

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 20th day of MARCH 2008.

Original Application No. 29 of 2000.

Hon'ble Mr. A.K. Gaur, Member J
Hon'ble Mr. K.S. Menon, Member A

Alok Mehrotra, S/o Sri K.N. Mehrotra, R/o Mandi Chowk Ganesh Street, Moradabad.

. Applicant

By Adv: Sri H.N. Sharma & Sri M.K. Updhayaya

V E R S U S

1. Union of India through General Manager, Northern Railway, Moradabad.
2. The Divisional Railway Manager, Northern Railway, Moradabad.
3. The Senior Divisional Personnel Officer, Northern Railway, Moradabad.
4. Sri Atul Saxena, S/o Sri D.V. Jauhri, Typist, Zonal Training Centre, Northern Railway, Chandausi.

. Respondents

By Adv: Sri P. Mathur

O R D E R

By Hon'ble Mr. A.K. Gaur, Member J

Through this OA the applicant has claimed seniority over respondent No. 4 (Atul Saxena) and also direction to decide the pending representation of the applicant on merits in view of the observation made by the Principal Bench of

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this Tribunal in its judgment rendered in OA 216 of 1992 decided on 03.03.1993.

2. The applicant was working as typist in the office of Divisional Railway Manager, Northern Railway, Moradabad was directed to appear in the typing test held on 31.03.1990. Since the applicant had already appeared in the typing test and was declared successful he was exonerated from appearing in any typing test being held for deciding the question relating to regularisation as Typist. The list of working Class IV employees was summoned for selection to the Class III post of Typist under circular dated 10.11.1989. Respondent No. 4 whose name appeared at Sl. No. 4 also appeared in the selection as of typist held on 31.03.1990, but he could not be qualified the same. Whereas the applicant was declared successful and ranked 1st in the list of successful candidates in the selection held on 31.03.1990. The applicant was astonished that the result of the typing test held on 31.03.1990 was cancelled and fresh applications were invited for holding the test. The applicant feeling aggrieved by the cancellation of the result of the typing test declared on 22.05.1990 filed OA No. 216 of 1992 before Principal Bench of this Tribunal. The

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matter was finally decided vide judgment and order dated 03.03.1993 and the OA was disposed of in the light of the agreement said to have been arrived at between the parties and the same was recorded in the body of the judgment. The Tribunal came to the conclusion that the matter could be settled to the satisfaction of both the parties in the following manner:

"The answer sheet of those who had appeared in Hindi typing test on 31.03.1990 could be revalued at the reduced and prescribed speed of 25 wpm and those who achieved that speed would be deemed to have achieved the required standard to proficiency in Hindi typing while leaving the position of those who had already been declared successful untouched. Further more, a fresh typing test in Hindi at the prescribed speed of 25 wpm could be held for those who were eligible to appear but did not do so for the test dated 31.3.90, because of the misleading mention of the Hindi typing speed as 30 wpm."

3. As the applicant who had already been declared successful in earlier selection in the typing test, he was not required to appear again in any typing test and by virtue of the applicant having qualified in the earlier test of 1990. The applicant obviously ranked senior to respondent No. 4 after the selection of Atul Saxena as a typist on the basis of typing test held on 03.09.1994. According to the applicant there existed greater justification for accepting the applicant's claim regarding seniority. In pursuance of the judgment dated 03.03.1993 rendered in OA No. 216/92 another selection of typist was held on 03.09.1994 i.e. after 4½ years of first type test which was held on 31.03.1990. Sri Saxena failed in the typing test

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held on 31.03.1990. He was promoted in the selection of typist held on 03.09.1994 and was appointed as typist in the year 1995. The applications were invited for holding fresh selection for considering regularisation as typist against 33 1/3 percent quota of Class IV employees. Letter was issued by the Divisional Railway Manager, Northern Railway, Moradabad on 30.03.1994 (Annexure A-3 to the OA). In this letter it was clearly specified that all those persons who had appeared in the typing test held on 31.03.1990 should not apply again and the second selection, which was notified to be held on 30.03.1994 was confined only amongst such aspirants who had not qualified in the selection held on 31.03.1990. In other words candidates who were successful in the typing test held on 31.03.1990 were to be placed in the seniority list of typists after the result of the subsequent selection held on 03.09.1994. In this view of the matter also the applicant should be deemed to be senior to Atul Saxena who was appointed as Typist in pursuance of the selection held on 03.09.1994. The applicant was also regularized in service as per the directions contained in General Manager (P), Northern Railway, Baroda House, New Delhi letter dated 14.12.1994. But the petitioner has subsequently learnt that while preparing the seniority list of typist in the office of Divisional Railway Manager, the name of Atul Saxena was shown higher than the place where the name of petitioner was shown in the

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seniority list. The applicant aggrieved by the said action of the respondents preferred representation before the Divisional Railway Manager, Northern Railway, Moradabad from time to time. Copy of the representations dated 02.09.1995 and 12.07.1995 is annexed as Annexure 6 to the OA. The case of the applicant is that even in terms of para 314 of IREM the persons borne in the earlier panel will be deemed senior to those selected later.

4. Denying the plea taken by the applicant in the OA the respondents filed their reply and submitted that the claim of the applicant is devoid of merit and is liable to be dismissed with cost as the respondent No. 4 admittedly had been put to work on adhoc basis prior to the applicant and the benefit had been extended in continuity of his adhoc services for the post in question. The respondents have further submitted that the OA filed by the applicant is not legally maintainable and the same deserved to be dismissed on the ground of delay and latches. Cause of action, if any, had been accrued to the individuals in the year 2000 after inordinate delay of more than 6 years and reasonable and plausible explanation has not been give by the applicant for condonation of delay. It is also submitted that the applicant had passed the typing test against the respective quota. But, merely qualifying in the typing test is not enough as one has to qualify the written test for finally qualifying in

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the selection which could not be finalized due to certain administrative reasons. As a special case in view of the Railway Board's circular dated 14.04.1994 the services of the typist worked on adhoc basis for more than 3 years were regularised.

5. No rejoinder affidavit has been filed by the applicant inspite of several opportunities granted to the applicant.

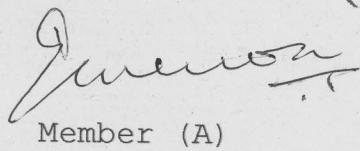
6. We have heard Sri M.K. Updhyaya learned counsel for the applicant and Sri P. Mathur learned counsel for the respondents. In the instant case the action has initially arisen in the year 1994, but the applicant filed the aforesaid OA after a lapse of more than 6 years without there being any application and affidavit for condonation of delay. It is settled principle of law that repeated representations will not confer the benefit of limitation. In support of his contention respondents' counsel has placed reliance on 2007 (2) Scale 325 Shiv Das Vs. U.O.I. & Ors and AIR 1976 SC 1639 and 2117. Learned counsel for the respondents has also submitted that in view of the Hon'ble Supreme Court's decision rendered in 2000 SCC (L&S) 53 R.C. Sharma Vs. Uddham Singh Kamal the OA filed without delay condonation application and affidavit is liable to be dismissed without entering into the question of merit.

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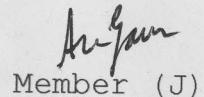
7. In view of the decision of the Hon'ble Supreme Court rendered in 2006 (12) Scale 347 UP Jal Nigam's case the Hon'ble Supreme Court has clearly held that, "it is trite law that the discretionary jurisdiction may not be exercised in favour of those who approached the Court after inordinate delay. The delay and latches are the relevant factor for exercising jurisdiction."

8. In view of the aforesaid observation the OA is not legally maintainable and deserves to be dismissed on the ground of delay and latches. We ordered accordingly.

9. There shall be no order as to costs.



Member (A)



Member (J)

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