

Transferred to one another
Division X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

M.A.No. 420 OF 1991

in

O.A. No. 351 OF 1991

TAX NO.

DATE OF DECISION 13-3-1992

Neeta B. Desai, Petitioner

Mr. M.C. Bhatt, Advocate for the Petitioner(s)

Versus

Divisional Railway Manager & Ors. Respondents

Mr. N.S. Shevde, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Neeta B. Desai,
Adult, Occ: Service
Residing at M/1/74/2088
Pratikshak Apartments,
Sola Road,
Naranpura, Ahmedabad-13.

.... Applicant.

(Advocate: Mr. M.C. Bhatt)

Versus.

1. Divisional Rail Manager,
Baroda Division,
Western Railway,
Pratapnagar, Baroda.

2. Divisional Personnel Officer,
Baroda Division,
Western Railway, Baroda.

3. Divisional Operating Superintendent,
Western Railway, Ahmedabad.

4. Divisional Railway Manager,
Western Railway,
Bombay Central.

5. Senior Divisional Personnel Officer,
Western Railway
Bombay Central.

6. General Manager(EST)
Western Railway,
Churchgate, Bombay.

7. Union of India
Railway Ministry,
Secretariat, New Delhi.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

M.A.No. 420 OF 1991

AND

O.A.No. 351 OF 1991

Date: 13.3.1992.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. M.C. Bhatt, learned advocate for
the applicant and Mr. N.S. Shevde, learned advocate
for the respondents.

2. The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985, on 1st July, 1991 praying for the reliefs that the respondents railway be directed to pass an order to treat the applicant transferred as Senior Clerk from Bombay Central Division to Baroda Division and to place her name at the bottom of the list of the Senior Clerks working in Baroda division as on 26th November, 1981 i.e., the day on which the applicant joined her duty in Baroda division and the respondents be directed also to pay the difference to the applicant for treating her as Senior Clerk on 28th November, 1981 etc. It is the case of the applicant that on 9th April, 1981 she gave an undertaking that she was prepared to accept bottom seniority on Baroda division vide Annexure-A. It is alleged that she appeared a suitability test for the post of Senior Clerk held in March 1981. But the result declared was subsequently cancelled by Divisional Personnel Officer on 7th August, 1981 which was challenged by some of the unsuccessful candidates by filing Writ Petition No. 1076/81 before the High Court of Bombay. The applicant joined duties on 11th December, 1981 in Baroda division as a junior clerk, that on 16th August, 1982 she applied for the promotion as Senior Clerk vide Annexure B, that she appeared for suitability

test for the post of Senior Clerk and her name appeared at Sr.No. 49 in the list of successful candidates declared on 24th April, 1986 vide Annexure-C and accordingly she was promoted as Senior Clerk on 31st August, 1987.

3. The applicant has alleged that she came to know about the judgment of the Bombay High Court given in Writ Petition No. 1076/81 by which the junior clerks working in Bombay Central Division were promoted as senior clerks as the order cancelling the result of suitability list declared on 20th May, 1981 was held null and void and the applicant on 20th August, 1986 and 1st September, 1986 applied through proper channel that her name placed at the bottom of Senior clerks in Baroda division on the date she joined duty in Baroda division vide Annexure D,E & F. In these application Ann.D dated 1st June, 1985, Ann.-E dated 20th August, 1986 and Ann. F dated 1st September, 1986, the applicant prayed for the arrears of pay and for request transfer. It was followed by another letter vide Ann.G dated 11th December, 1986 claiming promotion as senior clerk and arrears. The applicant was paid the pay difference as deemed promoted for the period from 1st October, 1981 to 31st July, 1981. But on

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26th November, 1986, the applicant requested to pay her arrears treating her as senior clerk.

The applicant, therefore, made request by her applications vide Annexures H, I, J & K,

about transfer as senior clerk and arrears etc. The case of the applicant is that the respondents have not given any response to all her representations and letters and no orders are passed, though more than three years have been left and hence this application.

4. The first question which arises for consideration is whether the application is filed within the period of limitation under section 21 of the Administrative Tribunals Act, 1985. The applicant on receipt of the pay difference applied for treating her transfer as senior clerk and demanded difference in pay in salary vide her applications Annexures D, E & F which are for the period from 1985 to 1986. The applicant ought to have filed the application within the period specified under section 21 of the Act even after the last representation dated 1st September, 1986 vide Annexure F. The explanation which has been given by the applicant in her application for condonation of delay in M.A. 420/91 is that she was advised by the advocate that as no orders were passed in her

application, the same will not be barred by limitation. She has not mentioned which advocate gave her this advise and when this advise was given. The applicant then gave applications Annexure H dated 23rd August, 1990 and representation dated 28th November, 1990 Annexure-I and representation dated 5th February, 1991 Ann. J, representation Annexure K dated 19th March, 1991 for considering her case. The applicant has mentioned in her application for condonation of that delay/as the respondents did not give reply to representations made in 1991, she has filed this application and hence the delay in presenting the application be condoned. The representations which have been filed in 1990 & 1991 namely, Annexure H to K are almost similar to the applications and representation filed in 1986 vide Representation D,E,F & G. It has been now settled law that the repeated representations do not save the limitation. The applicant ought to have filed the application within the period of limitation under section 21 of the Administrative Tribunals Act even after she did not get any reply from her last representation of 1986 i.e. dated 11th December, 1986 vide Annexure G. As observed above, she has not given the name of advocate who advised her that

limitation will not apply nor the year or month is given when she was given this advise. The application for condonation of delay from 1986/ onwards, therefore, can not be allowed as it is absolutely vague and there is no sufficient reason to condone such a delay of about four years. Hence the M.A. deserves to be dismissed. In view of the fact that the M.A. is dismissed as delay is not condoned, the O.A. also requires to be dismissed.

O R D E R

M.A. 420/91 and O.A. 351/91 are dismissed.

No order as to costs.

Renzil
(R.C. Bhatt)
Member (J)