

Open Court.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

....

original Application No. 1345 of 1995

this the 28th day of January 2002.

HON'BLE MR. S. DAYAL, MEMBER(A)
HON'BLE MR. RAFIQ UDDIN, MEMBER(J)

Heera Lal, S/o late Shri Ghure Lal, R/o Village Heera Ka Nagala,
Post Hathras Junction, District Aligarh.

Applicant.

By Advocate : Shri Sanjay Kumar.

Versus.

1. Union of India through D.R.M., Railway, Allahabad.
2. The General Manager, Baroda House, Northern Railway, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Allahabad.
4. Sr. DME, Northern Railway, Allahabad.

Respondents.

By Advocate : Shri S.N. Gaur.

ORDER (ORAL)

BY HON'BLE MR. S. DAYAL, MEMBER(A)

This application has been filed for promoting the applicant in accordance with the seniority list from the date of his initial appointment. A prayer has also been made for payment of salary with 30% running allowance as clerical cadre from 1.2.1984 onwards.

2. The case of the applicant is that he was promoted as Electric Driver on 15.7.1983. The applicant's eyes sight ~~was~~ failed in the year 1984 and he remained under medical treatment for 11 months. He was finally ^{declared} ~~medically~~ unfit vide letter dated 28.11.1984. He was given the job of Clerk in the grade of Rs. 260-400/- on the maximum of pay, where he joined on 15.5.1985. After the applicant joined as Clerk, the respondents issued an order dated 28.4.1986 by which the applicant was

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promoted to the scale of Rs. 330-560/- w.e.f. 1.2.1984 on account of re-structuring of Group 'C' cadre w.e.f. 1.1.1984. The applicant claims the benefit of this promotion in his re-engage-ment after decategorisation.

3. We have heard the arguments of Shri Sanjay Kumar for the applicant and Shri S.N. Gaur for the respondents.

4. The respondents, at the outset, have objected to the application on the ground of limitation. The applicant in his O.A. has stated that the subject matter of jurisdiction within the period of limitation. The order of promotion on re-structuring was passed on 28.4.1986. The applicant has filed the present O.A. in the year 1995. Prior to this, the applicant was re-engaged as Clerk in the grade of Rs. 260-400 on the maximum of pay of Rs. 400/- by order dated 13.6.1985.

5. The applicant has sought to explain the delay by stating that he came to know about the order dated 28.4.1986 in the year 1992 when he met his old colleague namely Shri Shiv Prasad, who was also working as Driver alongwith the applicant. The applicant made a representation after coming to know of his promotion on 9.3.92. When the respondents failed to give any reply, he approached his counsel/for filing an application. The application was drafted in September'92 and was ready for filing, but the file was lost in the office of the counsel and, therefore, the application could be filed only on 19.12.1995.

6. The learned counsel for the applicant has relied-upon the judgment of Jabalpur Bench of the Tribunal in the case of Madhukar Morey & Others vs. Union of India & Others (1989) 11 ATC 726) in which it has been held that the plea of limitation taken by the respondents did not apply to such employees who claim discrimination of pay and allowances as it is a recurrent cause of action every month. Therefore, the question can be examined. The cited case is not applicable in the present case because the applicant was decategorised and had joined another

post.

7. The learned counsel for the applicant has also cited the decision in the case of Celina L.V. Azavedo & Another Vs. Government of India & Others (1992 21 ATC 163). The applicants in this case were in the scale of Primary School Teachers and were working on the date of liberation i.e. 19.12.1961. The applicant in O.A. no. 785/90 was appointed as Administrative Clerk and the applicant in O.A. no. 786/90 was appointed on 8.5.1962 on the post of Primary School Teacher. The Goa, Daman & Diu Act came into force on 1.2.1966 and the pay of the absorbed employee has to be fixed in accordance with the Absorbed Employees Act. The Tribunal held that the pay had to be fixed w.e.f. 1.2.66 and not from 21.12.1961. The Central Government was directed to re-fix the salary of the applicants with minimum pay at a level higher than what they have received, but they were allowed the arrears only for three years under the law of limitation. The learned counsel for the respondents contends that law of limitation would not apply to the present case as the applicant had changed his job on account of decategorisation. This case is distinguishable from the case of the applicant before us. The applicant had accepted another job after decategorisation voluntarily and he had not worked on the restructured in his previous employment higher post at all.

8. The learned counsel for the respondents has chosen to rely-upon the decision in the case of Ramesh Chand Sharma Vs. Udhamp Singh Kamal & Others (2000 SCC (L&S) 53) in which it has been held that since no application for condonation of delay was filed under sub-section (3) of Section 21, the Tribunal had no jurisdiction to admit and dispose of the O.A. on merits. However, it was observed by the apex court that the applicant in this case had sought to give explanation before the apex court without laying the foundation before the Tribunal and this was not acceptable. The apex court has mentioned that it was open to the respondent to make a proper application under sub-section 21(3) of the Act for condonation of delay and having

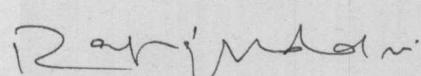
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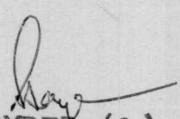
not done so, he cannot be permitted to take up such contention at this late stage before the apex court.

9. The contention made by the learned counsel for the respondents is that the Tribunal cannot entertain an application for condonation of delay after the stage of admission, in a situation where it was not mentioned in the O.A. that the O.A. suffered from delay and an application for condonation of delay can even be heard and considered later when the O.A. was finally heard.

10. However, as far as the case before us for condonation of delay in the O.A. is concerned, the cause shown is not sufficient to satisfy us that the delay needs to be condoned. Here the applicant had been decategorised in the year 1984 and had started working as Clerk from the year 1985. He claims to be completely un-aware of his promotion vide order dated 28.4.1986 till the year 1992 and thereafter shift the blame for non-filing of the O.A. till 1995 on the shoulder of the counsel for the applicant. The applicant is, thus, guilty of delay not once but twice.

11. For the reasons stated above, the O.A. is dismissed. No costs.


MEMBER (J)


MEMBER (A)

GIRISH/-