The applicant whose date of birth is 3.12.1966 has claimed appointment on the basis of the concession granted by the department.

3. The applicant made an application to the respondents for appointment on the basis of concession granted in the year 1974. A copy of the application, undated, has been annexed as Annexure -3 to the O.A. In para 4.9 of the O.A., it is, however, mentioned that the application is dated 4.5.1995. From the contents of the application, it appears that no representation prior to this (Annexure-3) was sent. Annexure-3 was sent on the basis of an order of this Tribunal passed on 20.1.1994 in O.A. No. 1383 of 1993 Rajesh Kumar Khanna & others Vs. Union of India & others. A copy of the said order is annexed as Annexure-5. Another representation (copy Annexure-4) was sent on 14.8.1995. Copy of the standing order of the department to provide concession in the appointment to the children of the railway employee has not been annexed.

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4. On perusal of the records, we are of the view that this O.A. can be disposed of at the admission stage itself.

5. We have heard the learned counsel appearing on behalf of the applicant. The concession for appointment to dependents of loyal workers was granted in May 1974. Thus, the cause of action arose in 1974. The father of the applicant retired from service on 30.9.1986. If the concession was granted in the year 1974, the benefit should have been claimed as per the provisions then applicable. Unless it is shown that the cause of action is still alive and is in nature of recurring cause of action, the applicant's grievance by this highly belated O.A. cannot be considered. This O.A. has been filed 22 years after the accrual of cause of action. This O.A. is, therefore, barred by time. This long delay has not been explained by the applicant.

6. In the case of Bhoop Singh Vs. Union of India (AIR 1992 SC 1414) services of personnel of department of Armed Police, who participated in a mass agitation were terminated in the year 1967. Some were given appointment by the government and afterwards some were granted relief by various courts. Bhoop Singh filed a case before the Tribunal in the year 1989 on the basis that persons similarly situate have been already given appointment by orders of courts. The Hon'ble Supreme Court rejecting the claim of the applicant therein observed that :

"No attempt has been made by the petitioner to explain, why he choose to be silent, why

for so long, if he too was interested in being reinstated and had not abandoned his claim, if any. If the petitioner's contention is upheld that lapse of any length of time is of no consequence in the case it would mean that any such police constable can choose to wait even till he attain the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground. That would be a startling proposition. In our opinion, this can not be the true import of Art.14 or the requirement of the principle of non-discrimination embodied therein, ~~xxxxxxxxxxxxxx~~, which is the foundation of petitioner's case."

The principle laid down in Bhoop Singh's case is fully applicable in the present case.

7. In the case of Union of India Vs. Harnam Singh (1993 SCC (L&S) 381) the Honible Supreme Court held "the law of limitation may operate harshly but it has to be applied with all its rigour" and the courts or Tribunals cannot come to the aid of those, who sleep over their right, and allow the period of limitation to expire----".

8. In the case of Ex-Captain Harish Uppal Vs. Union of India (1994 (2) SLJ 177) SC) the apex court has held that it is well settled policy of law that parties should agitate their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India.

9. For the O.A.s before the Tribunal limitation period is given under section 21 (1) (a) & (b) of the Administrative Tribunals Act(in short the Act)

This provides one year limitation in the case where a final order has been passed but where a representation has been made on expiry of six months without such final order having been made but within one year from the date of expiry of the said period of 6 months. Thus, under section 21 of the Act, the Tribunal shall not admit the application unless the application is within the time period prescribed under section 21 (1) or as per 21 (3), the applicant satisfies the Tribunal that he had sufficient cause for not making application within such period. If no cause for delay is shown, benefit of this provision section 21 (3) would not be applicable. In view of the provision under section 21(1) of the Act, the O.A. is highly barred by time.

10. Besides the above the Tribunal cannot admit an application under section 21 (2) of the Act, if the cause of action has arisen 3 years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal has become exercisable under the Administrative Tribunals Act in respect of matter to which such orders relate. The Act received assent of the President on 27th February, 1985 and in pursuance of the provisions ^{of the} ~~of~~ ^{Act,} Benches of the C.A.T. was established on 1.11.1985. As is apparent from the facts in the O.A., no proceeding for the redressal of grievance had been commenced before any Forum prior to the said date. Thus, the Tribunal cannot admit this application for a grievance which accrued to the applicant in the year 1974.

11. The learned counsel ~~has~~ submitted that the respondents be directed to consider and dispose of the representation by a reasoned and speaking order

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as was done in the case of Rakesh Kumar Khanna (supra).

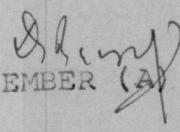
12. The learned counsel for the respondents has filed a copy of the judgment given by Allahabad Bench of the Tribunal in O.A. No. 1096/95 Virendra Vs. Union of India & others decided on 1.11.95. In this case also, appointment on loyal quota basis was claimed but the Tribunal rejected the claim on the point of limitation by observing "even if the railways had given any assurance in this regard, such assurance cannot be an open ended one. The applicant can hardly be allowed to seek the benefit of assurance given in 1974 by filing a representation only in 1991. Even otherwise the case is time barred as the representation was admittedly made in 1991 and subsequent representations cannot extend the period of limitation."

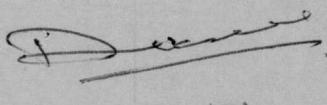
13. In the other case referred by learned counsel for the respondents & decided by Principal Bench of the Tribunal on 8.2.95 in O.A. No. 258/94 Pramod Kumar Sharma & others Vs. Union of India & others; the claim of the applicant for appointment on loyal quota basis was rejected. Before the Principal Bench, the judgment passed by Allahabad Bench of the Tribunal on 21.1.94 was also referred. The Principal Bench, however, held "application is not maintainable and there is no case at all for admitting the application or to issue any direction to the respondents."

14. The relief in the O.A. is for a direction to the respondents to provide appointment on concession basis under the railways. This O.A. for the said relief is barred by limitation. As

the Tribunal cannot admit the O.A. for the main relief, no direction for disposing of the representation can be given.

15. In view of the foregoing discussions, we are of the view that the O.A. is highly time barred and cannot be admitted. It is, therefore, rejected. No costs.


MEMBER (A)
GIRISH/-


MEMBER (J)