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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR**

ORIGINAL APPLICATION NO.136 /2004

Date of decision: 15 March 05

VidyanandApplicant

Mr. S.K MalikAdvocate for the Applicant



V E R S U S

Union of India & Others.Respondents.

Mr. Salil TrivediAdvocate for Respondents.

CORAM:

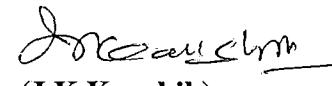
Hon'ble M. J.K. Kaushik : Judicial Member.

Hon'ble Mr. M.K. Mishra : Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *NO*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*


(M.K. Mishra)

Administrative Member


(J K Kaushik)

Judicial Member.

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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH: JODHPUR

ORIGINAL APPLICATION No. 136/2004

Date of order: 9-3-05

CORAM:

HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER

HON'BLE MR. M K MISRA, ADMINISTRATIVE MEMBER

Vidya Nand Bhagat S/o Sh. Ram Chandra Ji Bhagat, Aged about 32 years, R/o Qtr. No. T-19, Railway Station Samdari, Distt. Barmer (Rajasthan), presently working on the post of Traffic Inspector, at North Western Railway Samdari, Distt. Barmer (Rajasthan).

... Applicant.



[Rep. By: Mr. S.K. Malik, Advocate, for applicant]

V e r s u s

1. Union of India through the General Manager, North Western Railway, Jaipur (Rajasthan).
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur (Rajasthan).
3. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur (Rajasthan).

..... Respondents.

[Rep. By: Mr. Salil Trivedi, Advocate, for respondents]

:O R D E R):

[Per - Mr. M.K. Misra, Administrative Member]

The facts relevant for decision of this case are that applicant Shri Vidya Nand Bhagat, after qualifying the selection of Traffic Inspector through Railway Recruitment Board, was detailed for Traffic Apprentices Training at Zonal Training Center, Chandousi for the period from 28.10.1999 to 30.12.1999 i.e. Phase-I. Since applicant could not pass the same in first attempt, he was called back from the training vide letter dated 21.03.2000 (Annexure A-3). He was sent for Line Training and again detailed for training w.e.f. 25.05.2000 to 26.07.2000 and he

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passed in Phase-I Course and was directed by letter dated 01.08.2000 to undergo Line Training and was to be paid stipend (Annexure A-4). After completion of Line Training, he was sent for Phase-II Training for the period from 23.11.2000 to 05.02.2001 vide letter-dated 14.11.2000 (Annexure A-5). In Phase-II training, the applicant got the supplementary and was allowed to appear in such examination conducted on 02.06.2001 vide letter dated 29.05.2001 (Annexure A-6). He failed in the supplementary examination and was called back from training school. Vide letter-dated 19.09.2001 (Annexure A-2), The applicant was informed that he was not entitled for the stipend. He gave his consent for further training without stipend w.e.f. 22.10.2001 to 19.01.2002 and was declared pass in 2nd attempt vide letter dated 05.02.2002 (Annexure A-7). He was again sent for Line Training for Third Phase Training from 14.05.2002 to 02.07.2002. After Third Phase Examination, he was declared pass in first attempt vide letter dated 26.07.2002 (Annexure A-8).



2. The applicant submitted a representation-dated 24.01.2002 for payment of stipend w.e.f. 19.09.2001 to 03.03.2003 being a S.C. Candidate he is entitled for stipend even if he fails in the first chance in any phase i.e. Phase I to Phase III. He has been allowed 2nd chance in Phase I and Phase II. In the Third Phase, he has passed in the first attempt itself. The said representation of the applicant was rejected vide order dated 10.12.2003 (Annexure A-1), stating that as per PS No. 1692, the applicant was allowed third chance without stipend and hence he was not entitled for stipend and increment for the period of training.

3. The applicant pleads that since he belongs to SC category, as per PS No. 1692, SC/Traffic Apprentices/Trainees may be given 2nd chance with stipend/pay and in the Third chance, if considered necessary without stipend/pay. The applicant was allowed 2nd chance in Phase I and Phase II and in the second attempt he was declared successful in both phases. In the Third phase he passed in the first attempt. Not paying stipend and granting increment for the period w.e.f. 19.09.2001 to 03.03.2003 is contrary to the provisions of PS No. 1692. As per PS No. 10547, for SC/ST Apprentices/Trainees, 2nd Chance with stipend/pay and third chance without stipend/pay is to be taken for the purpose of increments; hence the applicant is entitled for both stipend and increment as per PS No. 1692 and PS No. 10547. The action of respondents in taking consent

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of applicant for further training without stipend is contrary to the provisions of law, which is violative of Article 14 & 16 of the Constitution of India. The entire Traffic Apprentices training is for a period of two years, which includes School Training and Line Training. School Training consists of three Phases and in each Phase an Apprentice belonging to SC/ST like the applicant is entitled for three chances. In case candidates belonging to these categories fail in Third chance at the end of training, then their services are to be terminated. In this case if the entire course of three phases is considered as one unit then he gets only three chances in three phases whereas applicant was given five chances in three phases to clear the entire training, which is not permissible under the law. Therefore, the chances are to be counted phase wise. It is submitted that the action of the respondents is an outcome of colourable exercise of power and mala fide. After raising these grounds the applicant has prayed for quashing of the orders dated 10.12.2003 (Annexure A-1) & 19.09.2001 (Annexure A-2) passed by respondent No. 3 wherein applicant has been denied stipend and also increment on fixation of pay and declare them as illegal and they may be set aside as if they were never passed against the applicant. The respondents may be directed to make payment of stipend for training period w.e.f. 19.09.2001 to 03.03.2003 and fix the pay of the applicant after granting him increments for the training period w.e.f. 19.09.2001 to 03.03.2003.

4. The respondents have filed a detailed reply with a view to contest the Original Application and at the very outset they pleaded that the O.A. is not maintainable on the ground that the applicant is guilty of concealing the material and relevant facts from this Tribunal as much as, the final order, rejecting his claim, came to be passed on his representation on dated 06.03.2002 (Annex. R/1) itself but the same is not under challenge in this O.A. The respondents communicated the same decision vide letter dated 10.12.2003. Thus it is a further communication letter and not the fresh decision. In view of non-challenge to this document i.e. order dated 06.03.2002 in this O.A. the applicant impliedly accepts his position and is not entitled to any relief by challenging the communication letter, and the contention regarding application of doctrine of merger, the same is not applicable in this case as the order under challenge is a communication letter and nothing else, giving no fresh cause of action. Thus the O.A. is barred by limitation

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under Section 21 of the Administrative Tribunals Act, 1985, inasmuch as the representation of the applicant was rejected vide order dated 06.03.2002 (Annexure R-1) and thus the cause of action, if any, arose to applicant in 2002 itself and the O.A. has been filed only on 24.05.2004.

5. The applicant was subjected to T.1-4 two years induction course after being declared medically fit by the Railway Doctor. It has been pleaded that passing of T.1-4 course is a pre-requisite condition for appointment as Traffic Inspector/Assistant Station Master/Yard Master and Section Controller in the scale of pay of Rs. 5500-9000 and as per rules one has to pass the complete course in one attempt. However, SC/ST candidates are allowed one more chance to pass the said course as per the Rules with stipend and third chance without stipend. It is submitted that if he fails in third chance also, then he is out of service/training. Although the Course is completed in three phases but it is a single course and the final result is declared in order of merit i.e. keeping in view the performance of all the three phases. Since the applicant failed to qualify in two attempts (i.e. he passed the course in 3rd attempt without stipend) he is not eligible for stipend/other benefit. As per the instructions contained in P.S. No. 1692, one has to pass the complete course in one attempt with stipend. However, in the case of SC/ST candidates further relaxation is given to pass the course with stipend in second attempt. If a candidate fails to qualify in the said course in second attempt also then he can be given third and last opportunity to pass the said course without stipend. Since the applicant belongs to SC community he was rightly given second chance with stipend to pass the said course. The undertaking of applicant to appear in test without stipend at Annexure R-2, dated 24.09.2001 is also relevant to support the contention of the respondents.

6. Learned counsel for the applicant made a statement at the bar on 06.01.2005 that applicant does not wish to file any rejoinder and the case can be finally heard. We have heard the learned counsel for the parties at length and perused the material on the file.

7. Learned counsel for the respondents vehemently argued that the instant Original Application is not maintainable being barred by the law of limitation as the claim of the applicant was rejected by the order dated 06.03.2002 (Annexure R-1). The said order is not even under

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challenge. Since the cause of action, if any, arose to applicant on 06.03.2002 itself and the instant Original Application having been filed on 24th May, 2004, it should be held to be barred by the law of limitation. On the other hand, learned counsel for the applicant submitted that there is no need to challenge the order dated 06.03.2002 inasmuch as it is void order and is not required to be challenged and in any case it is a case of pay fixation which gives recurring cause of action in favour of the applicant and as such the O.A. cannot be held to be barred by the law of limitation.

8. We have considered the contentions raised by both the sides minutely. The question of limitation as applicable to the pleadings before this Tribunal and effect of challenge or non-challenge to a void order and counting of limitation period under Section 21 of the Administrative Tribunals Act, 1985 from the date of such void order came to be considered by a Full Bench of this Tribunal in the case of **Dhiru Mohan vs. Union of India & Others**, decided on 11.07.1991 at Ahmedabad [reported in Full Bench Judgements of C.A.T. (1989-1991), Vol. II] which is as under:



"28. To sum up, we hold that an Application impugning a void order under Section 19 of the Administrative Tribunals Act, 1985 is also governed by the period of limitation prescribed by Section 21 of the Act. The question falling for our consideration is answered accordingly.

A contrary view taken by the Principal Bench in Shri Beer Singh (supra) and by the Chandigarh Bench in Ram Lal Thakur (supra) does not lay down good law in this behalf."

A support was also taken from the decision of the Hon'ble Apex Court in the case of **The State of Madhya Pradesh v. Syed Qamarali** (1967 SLR 228) which also cited on behalf of the learned counsel for applicant in support of his contentions, wherein their Lordships held as under:

"20. We therefore hold that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under Section 7 could be exercise, is totally invalid. The order of dismissal had therefore no legal existence and it was not necessary for the respondent to have the order set aside by a court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected."

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The Hon'ble Apex Court, in another case of **Rabindra Nath Boase and others vs. Union of India and others** (1970 SC 470), held that there is a limit to the time, which can be considered reasonable for making representations. If the Government has turned down one representation, the making of another representation on similar lines would not enable the petitioners to explain the delay.

Similarly, it was argued that in the case of **M.R. Gupta vs. Union of India and Ors.** (1995 (2) ATJ 567) wherein the Hon'ble Supreme Court held that the cause of action relating to pay fixation is a continuing process and gives rise to a recurring cause of action each time therefore the question of limitation would not arise in such cases.

9. The learned counsel for the respondents also quoted a decision of the Hon'ble Apex Court in the case of **The Ramjas Foundation and others vs. UOI and others** (AIR 1993 SC 852) wherein it was held that the writ petition was liable to be dismissed on the grounds of laches and delay on the part of the appellants.

10. In the light of the above discussion, we are of the firm opinion that if the void order has not been challenged, the Section 21 of the Administrative Tribunals Act, 1985, defining limitation would not come in the way of the applicant. But if the void order is challenged, the provisions of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 shall apply as per the Full Bench decision in **Dhiru Mohan vs. Union of India & Others** (supra). Further, as regards the law of limitation in cases of pay fixation, the same gives rise to recurring cause of action and shall be regulated by the verdict of the Hon'ble Apex Court in **(M.R. Gupta's)** case (supra).

11. Now we would advert to the facts of this case and test the same on the touchstone laid down above as regards the limitation question. Firstly, we have to determine as to whether the order dated 6.3.2002 could be construed as a void order. Unfortunately, there is no such plea or ground taken in the pleadings of the applicant and there is no question of any reply to the same by respondents. The matter does not end up here; the learned counsel for the applicant has no doubt termed the said order as void order but did not substantiate the same by any supporting material. In common parlance, an order can be said to be a void order, if

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the same has not been issued by competent authority. Nevertheless, such is not the case here. We are unable to persuade ourselves and in such circumstances, the order dated 6.3.2002 could not be held as a void order. Thus the contention of the learned counsel that said order is a void order falls on the ground; having no bases. The net result would be that the law of limitation as laid down under Section 21 of A T Act 1985 shall be attracted in its full vigour.

12. The next question for our consideration would be regarding the applicability of doctrine of merger of earlier order in its subsequent order. We observe that the earlier order was issued on 06.03.2002 (Annexure R/1) denying the claim of the applicant and subsequently the letter dated 10.12.2003, which is under challenge at Annexure A/1, is only a letter communicating the decision taken vide earlier order dated 06.03.2002. In other words, these two orders were issued independently. Otherwise also, non-statutory representations or decisions thereto do not extend limitation as per the verdict of Apex Court in constitution bench judgement in case of **S S Rathore Vs. Union of India AIR 1990 SC 10**.

Therefore, the doctrine of merger is not applicable in this case; rather such contention itself is misconceived. There is no application for condonation of delay, filed on behalf of the applicant in this case besides there is no challenge to very order dated 6.3.2002. If that were so, the order-dated 6.3.2002 did not merge into the subsequent communication i.e. so called impugned order in this OA. Thus, the O.A. is not maintainable.

13. As regards the plea of pay fixation and giving rise to recurring cause of action is concerned, the pay fixation is consequential to the grant of stipend in as much as one would be entitled to get the service benefits of the training period (including that of increments) only in cases one is entitled to payment of such stipend and not otherwise. This position emerges out from the very circular, which regulates the grant of stipend. The relevant portion from Annexure A/9 is excerpted as under:

" (ii). As regards further trainees in the above categories, it should be prescribed in the terms of appointment that a repeat course, if considered necessary by the Administration, shall be given without stipend of any other remuneration.

(iii) Scheduled caste/Tribe Apprentices/Trainees may be given a second chance with stipend pay and the third chance, if considered necessary, without stipend/pay.

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(iv) The Apprentices/trainees for whom repeat course is given will rank junior to those passing in their first attempt. Such of the Trainees/Apprentices, who fail in the initial training and who will be given repeat course without stipend, will be governed by the terms and conditions as given in Annexure 'A' to this letter. These conditions should be incorporated in the formal agreements in the case of Apprentices and in the offer of appointment in the case of trainees.

The grant of stipend/pay during the second chance of training in item (iii) above has the sanction of the President.

ANNEXURE 'A'

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(A) Trainees

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(8) Such trainee/trainees will not be eligible to any service benefits during the period of his/their repeat course of training without stipend. The period of his/their initial training and the repeat training will, therefore, not count as service for any purpose.

(B) Appendices

1. During the period of repeat course of training without stipend, the Apprentice/Apprentices will be governed by the terms and conditions of his/their agreement with the President, entered into by him/them at the time of joining the initial apprenticeship except that no stipend will be paid during the repeat course period.
2. Such apprentice/apprentices will not be eligible to any service benefits during the period of his/their repeat course of apprenticeship without stipend. The period of his/their initial and repeat course apprenticeship will, therefore, not count as service for any purposes."



The grant of stipend may give recurring cause of action only upto the date the stipend was payable i.e. upto the date of training which admittedly ended on dated 3.3.2003 and not thereafter. The OA, having been filed on dated 24.5.2004, after a period of one year from the said date, is beyond the period of limitation as prescribed under section 21 of A T Act 1985. In addition, the concept of pay fixation is not discernable; rather the same is deceptive and perhaps adduced to bring the OA within the purview of limitation, which cannot be concurred by us. Therefore, the OA deserves to be dismissed on the ground of limitation itself.

14. In normal course, we are not required to examine this case on merits since the applicant has not crossed the hurdle of limitation as per the verdict of Apex court in case of **Ramesh Chand Sharma Vs. Udhamp Singh Kamal 2000(1) ATJ 178**, but we consider it expedient to adjudicate this case on the merits also. The perusal of the aforesaid

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provisions, which govern the grant of stipend, reveals that the term 'repeat course' has been provided and not the repetition of training itself. Two such repeat courses are provided with stipend and the third repeat course shall be without stipend in case of SC/ST candidates alone. The applicant was admittedly allowed more than two repeat courses and was, therefore, rightly not paid the stipend in the third such course. Thus, no fault can be fastened with the action of the respondents and the very OA has to be construed as misconceived.

15. In case the submission of the learned counsel are taken to its logical conclusion, the same would lead to an anomalous situation of absurdity in as much as why to limit the repeat course to different phases only and why not to each paper in which one is required to appear during the whole training. The decision of apex court in the case of **Secretary-cum-Chief Engineer Chandigarh vs. Hari Om Sharma and others** (1998 SCC (L&S) 1273), cited on behalf of applicant, wherein their Lordships of Hon'ble Apex Court have held that even if, the undertaking was given by the appellant on the basis of stop gap arrangement he would not claim promotion as a matter of right nor would he claim any benefit pertaining to that post, that undertaking cannot be enforced by law and such argument is preposterous. He has every right to be considered for regular promotion, is of no help to the case of applicant herein. The circular regulating the terms and conditions of service benefits for the training period is not under challenge before us. Thus the applicant has absolutely no case warranting any judicial review by this bench of Tribunal.

16. The upshot of the aforesaid discussions leads us to an inescapable conclusion that this Original Application is hit by law of limitation as well as sans merits. The same stands dismissed accordingly but without any order as to costs.



[M.K. MISRA]

Administrative Member

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[J.K. KAUSHIK]

Judicial Member

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27/11/2005
S. M. D. M. S. R. M. D. M.

Part II and III destroyed
in my presence on 8/11/14
under the supervision of
section officer () as per
order dated 18/12/13

Section Officer (Record)

8/11/14