

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 19/15 day of May 2011

Original Application No. 1446 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

**Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)**

1. Anil Kumar Singh Son of late Sita Ram Singh Resident of House No.186, Manas Nagar Colony, Near Manas Convent School, District Mughalsarai.
2. Rama Shankar Pathak Son of late P.N. Pathak Resident of 435/AB, Indian Institute Colony, District Mughalsarai.

..... **Applicants**

By Adv. : Shri S.N. Gupta

V E R S U S

1. Union of India through the Secretary, Ministry of Railway's Board, Rafi Marg, New Delhi.
2. General Manager, Eastern Railway, Head Quarter Officer Fairle Place, Calcutta Now East Central Railways Hajipur.
3. Chief Personnel Officer, Eastern Railway Head Quarter Officer, Fairle Place, Calcutta now East Central Railway, Hajipur.
4. Chief Commercial Supdt. Eastern Railway Head Quarter Officer, fairle Place, Calcutta now East Central Railway, Hajipur.
5. Divisional Railway Manager Officer, Eastern Railway now East Central Railway, District Mughalsarai (U.P.)

..... **Respondents**

By Adv. : Shri P.N. Rai

K

O R D E R

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)

1. The applicants' succeeding in this case is only on their crossing the following two hurdles:-
 - (a) Limitation, for which the applicant had preferred an application for condonation of delay vide MA No. 4976 of 2009 (filed much after the filing of the O.A.).
 - (b) Contention of the respondents that the applicants had failed in the screening test conducted as early as in 1984 and as such, they cannot be considered for regularization.
2. As regards (a) above, the applicants contend that they could know about the Railway Board circular of 06-02-1990 (Annexure A-2) only in December, 2004 and the decision of the Apex court in the case of P.K. Srivastava (Annexure A-6) supporting the case of the applicants the applicants have approached the Tribunal. Thus, the delay is not intentional.
3. The above MA. No. 4976 of 2009 in unequivocal term states that "*the applicant has come to know through the judgment of this Hon'ble Tribunal passed in O.A. No. 464 of 1997 on 22.12.2004 that a circular dated 6/2/1990 has already been issued by the Railway Board stating therein that the candidate may be re-engaged as Mobile Booking clerk as and when they approach the*

Railway Administration for their engagement.” The applicants have further stated in para 6 of the M.A. “immediately thereafter on 22.12.2004 the applicants sent a representation along with the Railway Board circular dated 17.11.1991....”

4. If the above fact is taken on its face value, perhaps, there could be some justification in their delay in filing the O.A. In other words, had the applicants got the knowledge of the existence of order dated 06-02-1990 only on 22-12-2004, there may be some justification in the delay in filing the O.A. But the OA gives an impression that the applicants had the knowledge about the said order of 06-02-1990 much earlier. First, they had never indicated in the OA that they came to know of the letter dated 06-02-1990 only on 22-12-2004. Nor is there any reference of this order in their communication dated 22-12-2004, though it talks of order dated 17-11-1991. More than that, in para 4.9 of the OA the applicants mentioned about the order dated 06-02-1990, and in para 4.10 they have stated that **immediately after coming to know** of the circular dated 6-2-1990 issued by the Railway Board the applicants approached Respondent No. 5 and requested him for giving them appointment/reinstatement and has also given them several representations to all the authorities concerned but nothing had been done by the authorities under the respondents concerned nor the representation of the applicants had been replied. The tenor in this para reflects that the applicant could get scent as to the issue of order dated 06-02-1990 much earlier and nowhere has there been a mention that it was at a very late stage that they had come to know of the same. Thus, the reason given

by the applicants in filing this case after a score of years is certainly an after thought. An attempt has been made by the applicants to give false information to the court and thus, the applicants have not come up with clean hands. The claim is stale and therefore, care must be taken before the same is entertained even on consideration on merit.

5. The Apex Court has, in many cases, come up heavily against the courts entertaining stale claims. In the case of **Union of India vs M.K. Sarkar (2010) 2 SCC 66**, the Apex Court has held as under:-

“16. A court or tribunal, before directing “consideration” of a claim or representation should examine whether the claim or representation is with reference to a “live” issue or whether it is with reference to a “dead” or “stale” issue. If it is with reference to a “dead” or “stale” issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct “consideration” without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

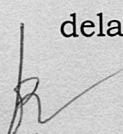
6. The claim of the applicant is that they are similarly situated as those before the Apex Court in the case of **Union of India v. Pradeep Kumar Srivastava, 1998 SCC (L&S) 1749** and that their case ought to have been considered. Respondents have taken a stand that the case before the Apex Court does not pertain to Mughalsarai Division and that the facts also are not applicable to the case of the applicants. This contention has to be summarily rejected. The said decision certainly pertains to regularization of the services of the Mobile Booking Clerks, in contra distinction to regularization of services of temporary ticket collectors engaged on



honorarium basis (**Union of India v. Mukesh Srivastava, (1997) 11 SCC 554,**) and that is sufficient to apply the same to the case of the applicant. It is not essential that the case should pertain to Mughalsarai division, for, the policy decision being one for all the Railways, the same has to be followed by any division. While the applicant could get the relief on the basis of the above, the same is subject to limitation for, a stale claim cannot be entertained as held by the apex court in the case of M.K. Sarkar (supra). Here, limitation stares at the face of the applicants. In the case of **Bhoop Singh v. Union of India, (1992) 3 SCC 136**, a three judges Bench of the Apex Court has held as under:-

“Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner’s contention would upset the entire service jurisprudence.”

7. There could be full justification for considering condonation of delay for justifiable reasons if the case is strong from the point of view of merits. The Apex Court has held in **Collector, Land Acquisition v. Katiji (1987) 2 SCC 107**, the Apex Court, inter alia has held, “ Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause



would be decided on merits after hearing the parties." In **N. Balakrishnan v. M. Krishnamurthy** (1998) 7 SCC 123, the Apex Court has held, "the purpose of the Limitation Act was not to destroy the rights." In **State of Bihar v. Kameshwar Prasad Singh**, (2000) 9 SCC 94, the Apex court has held that when sufficient cause is shown for the delay in approaching the court, Courts should be liberal in condoning the delay.

8. The case is considered keeping in view the above decisions of the Apex Court so that justice could be rendered to both the parties. In the instant case, lack of sufficient cause for delay has already been established. Apart from lack of sufficient cause, even on merit, the case has to fail on the ground that the applicants, when screened for regularization as early as in early eighties, had failed as stated in para 6, read with Annexure CA-1. The applicants have not been able to deny the same nor could they produce any evidence to show that they had passed the screening test. Thus, failure to qualify in the screening test is quite sufficient to reject their claim on merit.

9. Thus, both on merit as well as on limitation, the case has fails. Hence, **the OA is dismissed on grounds of limitation and merits.**

10.

No cost.

Member-A

Member-J

Sushil