

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 398 of 2001.

Dated this _____, the 25th day of February, 2002.

Ramesh Singh, _____ Applicant.

Shri G. S. Walia, _____ Advocate for the
Applicant.

VERSUS

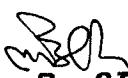
Union of India & Others, _____ Respondents.

Shri V. S. Masurkar, _____ Advocate for the
Respondents.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.

Hon'ble Shri M. P. Singh, Member (A).

- (i) To be referred to the Reporter or not ? *Y*
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library. *Y*


(M. P. SINGH)
MEMBER (A)

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Dated this _____ the 25th day of February, 2002.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.

Hon'ble Shri M. P. Singh, Member (A).

Ramesh Singh,
Residing at -
Vishwakarma Nagar,
Phase-II, Bldg. No. 24/102,
Ambadi Road, At 100 ft. Road,
Dewanman,
Vasai Road (W) - 401 202.

Ex-Mobile Booking Clerk,
Bombay Central,
Western Railway,
Bombay.

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Applicant.

(By Advocate Shri G. S. Walia)

VERSUS

1. Union of India through
The General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
DRM's Office,
Bombay Central,
Bombay - 400 008.

3. Sr. Divisional Commercial
Superintendent,
Mumbai Division,
Western Railway,
DRM's Office,
Mumbai Central,
Mumbai - 400 008.

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Respondents.

(By Advocate Shri V.S. Masurkar)

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O R D E R

PER : Shri M. P. Singh, Member (A).

By filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the Applicant is challenging the order dated 30.09.1999 rejecting the representation of the Applicant to take him back on duty and grant him the consequential benefits.

2. The brief facts of the case are that the applicant was engaged as a Mobile Booking Clerk in Western Railway in the year 1980. In 1983 he was arrested in connection with the criminal case. On the basis of the arrest of the applicant in a criminal case, his services were terminated by the respondents. According to him, the persons who were working with him were subsequently absorbed and regularised by the respondents. The applicant was finally acquitted in the criminal case by the Metropolitan Magistrate vide judgement dated 02.05.1997, as the charge levelled against him could not be proved. On 15.07.1998 the Applicant submitted a representation to the respondents for his reinstatement. The respondents considered the representation of the applicant and rejected the same vide their letter dated 30.09.1999. Aggrieved by this, the applicant has filed this O.A. seeking direction to the respondents to absorb him and regularise his service as a Commercial Clerk from the date he was discontinued i.e. with effect from 11.08.1983 with all consequential benefits, including arrears of salary, seniority, promotion, etc.

3. The respondents in their reply have stated that the cause of action accrued on 11.08.1983 i.e. the date on which he was disengaged whereas the O.A. has been filed by the applicant on 01.06.2001, hence, the O.A. suffers from delay and laches and on this ground alone the O.A. deserves to be dismissed. To support their contention, the Respondents have relied upon the following judgements :

- (i) *P.S. Sadashivswamy V/s. S/O. Tamil Nadu (AIR 1974 SC 2271)*
- (ii) *Jacob Abraham & Others [A.T. Full Bench Judgements 1994-96]*
- (iii) *Ram Chandra Samanta V/s. Union of India. 1994 (26) ATC 228.*
- (iv) *S. S. Rathore V/s. S/O. M.P. [1989 (2) ATC 521]*
- (v) *Bhoop Singh V/s. Union of India. [AIR 1992 SC 1414]*
- (vi) *Secretary to Govt. of India V/s. Shivaram M. Gaikwad (1995) 30 ATC 635 = 1995 (6) SLR (SC) 812.*
- (vii) *Ex. Capt. Harish Uppal V/s. Union of India [1994 (2) SLJ 177].*
- (viii) *L. Chandra Kumar V/s. Union of India [1997 (2) SLR SC 1]*
- (ix) *Dattaram V/s. Union of India [AIR 1999 SC 564]*
- (x) *Union of India V/s. Bhagnoar Singh 1996 LLJ 1127 (SC)*
- (xi) *Ramesh Chand Sharma V/s. Udhamp Singh Kamal & Ors. [1999 SCC 304].*

They have further stated that the applicant was deployed some time in the year 1980 and, therefore, no record relating to the applicant is available with them. In any case, the applicant was not engaged since 1983 and that he was engaged on purely

temporary arrangement as a Mobile Booking Clerk. He was neither selected through the process of recruitment rules i.e. through R.R.B. or departmental promotion. Hence, the records of such a person cannot be preserved for such a long time i.e. from 1983 till the filing of the present O.A. before this Tribunal on 01.06.2000. Since the applicant was engaged purely on temporary basis and on payment of honorarium and not on salary, his services were discontinued as per the clause of deployment of M.B.C. (Mobile Booking Clerk). In view of the above contentions the O.A. has no merit and be dismissed with cost.

4. Heard the Learned Counsel for the rival parties and perused the pleadings and records.

5. During the course of arguments, the Learned Counsel for the applicant drew our attention to the judgement of Metropolitan Magistrate dated 02.05.1997. He submitted that in the criminal case C.C. No. 122/S of 1988 which was filed against the applicant in the Court of the Metropolitan Magistrate's 36th Court at Mumbai Central, Mumbai, one of the accused was Ronni J. Vaz, who was also working alongwith the applicant as Mobile Booking Clerk and whose services were also terminated alongwith the applicant. Ronni Vaz, was also acquitted alongwith the applicant of the charge by the Criminal Court vide common judgement dated 02.05.1997. Ronni Vaz was, therefore, similarly placed as the applicant. He also made a representation to the respondents for re-instatement in service. His aforesaid representation was rejected by the Respondents on 30.09.1999, therefore he filed an

O.A. No. 155/2000 in the Tribunal. The said O.A. was allowed by the Mumbai Bench of this Tribunal vide judgement dated 01.05.2001. The Tribunal directed the respondents to take back the applicant (Ronni Vaz) in service notionally w.e.f. 11.08.1983 without payment of backwages. The Tribunal further directed the respondents to consider him for regularisation if he was found suitable as per rules. The Learned Counsel for the applicant further submitted that the judgement of the Tribunal was carried over to the Hon'ble High Court of Bombay. The High Court of Bombay vide their judgement dated 28.01.2002 in the case of Union of India V/s. Shri Ronnie J. Vaz & Ors. in Writ Petition No. 2377 of 2001^{had} confirmed the aforesaid judgement of this Tribunal except with the modification that the applicant (Ronnie J. Vaz) will be appointed as a fresh recruit and no benefit from his earlier service will be given to him. Learned Counsel for the applicant further submitted that the benefit of the judgement in the case of Ronnie J. Vaz should be extended to the applicant, as he was similarly placed.

6. On the other hand, the Learned Counsel for respondents pointed out that there is a delay in filing the O.A. by the applicant. He submitted that the services of the applicant were terminated in the year 1983 and thereafter, the applicant had never approached the respondents or made a representation for his reinstatement. Even after the judgement in the criminal case was given in his favour by the Metropolitan Magistrate on 02.05.1997, it was only after three months i.e. on 14.08.1997 he had applied for a certified copy of the judgement. The applicant

was without any employment, even then he did not bother to approach the respondents for his re-instatement immediately after a copy of the judgement was received by him. It was only on 15.07.1998 that the applicant submitted a representation to the respondents. Even after his representation was rejected on 30.09.1999, he did not come before the Tribunal within the time limit prescribed for filing the O.A. As per Section 21 of the Administrative Tribunals Act, 1985, he should have come before the Tribunal after a period of one and a half years from the date of submitting his representation to the respondents. The applicant had filed the present O.A. only on 01.06.2001, which is beyond the limitation period prescribed under Section 21 of the A.T. Act and his case is, therefore, not similar to that of Ronni J. Vaz. In support of his claim, he relied upon the judgement in the case of L. Chandra Kumar V/s. Union of India reported at [1997 (2) SLR SC 11] and a number of other judgements of the Hon'ble Supreme Court.

7. The admitted facts of the case are that the applicant was enrolled as a Mobile Booking Clerk in the year 1980. His services were terminated in 1983 alongwith one Shri Ronnie J. Vaz, as both of them were involved in a criminal case. Both, the applicant and Ronnie J. Vaz, were acquitted of the charge by the Criminal Court on 02.05.1997. Ronnie J. Vaz made a representation on 13.07.1998 to the Respondents for his re-instatement which was rejected on 30.09.1999. The representation of the applicant for his re-instatement was also rejected on the same date i.e. 30.09.1999. Roney J. Vaz

thereafter filed an O.A. No. 155/2000 in the Tribunal which was within the prescribed time limit. However, the applicant filed the present O.A. on 01.06.2001 i.e. 20 months after his representation was rejected. Since there is a delay in filing the present O.A., the applicant has filed a Miscellaneous Petition No. 522/2001 for condonation of delay. In view of the grounds mentioned by the applicant in his M.P. and in view of the ratio laid down by the Hon'ble Supreme Court in their judgements in the case of - (i) State of Bihar V/s. K. P. Singh [2001 SLJ Vol.I page 76], (ii) K. C. Sharma & others V/s. Union of India & Others [1998 SCC (L&S) 226] and (iii) Sualal Yadav V/s. State of Rajasthan & Others [AIR 1977 SC 2050], we condone the delay as prayed for by the applicant. The case of the applicant is covered in all fours by the judgement of the Tribunal dated 01.05.2000 in O.A. No. 155/2000. The aforesaid judgement dated 01.05.2000 of the Tribunal has been confirmed by the Hon'ble High Court of Bombay vide order dated 28.01.2002, except with the modification that the respondent (Shri Ronnie J. Vaz) will be appointed as a fresh recruit and no benefit from his earlier service will be given to him. We are, therefore, of the considered view that the same benefit, as granted to the similarly placed person, Ronnie J. Vaz, by the Tribunal and the Hon'ble High Court of Bombay be extended to the applicant.

8. We therefore, quash and set aside the impugned order dated 30.09.1999 and allow this O.A. partly with the direction to the Respondents to take back the applicant in service. If the applicant is found suitable for the post of Commercial Clerk, he

will be appointed as a fresh recruit and no benefit from his earlier service will be given to him within a period of two months from the date of receipt of a copy of this order.

9. The O.A. is disposed of with the aforesaid directions.
No order as to costs.

(M. P. SINGH)
MEMBER (A).

B. ignit

**(BIRENDRA DIKSHIT)
VICE-CHAIRMAN.**

OS*

dt 25/2/20
~~Order / Judgment ... despatched~~
00 - Plaintiff - respondent (s)
02 - 21/4/02

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