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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
JODHPUR**

O.A.NO.210/2005

7th Sept., 2006

**CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR. J.P.SHUKLA, MEMBER (A)**

Ghanshyam Sharma (Under Going Treatment for mental retardness as OPD of P&T Dispensary, Jodhpur), S/o Shri Janki Vallabh Sharma, Aged 35 years, E.D.Waterman under Post Master, Head Post Office, Erstwhile situated in Shri Keshav Singh Sankhala's Keshav Bhawan, Opposite M/s Purshotam Das Jagdish Chandra Petrol Pump Chopasani Road, Jodhpur, now merged with HPO Shastri Nagar, Jodhpur C/o Shri Shanta Ram Bohra, Jallap Mohalla, Jodhpur, through next in friend Shri Vijay Sharma.

Applicant

BY : Mr.S.N.Bohra, Advocate.

Versus



Union of India Through The Secretary to the Ministry of Communication (P&T), Central Secretariat, Govt. of India, New Delhi-110001.

Chief Post Master General, Rajasthan Circle, Jaipur-302001.

Senior Superintendent (P&T), Jodhpur Division, Jodhpur.

Post Master, Head Post Office (Chopasani Road), at present merged with Head Post Office, Shastri Nagar, Jodhpur.

.... Respondents

By : Mr.M.Godara, Advocate for Mr. Vinit Mathur, Advocate.

ORDER

KULDIP SINGH, VC

The applicant has filed this O.A. under section 19 of the Administrative Tribunals Act, 1985, seeking relief to the effect that a direction be issued to the respondents to get the applicant medically examined by a competent Medical Board as E-17 and then implement the recommendations of the Medical Board in letter and spirit.

The facts as alleged by the applicant in brief are that he was appointed as a Waterman in P&T Department, Jodhpur since 17th January, 1981 and is stated to had been posted as ED Waterman at

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erstwhile Head Post Office Chopasani Road, Jodhpur.

On 24.11.1988, the applicant while on duty is alleged to have been manhandled by some employees of the respondents with the result there was a fracture in his jaw bones. The applicant was referred to Medical authorities and was treated at P&T Dispensary, Jodhpur, as well as Ahmadabad and Government Hospitals at Jodhpur.

At that time, it is stated that Head Post Office was situated in a rental building known as Keshav Bhawan owned by Shri Keshav singh Sankhala. Now the said H.P.O. Chopasani Road, has been bifurcated into two post offices. The part of HPO has been merged into HPO Shasri Nagar, Jodhpur whereas the BPO part is working in another rental building.

The applicant further claims that his salary was fixed at Rs.42/- per month, later on it was raised to Rs.90/-. He was also paid arrears of pay to the tune of Rs.4,000/- in 1985. His basic pay was fixed at Rs.350/- P.M. His base of salary was $1/30^{th}$ of 750 + pro rata D.A. Plus interim relief, i.e. About Rs.2200-2300 per month. After the report of the Vth Pay Commission, his basic pay was fixed at Rs.550/- P.M. Based on Rs.2550/-+ pro rata (DA + interim relief) i.e. Rs.3647-4700 per month. However, the arrears of Vth Pay Commission Recommendations is yet to be paid to the applicant.

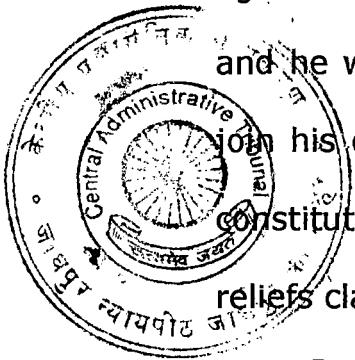
It is further stated that duties of the applicant was to reach at Post Office concerned at about 5.00 A.M. to fetch potable water from the water tap situated in the building owner's portion. After filling the water from the tap the applicant used to fetch the water to the post office to store in the water posts. After closing of the postal business, the applicant was duty bound to clean the floors and windows of the post office. Thus, he claims that his duty hours ranged from 5.00 AM to 7.00 PM in the evening. From 1981 to 1988 everything was normal and smooth.



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He claims that in 1988, Shri Ghisoolal and Chetan Chouhan, the concerned postmasters of H.P.O.Chopasani Road, Jodhpur, began to take interest in another person namely Shri Mohan to be given appointment in place of the applicant. To achieve this aim, Shri Mohan and the Postmasters concerned of the relevant time along with one Mr. Ummed Bharti, an employee of Post Office, began to tease and maltreat the applicant.

Ultimately on 24.11.1988, the applicant was manhandled and his jaw bones were broken and since then he is undergoing various treatment at various hospitals. His treatment continued for one year and during this period, he was partially fit for duty but he was unable to pour and fetch the required quantity of potable water. Shri Vijay Sharma, a minor younger brother of the applicant used to work as "E^{VA}ZI" (substitute) to his brother. The applicant became victim of mental retardness and epilepsy. The P&T Dispensary at Jodhpur began treatment of the applicant. The applicant has given in detail the various treatments taken by him in different Hospitals etc. Ultimately, he was declared cured from the disease and fit to join duty on 22.10.1992. He made a representation to the post office to allow him to join his duties but ~~since~~ no reply was given to his representation, He again fell sick and had undergone mental treatment in the year 1993 and he was declared fit to join duty. However, he was not allowed to join his duty. He was not medically examined by the respondents by constitution of a medical board. Thus, he has now filed this O.A. for the reliefs claimed above.



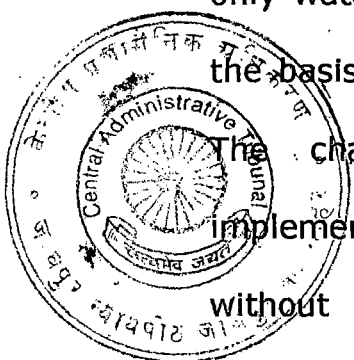
Respondents are contesting the O.A. They plead that there is no provision to engage E.D. Waterman. The applicant was engaged temporarily as part time waterman at Chopasani Road Post Office. He was contingent paid part time waterman and was paid from the fixed water allowance for the post office by the DOP from time to time. The

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duties of applicant were for one or two hours per day as per the norms fixed by the Department depending upon the staff strength of that post office. He was never asked to perform the duties for more than the period of one to two hours daily.

There is no post of Waterman in the post office, therefore, there was no question of giving appointment on the post of waterman on the regular basis to the applicant. He left the job without information to the respondents w.e.f. 24.11.1988 and thereafter he did not turn up. Since he was contingent paid waterman, thus, there is no service record of the applicant available with the respondents. It is the medical authority who can conduct the medical board if the applicant appeared before them. As far as the respondents are concerned, they are not competent to direct the medical authority to conduct medical board of the applicant.

The applicant is not an "aggrieved person" and as such is not entitled to file this O.A. No post of Waterman was sanctioned in the post Office and neither any notification for recruitment of the post was issued nor any appointment was made. The father of the applicant Shri Janki Vallabh Sharma is working as Postman in the department. Thus, the applicant was provided medical relief on behalf of his father. Neither the salary was fixed nor paid to the applicant. He was paid only water allowance fixed by the Department from time to time on the basis of staff strength. No basic pay was fixed for the applicant. The changes / increased water allowance was refixed on implementation of Vth CPC Report. Since, he had left the department without information w.e.f. 24.11.1988, no arrear of Vth Pay Commission i.e. Enhanced rate of fixed water allowance is available to the applicant. The duties of the applicant was assigned for two hours for filling water for staff of post office.



The applicant had described the details of 18 years past

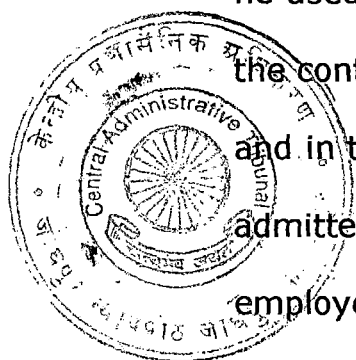
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happening for which no documentary proof is available as he was a part time worker. Post and Telegraph Dispensary card is issued to the employee of the Department for treatment of the employee and his family members. The dispensary cards issued by the Department with fresh card numbers were issued in the name of Shri Janki Vallabh postman. Applicant being his son, was entitled to take treatment. No dispensary cards were issued to an ED employee or part time workers. The applicant appeared after 3 years to engage him again as part time waterman but his application could not be considered as the Department had already engaged another part time worker. The applicant has made allegations against certain officers without impleading them as party and as such the same cannot be taken cognizance of. In so far as manhandling is concerned, the applicant did not lodge any complaint with the Police.

The applicant has not filed any rejoinder to rebut the pleas taken by the respondents in their reply.

We have heard the learned counsel for the parties at length and perused the material on the file.

At the very outset we may mention that it is admitted case of the applicant himself that his duty was only two hours in the morning and two hours in the evening, after close of the post office. In the morning he used to fetch water from a portion of the building which was not in the control of the post office and fill up the water pots in the post office and in the evening he used to close the doors and windows. Thus, it is admitted case of the applicant himself that he was not a regular employee. Even for the post of EDA also, there is a set procedure to be followed for appointment but no such procedure was applied in this case. Contention of the respondents appears to be in consonance with the Annexure R-1, which provides for engagement of waterman from contingent that too depending upon the strength of the concerned post



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office. It appears that in the exercise of the powers delegated by Annexure R-1, the applicant might have been engaged as a part time waterman, be paid out of the contingent fund but that will not confer the applicant status of a regular employee or even the extra department employee of the department. The various pleas taken by the respondents in their reply have gone unrebutted by the applicant and as such the same are deemed to have been admitted. The respondents have specifically pleaded that after applicant left the job, another person was engaged. Such contention has neither been rebutted nor any step was taken by applicant to amend the O.A. to make such person a party in the O.A. Thus, the O.A. is not maintainable.

Learned counsel appearing for the applicant submitted that when the applicant was taking treatment, his medical tickets prepared by the Postal Telegraphs Dispensary shows as Card No.E-17 and the use of the word "E-17" means that he was a regular employee. This contention cannot be accepted as later on in some Cards he has been shown as PO-2/319, which means it is for some dependent of an employee of the P&T Department. It is also admitted by the applicant that his father was working as Postman in the same post office. Thus, it can safely be concluded that he took treatment from P&T Dispensary being son of his father and not as an "employee", as sought to be projected by him.



Now the question arises whether mention of word "E-17", on the medical Card will go to prove that applicant was a regular employee or ED employee particularly when in some of the Card the category mentioned is PO 2/319 which means that he is son of an employee. Thus the fact that there are different types of Cards such as E-17 or PO 2/319, only raises confusion and it may be due to some clerical error that he might have been mentioned as E-17. If we go along with the admitted facts, as alleged by the applicant as he was made only a

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part time employee rendering only 2-3 hours of duty in morning and in the evening, that will not give him status of a regular E.D. employee. Another fact supports our view that for ED employees, there are separate recruitment rules and in the year 1981, when the applicant is stated to have joined the service, rules were existing. The rules require procedure to be followed and certain conditions to be fulfilled by candidates for appointment as an ED Agent but the applicant nowhere alleges in the O.A. that he had ever been engaged as per rules or he fulfilled those conditions for getting the job as ED employee. On the contrary there is admission on his part that he is working as Waterman and his duties were to fetch water from a part of building for filling in the water pots in the post office building and closing of the office in the evening. The various pleas made by the respondents in their reply have gone un rebutted and we have no hesitation in accepting the plea of the respondents. Moreover, the constitution of Medical Board to declare an employee incapacitated and offer him alternative employment is done for regular employees and not for part timers.

Since the applicant himself does not say that he has ever been regularized from the post of part time Waterman to any other regular post available in the postal department such as ED Agent, GDS or Postal Assistant in the post office, so he cannot be said to be a regular employee of the postal department and is not entitled for the direction sought for in this O.A.

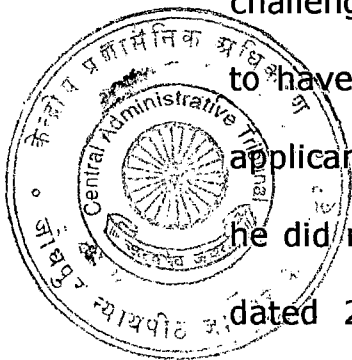
It is also admitted case of the applicant that on 24.11.1988, he had some problems with other staff members and his jaw was broken and his mental conditions has also not been stable since then and he has been taking treatment from P&T dispensary, as well as he had gone to Ahmedabad also for taking treatment. As far as treatment from P&T Dispensary is concerned, he has been using the card of P&T



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Dispensary probably because his father was a postal employee. But not as a regular employee of the postal department. It is unbelievable that a part time worker would have been issued a medical card in his own name by the postal authorities itself particularly when there is specific averment to this effect by respondents in their reply that they do not issue such card to part time workers. Since after 1988, till date he has not worked in the office, it cannot be deemed that he had been continuing in employment with the respondents. On the contrary, it has to be believed that after 24.11.1988, whatever relations ^{of master & servant} he was having as part time servant which existed prior to 1988, that was severed and since then applicant had not taken any action for the restoration of those relations and this O.A. has been filed only in July, 2005. Though in between few representations are stated to have been made to the department but since as per the applicant himself after 1988, he is stated to have got issued demand of notice only on 17.1.2005, which is quite belated and as such the O.A. is barred by time.


So we find that even status of the applicant cannot be restored to that of part time employee at this stage, when an alternative arrangement has been made by respondents which is not under challenge. In so far as delay is concerned, one representation is stated to have been made by applicant in October, 1992, but thereafter the applicant again remained silent and there is no explanation as to why he did not pursue his case after giving representation, Annexure A-7, dated 22.10.1992. Another representation is stated to have been made on 5th August, 1993 but that will not extend the period of limitation. It is well settled law that repeated representations do not extend the period of limitation and if the applicant had any grievance to be redressed by the respondents, applicant should have approached the court within the period of limitation as prescribed under the



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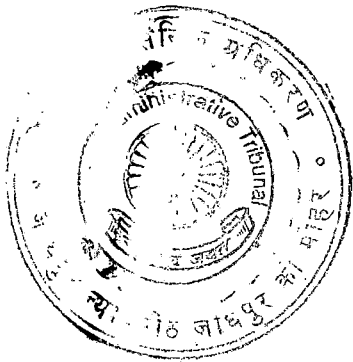
Administrative Tribunals Act, 1985.

In view of our above discussion we find that the applicant has failed to prove that he has ever been appointed or regularized as ED Agent or that he has been illegally removed. The person who has been appointed in place of the applicant is not a party before us. The specific stand taken by the respondents in their reply has gone un rebutted. The O.A. is hit by the law of limitation, as well as delay and laches. O.A. is thus held to be devoid of any merit and is dismissed. *No order as to costs*


(J.P. SHUKLA)
MEMBER (ADM.)


(KULDIP SINGH)
VICE CHAIRMAN

HC.



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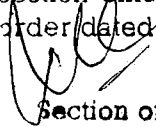
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SRINATH BOOTHRA, Adv.
counsel for petitioners

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Part II and III destroyed
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under the supervision of
section officer () as per
order dated...31/12/14...



Section officer (Record)