

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 984/96.

Date of Decision: 13.11.97

Shri S.D. Deokar & Another, Applicant.

Shri S. N. Pillai, Advocate for
Applicant.

Versus

Union Of India Respondent(s)

Shri S. C. Dhavan, Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B. S. Hegde, Member (J).

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- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 984/96.

Dated this 13th, the ~~13th~~ day of November, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

1. S.D. Deokar, (Retd. OS-I
in the Office of CCS, C.Rly)
Residing at -
MS/RB/II/52/1,
Central Railway Colony,
Near Sion Hospital, Sion,
Mumbai - 400 022.

... Applicants

2. Ms. Damayanti S.,
residing at MS/RB/II/52/1,
Central Railway Colony,
Near Sion Hospital, Sion,
Mumbai - 400 022.

(By Advocate Shri S. N. Pillai)

VERSUS

Union Of India through
The General Manager,
Central Railway, C.S.T.,
Mumbai - 400 001.

... Respondents.

(By Advocate Shri S. C. Dhavan)

: ORDER :

I PER.: SHRI B. S. HEGDE, MEMBER (J) I

Heard Shri S. N. Pillai for the applicants and
Shri S. C. Dhavan for the respondents.

2. The only prayer made in this O.A. is that the
Applicant No. 1 is entitled to employment to his daughter

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as per the orders of the Railway Board and the Railways in respect of the incentive to loyal employees pursuant to their order dated 08.07.1974.

3. The Applicant No. 1 retired from service with effect from 31.12.1993. Applicant No. 2 is the daughter of Applicant No. 1. In the year 1974, there was an All India Strike by the railway employees of Indian Railways from 08.05.1974. The contention of the applicants is that the entire administration was paralysed by the strike and the applicant no. 1 remained loyal to the administration and reported for duties during the period of strike, except one day. In this connection, the learned counsel for the applicant draws my attention to exhibit A-2 vide dated 08.07.1974 wherein the railway servants who remained loyal during the strike period were granted incentives by the Railway Board, and accordingly, suitable instructions/directions were issued by the Railway Board which reads as follows :

- (a) Hard duty allowance.
- (b) Cash awards
- (c) Advance increments
- (d) Extensions
- (e) Employments to sons and daughters of loyal staff.

4. The counsel for the applicant also stressed that the Government changed the policy of incentives from time to time. This instruction was subsequently modified vide C.P.O.'s letter dated 20.09.1974 wherein the "Board further decided that if the staff had worked for the major part of the strike and were on authorised leave for a day or two they will not be debarred from being sanctioned advance increments, cash award. Every case should be dealt on merits after ascertaining the loyalty of such staff." The same has again been modified vide letter dated 25.10.1975 stating that - "staff who were on authorised leave for a period of 3 days excluding Sundays/Holidays/Rest days, etc. but have worked for the major part of strike period, should be eligible for advance increments and their case should be finalised before 31.10.1975." Despite this relaxation, the respondents did not consider the case of the applicant and he was perforced to file an application before the Bombay High Court vide Writ Petition No. 1674 of 1994 which was disposed of by the Division Bench of the Bombay High Court on 19.07.1994. After considering the case, the Court did not find any merit in the writ petition and the same was dismissed at the admission stage itself. However, the High Court allowed the applicant to make suitable representation to the competent authority, which may be considered by the authorities sympathetically.

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5. Pursuant to the direction of the High Court, the applicant made representation to the competent authority, which has been considered and rejected by the respondents department on 22.11.1995 (exhibit 'A') stating that the power to grant such advance increments should be used objectively and sparingly. For this purpose, attendance from the very first date of the strike, attendance despite intimidation, threat of violence and hardship in coming to the place of duty may be taken into account. Preference should ordinarily be given to those who man essential service or stations either single handedly or in association with one or two colleagues only. His case has been considered as back as 1975 and decided that the authorised absence is totally different from regularising absence after the strike. Thus, a positive decision has been taken in 1975 not to consider the case of applicant no. 1 for grant of any incentives granted to those staff who had attended duty for the full period of the strike. These incentives were sanctioned right immediately after the time when the strike took place. These claims cannot be kept pending for 15 to 20 years. Therefore, an appointment at this stage because your father had attended duty from the second day after the starting of the strike, is not considered justified and your request for appointment is not accepted.

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6. On the other hand, the learned counsel for the respondents, Shri S.C. Dhavan, vehemently urged that the application filed by the applicants is hopelessly barred by time. The alleged cause of action arose in the year 1974 and whatever benefit to be given to such loyal workers, who did not participate in the strike, could be claimed within the period of limitation, therefore, such belated application cannot be entertained. Admittedly, the applicant has filed this application after a lapse of 22 years and the same is required to be dismissed on limitation alone.

7. The Learned Counsel for the respondents has also drawn my attention to the circular issued by the department vide dated 25.10.1975 wherein it is stated that all claims have been examined and apart from Shri K.G. Katti, ~~Steno~~ and Shri S.D. Deokar, Jr. Clerk, there were only 7 cases of absence on 08.05.1974 i.e. the first date of strike. None of them are considered suitable for being recommended for grant of advance increment, etc. The Learned Counsel for the respondents also urged that similar matters cropped up before the Principal Bench, Allahabad Bench and Lucknow Bench, which has been suitably considered and rejected by the Benches.

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8. The Learned Counsel for the respondents, in support of his contention, has drawn my attention to the decision of the Principal Bench in O.A. No. 258/94 which has been delivered on 08.02.1995. After considering the contentions of the parties, the Tribunal observed that the application is not maintainable and there is no case at all for admitting the application or to issue any direction to the respondents, therefore, the O.A. was dismissed at the admission stage itself. The Allahabad Bench in Nandlal Shukla V/s. Union Of India [1996 (2) ATJ 650] observed that the claim for appointment of dependent of a railway employee on account of non-participation during the strike period, such an appointment must be claimed within limitation. In the present case, the applicant claims appointment on the basis of concession granted to his father by the department. He filed a representation before the Department in the year 1995, which was rejected. Therefore, the applicant filed the Original Application before the Tribunal. The Tribunal held that the cause of action arose in the year 1974 and there is no explanation for the delay of 22 years. Accordingly, the application was rejected being barred by limitation. Similar is the case of Quasim Sazzad & Others V/s. Union Of India [1997(1) ATJ 83] wherein the Lucknow Bench of the Tribunal

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held that the circular giving concession was a one time measure only and gives no right to claim the concession by the wards of loyal railway servant. In that case also, the wards of loyal railway servant were minor at the time and they made representations subsequently in the year 1994. When the representation of the applicants have not evoked any response, they sought direction to be issued to the respondents to decide the representation. Earlier, the Principal Bench had held that the benefits provided by the circular 1974 could have been availed of only by the railway servant, who had not participated in the All India Strike and it was not open to wards to claim that benefit which was only to be claimed by such loyal employees at the relevant time. Therefore, it was held that the applicants have no vested right or any right in them for making such a representation and accordingly, the O.A. was dismissed.

9. I am fully in agreement with the view taken by the respondents department and the observations made by the Allahabad Bench, Lucknow Bench as well as Principal Bench in this respect. It is true, that the circular issued was a one time measure and give no right to claim concession by the wards of the loyal railway servant. In the present O.A. also, the applicant no. 2

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is the ward of the retired government employee, who retired in the year 1993. Keeping in view the observations made by the Tribunal in the earlier judgements, I am of the opinion that the O.A. filed by the applicants is not maintainable and lack merits. The same is accordingly dismissed after hearing both the parties. No order as to costs.


(B. S. HEGDE)
MEMBER (J).

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