

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 9 DAY OF 7 2009)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)

Original Application No. 471 of 2007

(U/S 19, Administrative Tribunal Act, 1985)

1. Raghubans Kumar aged about 60 years S/o Late Shri Ram Kishore R/o 48, Ganesh Bazar, Jhansi.
2. Manoj Goswami aged about 36 years S/o Shri Raghubans Kumar R/o 48, Ganesh Bazar, Jhansi.

..... *Applicants*

Versus

1. Union of India through General Manager (P) North Central Railway, Allahabad.
2. The Divisional Railway Manager (P), North Central Railway, Jhansi.

..... *Respondents*

Present for Applicants : ***Shri Rakesh Verma***

Present for Respondents : ***Shri K.S. Saxena***

O R D E R

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

The applicant being aggrieved by non consideration of his case for appointment under Group 'D' category against quota reserved for loyal workers pursuant to the Headquarters/NER/Gorakhpur notice dated 19/21.12.2005 in compliance of the direction of the Hon'ble High Court in its judgment and order dated 26.05.2005 in Civil Misc. Writ Petition No. 43111 of 2005 (Santosh Kumar Gupta Vs. C.A.T.,

✓

Allahabad and others). The applicant has also claimed that the benefit of the judgment rendered by the Allahabad High Court, in Santosh Kumar Gupta's case (Supra) be also extended to him.

2. The brief facts of the case are that the father of the applicant no.2 rendered exemplary and dedicated services as loyal worker during the strike in Railways with effect from 08.05.1974 to 28.05.1974, even though there was intimidation and violence at the station of the respondents. This fact has also been duly certified by the respondents. The father of the applicant no.2 had been working as Khalasi in substantive capacity under the supervision of Carriage & Wagon Superintendent which has now been re-designated as Senior Section Engineer, North Central Railway, Jhansi. The father of the applicant no.2 while working as Fitter Grade-I has already been retired from service after attaining the age of superannuation w.e.f. 31.05.2006. According to the applicant there was an extensive strike in the Railways from 08.05.1974 to 28.05.1974. The then Hon'ble Railway Minister even on the floor of the Parliament announced that the services of the loyal staff, who rendered dedicated services and stuck to their posts in face of intimidation and violence would not go unrecognized and accordingly Railway Board issued a Circular dated 13.02.1974 (Annexure A-2). The aforesaid circular of the Railway Board was followed by another Circular dated 20.05.1974. It is alleged by the applicant that the date of birth of the applicant no.2 is 25.04.1970 and at the time of issue of the aforesaid circular the applicant no.2 was minor. The applicant no.1 accordingly made a representation dated 18.03.1975 that his son i.e. applicant no.2 be given appointment on attaining the age of majority. According to the

applicant his representation was not acceded to by the respondents and he was probably informed to approach the authorities, after the applicant no.2 attains the age of majority. The applicant no.2 attained the age of majority on 25.4.1988. The applicant no.1 approached the respondent no.2 by sending the representation dated 22.12.1988 but the respondent no.2 did not take any action on his representation. It is also submitted by the applicant that of late one Shri Santosh Kumar Gupta son of Late Satya Narain Sah, Ex-Peon under Chief Mechanical Engineer, N.E. Railway, Gorakhpur filed a Civil Misc. Writ Petition No. 43111 of 2005 before Hon'ble High Court seeking for appointment against quota reserved for loyal workers in the Indian Railways. The Hon'ble High Court vide its order dated 26.05.2005 (Annexure No. A-4) directed the respondent no.1 General Manager, N.E. Railway, Gorakhpur to decide the representation in accordance with the relevant rules, Government orders/Schemes/Policy. While disposing the of the representation of Santosh Kumar Gupta, the respondent no.1 granted appointment to him against the quota reserved for loyal workers vide appointment letter dated 19/21.12.2005 (Annexure A-5). In paragraph no. 11 of the O.A., it is also alleged by the applicant that when this fact came to the knowledge of the applicant no.2, he also approached by means by his representation dated 22.02.2006 (Annexure A-6) but till today no response has been given by the respondents.

3. The grievance of the applicant is that the applicant no.2 has been discriminated and the respondents have unreasonably and unjustifiably denied him appointment against the loyal quota. The action of the respondents is clearly violative of Articles 14 and 16 of

the Constitution of India. The further grievance of the applicant is that the applicant no.2 is similarly situated, like Shri Santosh Kumar Gupta, whose father too had worked during the above extensive strike period rendering exemplary and dedicated services in the N.E. Railway, Gorakhpur Division Gorakhpur. The father of the applicant no.2 i.e. petitioner no.1 had also worked during the aforesaid period in the similar manner as would be evident from a bare perusal of the Service Certificate already annexed by the applicant. It is submitted by the applicant that he being similarly situated should also have been allowed the same benefit pursuant to the judgment and order of the Hon'ble High Court, Allahabad, as has been allowed to the aforesaid Shri Santosh Kumar Gupta. The action of the respondents in not taking any action on the representation of the applicant is wholly arbitrary and without jurisdiction.

4. In the Counter reply filed by the respondents, it is submitted that respondent no.1 did not issue any appointment letter to one Santosh Kumar Gupta as alleged. The personal file of the applicant does not indicate whether he had submitted any application for the appointment of his son Manoj Goswami as alleged (Annexure No. CR-I). The personal file of the applicant no.1 Raghubans Kumar clearly indicates that the applicant has never rendered loyal/dedicated service during Railway Strike (May, 1974) worth for any reward for loyalty. According to the respondents his representation dated 22.2.2006 was received by the respondents, but as it was pertaining to a closed matter as far back as 1974, the respondents did not pay any heed to the same. Respondents have already placed reliance on the judgment and order of the Principal Bench of Administrative Tribunal,

New Delhi dated 8.2.1995 in the case of **Pramod Kumar Sharma & others Vs. GM, NRLy & others**. It is also submitted that the applicant has no cause of action at all. The benefit of the circular was available only for that relevant year in which circular was issued. The applicant ought to have approached the Tribunal at the earliest opportunity and after such an inordinate delay. It is not open to the ward to claim that benefit, which was only available to the ward of loyal employees at the relevant point of time. There is not an iota of evidence on record to show that the applicant has at any point of time during the relevant period applied, in pursuance of the Railway Board circular issued in the year, 1974.

5. The applicant has filed detailed rejoinder reply denying the facts contained in the counter reply and submitted that the applicant is entitled to get the benefit of the Railway Board Circular issued in the year 1974.

6. We have heard Shri Rakesh Verma, learned counsel for the applicants and Shri K.S. Saxena, learned counsel for the respondents and perused the records. We have also carefully gone through the order passed by the Hon'ble High Court rendered in Civil Misc. Writ Petition No. 43111 of 2005 Santosh Kumar Gupta Vs. C.A.T., Allahabad and others), in which certain directions were given by the Hon'ble High Court vide order dated 26.5.2005. The order and direction passed by the Hon'ble High Court, Allahabad in the aforesaid writ Petition is being reproduced hereunder:-

✓

" The Hon'ble A.K. Yog,J
 The Hon'ble B.B. Agarwal,J

Civil Misc. Petition No. 43111 of 2005 Santosh Kumar
 Gupta Vs. C.A.T., Allahabad Bench, Allahabad.

Heard the learned counsel for the parties and perused
 the record.

In the facts of the case, we direct the petitioner to file
 fresh comprehensive representation along with certified copy of
 this order as well as complete copy of the Writ Petition with all
 annexures before concerned competent authority within three
 weeks from today and on such representation being filed, as
 stipulated above, the concerned competent authority shall
 decide the same within three months of the receipt of
 representation, as contemplated above, exercising its
 unfettered discretion on the basis of record before him in
 accordance with relevant Rulers, Government Orders,
 Scheme/ Police without being influenced by any of the
 observations in this judgment since this Court has not entered
 into merits of the present case.

Subject to the above observations and directions, Writ
 Petition stands partly allowed by moulding the relief to the
 extent indicated above. No costs.

Dated 26.5.2005/ALS
 Sd/- AK Yog
 Sd/- BB Agarwal"

7. After coming to know of the above directions rendered by Hon'ble
 High Court, the applicant preferred a representation dated 22.2.2006
 (Annexure A-VI) of the aforesaid order of the Hon'ble High Court.
 Learned counsel for the applicant vehemently argued that he may also
 be granted the benefit of the judgment rendered by the Hon'ble High
 Court in the case of Santosh Kumar Gupta (Supra). Learned counsel
 for the applicant also submitted that the extension of benefit of a
 decision to all similar circumstanced persons, cannot be denied on the
 ground of not being a party to the aforesaid O.A., and the question of
 delay has to be ignored, as settled by the apex Court in a
 constitutional Bench decision rendered in K.C. Sharma Vs. Union of
 India and others reported in (JT 1997 (7) SC 858). Learned
 counsel for the applicant would further contend that the benefits of

✓

judgment rendered by Hon'ble Allahabad high court in Santosh Kumar Gupta's case (Supra) must be extended to the applicant also. Learned counsel for the applicant would further contend that similar benefits must be extended to all similarly situated persons and delay/laches may not create an obstacle or impediment in granting relief to the applicant No. 2. Learned counsel for the applicant has placed reliance on the decision of Hon'ble Supreme Court rendered in **Gopal Krishna Sharma and other Vs. State of Rajasthan (1993 SCC (L&S) 544);** **Maharaj Krishna Butt Vs. State of Jammu & Kashmir 2008 (9) SCC24;** and **Sujit Kumar Gosh and others Vs. union of India and others (1996) 32 ATC 347.**

8. Learned counsel for the applicant would contend that, the benefit of the judgment rendered by Allahabad High Court in Santosh Kumar Gupta's Case (Supra) must be extended to all similarly situated persons, even though they were not parties before the Court,. Once a judgment had attained finality, it could not be termed as wrong, and its benefit ought to have been extended to all other similarly situated persons.

9. Shri K. S. Saxena, learned counsel for the respondents strongly contended that it is the settled principle of law that series of representations will not confer the benefit of limitation to a dormant person. In support of this plea, he placed reliance on the following cases of Hon'ble Supreme Court.

- 1) ***Karnataka Power Corporation Vs. K. Thankappan (2006 (4) SCC 322;***
- 2) ***Shiv Das Vs. Union of India 2007 (9) SCC 274***

- 3) **A.K. Gupta & others Vs. State of Jammu & Kashmir AIR (1996) SC (3) 2882**
- 4) **Government of West Bengal Vs. T. K. Roy & Ors. (2004 (I) SCC 347;**
- 5) **U.P. Jal Nigam Vs. Jaswant Singh (2006 (11) SCC 464**

10. Learned Counsel for the respondents would further contend that, it is trite that the discretionary and equitable jurisdiction may not be exercised in favour of those who approached the Court after a long time. Delay and laches are relevant factors for exercising equitable jurisdiction. It is also argued on behalf of the respondents that Hon'ble High Court of Allahabad in Santosh Kumar Gupta's Case (supra) has not decided any ratio of law, it has merely given a direction to the respondents to consider and decide the representation of the applicant within a specified period of time.

11. We have given our thoughtful consideration to the pleas advanced by the parties' counsel and in our considered view the claim of the applicants that they may also be given the similar benefits as has been given to Mr. Satosh Kumar Gupta (supra), appears to be ill-founded mainly on two grounds:

1). *The applicant is not a party to the said O.A.*

2). *No ratio of law has been propounded by the Hon'ble High Court, Allahabad in the case of Santosh Kumar Gupta (supra) and as such, there is hardly any occasion for the applicants to claim the same benefit. In the case of State of Karnataka Vs. S.M. Kotrayya and others reported in 1996 SCC (L&S) 1948 1996 SCC (L&S) 1948 the Apex court clearly held that delay cannot be condoned on the ground that some judgment came to the knowledge of the applicant after some time and as such, same benefits should also be extended to the applicant. The decision rendered by the Hon'ble Supreme Court in K. C. Sharma's case (supra) is a well-reasoned judgment. The Hon'ble Supreme Court has elaborately considered the reasons as to why the benefit of a judgment is to be extended when similarly situated persons are involved. In the present case we find no jurisdiction to give similar direction as has been given in Santosh Kumar's case (Supra) and that too after a lapse of about 33 years.*

✓

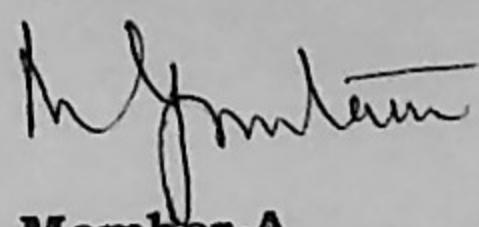
12. We have also carefully gone to the decision of the Hon'ble Supreme Court reported in **2008 (10) SCC 115, C Jacob Vs. Director, Geology and Mining**. The Hon'ble Apex Court has held that **"the Court's directions to consider a stale claim of the applicant to the department should not normally be granted. The Court should be circumspect in issuing such direction as it ultimately leads to consideration of case on merits at a subsequent stage of litigation, as if the cause of action stood revived due to fresh consideration. The Hon'ble Supreme Court further held that the department can reject a stale claim on the ground of delay alone without examining its merits. The reply given to an individual does not give rise to a fresh cause of action or observation made where a terminated employee submitted a representation after 18 years and the Administrative Tribunal directed for disposal of representation within four months".**

13. From the aforesaid decision of Hon'ble Supreme Court we are satisfied that the applicant is not a similarly situated/circumstanced person. He was not even born on the date when the Railway Board's Circular and letters were issued. If the contention and pleas advanced by the learned counsel for the applicants is accepted and the benefits of direction rendered by the Allahabad High Court in Santosh Kumar Gupta's case (Supra) is extended, it would lead to an anomalous situation.

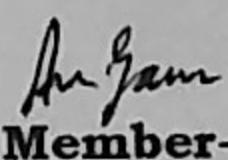
14. In our considered view, the applicants have utterly failed to give any reasonable or plausible explanation for the delay of 33 years in filing the aforesaid O.A. The argument advanced by the learned

counsel for the applicants that he may also be given all similar benefits of the decision rendered by the Hon'ble High Court of Allahabad, cannot be countenanced for a moment. The original application has no merits and is liable to be dismissed on the ground of delay and laches.

Accordingly, O.A. is dismissed. No order as to costs.



Member-A



Member-J

//Sushil//