

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 149 of 2011

Reserved on 18.5.2015

Pronounced on 27.05 May, 2015

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

1. Dinesh Awasthi, aged about 49 years, S/o Sri Kapil Awasthi, R/o H.No. 533/65, Mahaveerji Ka purwa, Aliganj, Lucknow.
2. Ms. Suman Devi, aged about 47 years, D/o Si Murli Dhar Shukla, R/o H.No. 533/65 Mahaveerji Ka purwa, Aliganj, Lucknow.

.....Applicants

By Advocate : Sri A. Moin

Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.

.....Respondents.

By Advocate : Sri N. Nath

O R D E R

The applicants have filed the present Original Application under Section 19 of Administrative Tribunals, Act 1985 with the following relief(s):-

- "(a) to set-aside the letter/rejection order dated 26.11.2010 passed by the Respondent no.2 as contained in Annexure A-1 to the O.A.
- (b) to direct the respondents to re-engage and regularize the applicants as Voluntary Ticket Collectors within a specified time with all consequential benefits.
- (c) To direct the respondents to pay the cost of this application.
- (d) Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case, be also passed."

2. The facts of the case are that the applicants had served as Mobil Booking Clerks and Voluntary Ticket Collectors (MBC and VTC respectively) from 10.8.1983 to 12.12.1983 under the scheme

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of employing the services of family members and dependent upon of railway employees as provided in circular dated 21.4.1982, 31.3.1983 and 7.7.1983. Their certificates of employment are annexed at Annexure no.4. The applicants were disengaged without sanction or concurrence of respondent no.1 i.e. General Manager, North Eastern Railway. The Railway Board issued circular dated 20.4.1985 (Annexure-5) for regularization of such VTCs and MBCs, who had been working under the said scheme. Subsequently, the Railway Board issued another order dated 17.11.1986 with regard to making temporary arrangements to handle the rush of passengers and increase intake of VTCs and MBCs. Pursuant to the aforesaid circular dated 17.11.1986, various VTCs and MBCs preferred O.As before various Benches of the Tribunal in which leading case was Miss Neera Metha & Others Vs. Union of India & others. The Principal Bench of this Tribunal in that case held that all the applicants who had been engaged as MBCs before 17.11.1986 deserve to be reinstated in service irrespective of the period of service put in by them and all persons should be considered for regularization and permanently absorbed in accordance with the provisions of the said scheme. A similar decision was given by Principal Bench of the Tribunal in the case of Usha Kumari Anand by means of judgment and order dated 23.5.1998. The respondents, thereafter, issued circular dated 18.8.1998 for considering the cut off date of disengagement of VTCs and MBCs as 17.11.1986 and had also directed for absorption in regular employment of the persons engaged as VTCs and MBCs in the Railways. The Sr. Divisional Commercial Superintendent, North Eastern Railway, Varanasi issued an order dated 8.5.1990 reinstating the VTCs and MBCs on their respective place of posting, but the applicants were not considered for reinstatement. After coming to know that similarly situated persons have been engaged, the applicants alongwith others had preferred a representation dated 19.3.1993 in view of judgments passed by various Benches of the Tribunal and subsequently order of Hon'ble Supreme Court in the case of Bilal Ahmad. Thereafter, the applicant preferred O.A. no. 391 of 1999 in which the present applicants were applicant nos. 4 & 3 respectively. The said O.A. was disposed of by means of judgment and order dated 2.9.2008 with the observation that in the event either of the

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applicants submit to the respondents the valid proof of their working which could have been verified or any other collateral evidence, the same shall be considered (Annexure no.9). The applicants gave their representations to the respondent no.2 on 21.3.2009. In the meanwhile, the Hon'ble High Court in Writ petition No. 74 (S/B) of 2005 (Union of India & others Vs. Vinay Kumar Mishra & Others) affirmed the order of the Tribunal wherein order to reinstate the MBCs had been passed. Yet, no action was taken. The applicants, thereafter, filed O.A. No. 39 of 2010, which was disposed of by means of judgment and order dated 18.2.2010 with a direction to the respondent no.2 to decide the representation of the applicant by passing a reasoned and speaking order (Annexure no.12). The impugned order dated 26.11.2010 has been passed by the respondents rejecting the claim of the applicants, hence this O.A.

3. The respondents have raised preliminary objection against maintainability of the O.A. Their objection is that in the earlier two O.A. Nos. 391 of 1999 and 39 of 2010, the age of the applicants were disclosed as 39 and 42 years respectively which could mean that at the time of their engagement as MBCs/VTCs, they were minor (under age) . Infact, their claim is that the direction of O.A. no. 319 of 1999 was that in the event either of the applicants submit to the respondents the valid proof of their working which could have been verified or any other collateral evidence, the same shall be considered. The certificates of working as submitted by the applicants are not authentic and hence their factum of the alleged working with the respondents is denied.

4. The respondents have pleaded that the case is much delayed that the applicants have approached this Tribunal 17 years from the date of their disengagement having said that they have worked from 10.8.1983 to 12.12.1983, then again years after the aforesaid judgment dated 2.9.2008. The applicants have filed O.A. no. 391 of 2010, which was disposed of by means of judgment and order dated 18.2.2010 with a direction to decide the representation of the applicants. Thus, in view of the law laid down in the case of **J. Jacob Vs. Director Geology & others reported in AIR 2009 SC 264** every representation to the

Government for relief, may not be replied on merits. The Hon'ble Supreme Court has further held that representation relating to matters which have become stale or barred by limitation, can be rejected on that ground alone without examining the merits of the claim by further observing that the replies to such representation cannot furnish a fresh cause of action or revive a stale or dead claim. Hence, the instant O.A. is hit by such pronouncement. :-

5. The respondents have stated that in O.A. no. 319 of 1999, the applicant no.1 declared himself as 29 years old and applicant no.2 as 30 years; whereas in O.A. no. 39 of 2010 the applicant no.1 declaring his age as 39 and applicant no.2 as 42 years old and in the present O.A. the applicant no.1 has declared himself as 49 years old and the applicant no.2 as 47 years old. In this case, there appears to be two grounds of false claim inasmuch as the applicants would have been minor aged about 13 and 14 years respectively at the time of their engagement from 10.8.1983 to 12.12.1983. By means of the present O.A., the applicants have suddenly declared their age as having been different than disclosed in the earlier two O.As. Therefore, in terms of directions given in O.A. no. 391 of 1999, the applicants failed to provide the valid proof of their working and/or any other collateral evidence of their having worked. More-over, the Railway Board's vide letter dated 21.4.1982 had directed to consider the regularization of those VTCs and MBCs who had put in minimum three years service. This scheme was closed vide Railway Board's letter dated 17.11.1986. However, following directions received in various cases, the Railway Board vide letter dated 6.2.1990 gave directions that those MBCs/VTCs engaged as before 17.11.1986 must be considered for absorption for regular employment provided they have completed three years as MBCs/VTCs. As per the applicants' own averments that they were engaged as MBCs/VTCs w.e.f. 10.8.1983 to 12.12.1983 and as such they are not covered under the aforesaid order.

6. The applicant has filed Rejoinder in which they have stated that the date of birth of the applicant no.1 is 1.8.1967 and applicant no.2 is 17.8.1966. Accordingly, in 1983 the applicant nos.1 and 2 were aged about 17 and 18 years respectively. However, they have denied the contentions of the respondents

made in the Counter Reply and reiterating the averments made in the Original Application.

7. During the course of hearing, learned counsel for the applicant has placed reliance the following case laws:-

Ms. Neera Mehta & Others Vs. Union of India & Others reported in (1990) 12 ATC 249.

8. We have heard the learned counsel for the parties and have also perused the pleadings available on record.

9. The applicants have stated that they were dis-engaged from service w.e.f. 12.12.1983. In all their entire pleadings, they have never said that consequent upon such disengagement, they had approached for redressal of their grievance arising out of such disengagement in December, 1983. For the first time, they approached this Tribunal or any court of law by filing O.A. no. 391 of 1999 after the delay of 25 years. The said O.A. was dismissed with following observations:-

"In the above view of the matter, when in the event either of the applicants submit to the respondents the valid proof of their working which could have been verified or any other collateral evidence, the same shall be considered. However, the claim of the applicants at present cannot be established in law. Accordingly, the O.A. is found bereft of merit and is dismissed. No costs."

10. This order does not say that any delay in approaching the Court would automatically stand condoned. The applicants next approached this Tribunal by means of O.A. no. 39 of 2010, which was disposed of with the following directions:-

"In view of the above, we direct the applicants to file within six weeks from today a certified copy of this order alongwith a copy of O.A (both compilation I + II) alongwith 'additional representation' (if required) before Opposite party no.2/Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow and the said authority shall (provided said representation/ additional representation is presented, as stipulated/contemplated above) decide the same within three months of the receipt of the representation by passing a reasoned and speaking order in accordance with law. Decision taken shall be communicated to the applicants forthwith."

Once again, no application for condonation of delay in filing the case has been granted to the applicants. The Hon'ble Supreme

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Court in the case of Union of India & Others Vs. A. Durairaj reported in JT 2011 (3) SC 254 has held as under:-

"This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This Court had occasion to examine such situations in Union of India v. M.K. Sarkar [2010 (2) SCC 58] and held as follows:

"The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. x x x x x

When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect."

14.1 We are therefore of the view that the High Court ought to have affirmed the order of the Tribunal dismissing the application of the respondent for retrospective promotion from 1976, on the ground of delay and laches.

Therefore, in terms of the above observations, the O.A. is liable to be dismissed on the ground of delay.

J. Chaudhary

11. Coming to the merits of the case, the applicants have sought shelter of Railway Board's circular dated 21.4.1982 on the subject of VTCs/MBCs. The said circular provides for absorption against regular vacancies provided the MBCs/VTCs have minimum qualification required for direct recruitment and have put in atleast three years service as VTCs/MBCs. The order dated 20.4.1985, once again repeals the above stipulation of availability of regular vacancy, having minimum qualification at the level of direct requirement, age limit and minimum work for three years as MBCs/ VTCs for consideration of regularization. The Hon'ble Supreme Court in SLP no. 14018 of 1986 in re. Secretary, Ministry of Railways Vs. Neera Mehta as quoted in Railway Board's circular dated 18.8.1998 states that 17.11.1986 be accepted as cut-off date for extension of benefit of regularization provided they have put in 3 years service by 31.3.1987. By means of various judgments quoted, the applicants have not been able to show that there has been any relaxation in stipulation of three years service laid down by various orders of the Railway Board. The order dated 6.2.1990 is an order in which the cut off date has been harmonized with the pronouncement of CAT, Principal Bench in O.A. no. 1174 of 1986 Meera Mehta Vs. Union of India & Others. In all case for absorption in regular employment the requirement of completion of three years service as MBCs/ VTCs is adhered to. The applicants, by their own averments, have stated that they had worked only from 10.8.1983 to 12.12.1983 and as such they have not been able to demonstrate how any order or any judgment in favour of regularization of such MBCs/ VTCs who had worked only for the period as spelt out by them.

12. In view of the above, the O.A. fails and is accordingly dismissed. No costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

VR. Agarwal
(Navneet Kumar)
Member (J)