

I/835

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,
JODHPUR**

**M.A.No.4 of 2004 in O.A.No.9/2004 &
O.A.NO.9/2004**

May 8, 2007

**CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR. TARSEM LAL, MEMBER (A)**

Suresh Chandra Sharma son of Shri Hari Kishan Sharma R/o Gori Bhawan, 22, Madhuban Colony, Basni, Jodhpur. Post. The applicant is presently working as Senior Clerk, at operating Branch North West Railway, DRM Office, Jodhpur.

Applicant

BY : Mr.Kuldeep Mathur, Advocate.

Versus

1. The Union of India through the General Manager, North Western Railways, Jaipur.
2. The Divisional Rail Manager, Divisional Office, North-West Railways, Jodhpur.

The Divisional Personnel officer, North West Railway, Jodhpur.

By : Mr. C.S.Kotwani, Advocate.

Sawai Ram, Senior Clerk, presently working in Divisional Rail Manager Office, Operating Branch, North West Railway, Jodhpur.

By : None.

Respondents

ORDER (oral)

KULDIP SINGH, VC

The applicant has approached this Tribunal challenging an order dated 1.7.2002 (Annexure A-1) by which his representation dated 22.5.2002 has been rejected and to declare the order dated 4.4.1988 (Annexure A-5) as illegal to the extent it denies regularization to him w.e.f. 3.7.1985.

2. Case of the applicant, as projected by him, is that he entered into service on 7.1.1980 in the pay scale of Rs.260-400, as Clerk in Operating Branch. He was promoted as Senior Clerk in the pay

scale of Rs.330-560 vide order dated 3.7.1985, on ad hoc basis.

Respondent No.4, also entered the service as clerk. He was promoted as Senior Clerk against departmental quota of graduate clerks, vide order dated 15.10.1985. The services of the applicant were regularized as Senior Clerk vide order dated 4.4.1988 w.e.f. 5.11.1986. It is submitted that from 3.7.1985 to 4.4.1988, the applicant served without any break. A seniority list was issued by respondents on 15.7.1988 in which name of applicant is at Sr. No.27 and that of respondent no.4 is at Sr. No.26. He filed a representation to the respondents claiming seniority above respondent no.4. Again a seniority list of Senior Clerks was issued in 1994. Applicant filed a representation against this seniority list. Again in 2002, a seniority list was issued in which the respondent no.4 has been shown above applicant (Annexure A-8). The applicant submitted a representation for treating him senior to respondent no.4, by counting his adhoc service which prayer has been rejected vide order Annexure A-1.

3. The respondents have filed a reply. They have taken preliminary objection of O.A. being barred by time. It is also submitted that respondent no.4 was promoted on regular basis against his own quota, whereas the applicant was promoted only on ad hoc basis and was regularized subsequently and his ad hoc service cannot be taken as regular for determination of seniority. The respondents have issued seniority lists in 1993, 1997, 2000 and 2002 which are not the subject matter of this O.A. Thus the O.A. is liable to be dismissed.



However, being aware about the fact that the O.A. is barred by time, applicant has moved an M.A.No.4 of 2004 for condonation of delay. He submits that he was not having copies of orders dated 3.7.1985, 4.4.1998 and 15.7.1988 with him. After receiving order dated 1.7.2002, he collected documents from the office

and other persons. He could not collect these documents within time. The O.A. is barred only by few days. The delay is bonafide and not intentional. Thus, the delay deserves to be condoned by this Tribunal. He has very good case on merits and the same deserves consideration by this Tribunal. Reply has been filed by the respondents to the M.A. It is stated that cause of action arose to applicant in 1988 and no reasonable and just cause has been mentioned in the application. Thus, the M.A. Deserves dismissal.

5. We have heard the learned counsel for the parties and gone through the pleadings.

6. Admittedly, the cause of action, if any, arose to the applicant in 1988 itself, when his period of adhoc service was not regularized. Unless the entire adhoc period is regularized, the applicant cannot get benefit of such service for counting seniority. The order of regularization was passed in favour of the applicant way back on 4.4.1988. Thus, the cause of action, if any, arose to him in 1988 itself and challenge to the same in 2004, after a period of about 16 years, is grossly barred by time. Subsequently, the respondents issued seniority lists in 1993, 1996, 1997, 2000 and 2002 showing name of applicant below respondent no.4, which stand accepted by the applicant. He is, thus, estopped from challenging the subsequent orders. The applicant has claimed that there is only a few day's delay in filing of the O.A. and he was not having copies of certain orders. The plea does not inspire confidence. There is no explanation for condonation of delay, much less with cogent reasons, given in the M.A. Undisputedly, the original cause of action had arose to applicant in 1988 itself and the impugned order simply reiterate the position which was available at that time. The rejection of representation by the respondents vide impugned order, Annexure A-1, dated 1.7.2002, will not give him a fresh lease of limitation which expired about 16 years

back. It is well settled law that the limitation is to be counted from original cause of action and repeated representations do not extend period of limitation. Reference can be made to **High Court of A.P.,** **Vs. Mahesh Parkash & Others**, 1995 SCC (L&S), Page 278. It has been further held that even if a delayed representation is considered and rejected, same cannot extend the period of limitation expired long time back, as held in the case of **Administrator of U.T. of Daman &**

Dia & Others Vs. R.D. Valand, ATC 1996 (32), Page 148.

In view of the above, we find that there is no substance in the Miscellaneous Application for condonation of delay which is rejected. Once that is so, we are not required to go into merits of the O.A. Consequently, the O.A. is also dismissed being barred by time.


Tarsem Lal
(TARSEM LAL)

MEMBER (ADM.)


(KULDIP SINGH)
VICE CHAIRMAN

HC*

copy of order in OA & MA
send to F-4 via SW No -

Received one copy for Sh. G.S. Motwani

(Attn
(Motwani Singh)
W.D.(S)
18/5/07)

R.C

Section Officer

21/5/07

for K. Motwani

Part II and III destroyed
in my presence on 03-6-14
under the supervision of
Section Officer (J) as per
order dated 26.3.14

Section Officer (Record)