

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No.614/2001.

Wednesday, this the 10th day of October, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Smt. Shanta Shastry, Member (A).

1. Paschim Railway Karmachari
Parishad, Catering Branch,
32A, Chhapra Bhavan,
R.K.Vaidya Marg, Near
Plaza Cinema,
Dadar (W),
Mumbai through its Secretary.
Shri Banke Bihari.

2. Ignadius Fernandes,
Working as Bill Issuer,
Navar Chawl,
Room No.1, 2nd Road,
Near Church Pakodi,
Sahar Village,
Mumbai - 400 099.

(By Advocate Shri S.V.Marne)

...Applicant.

v.

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

2. The Chief Commercial Manager (Catering),
Western Railway,
Churchgate,
Mumbai - 400 020.

..Respondents.

: O R D E R (ORAL) :

Smt. Shanta Shastry, Member (A).

The applicants in this case were appointed as Cleaners/Waiters in the Western Railway between 28.1.1977 to 1.2.1979. In 1979, they were posted as Bill Issuers on vacant posts, but they were not paid the salary for the post of Bill Issuers. They filed a Writ Petition in Bombay High Court of

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Judicature in 1983 challenging their proposed reversion and for regularisation of their promotions. They had also prayed for stay of the reversion. On 15.11.1984, the High Court of Judicature at Bombay stayed their reversion orders and subsequently transferred the matter to the Central Administrative Tribunal, Mumbai Bench. The Tribunal allowed the Transfer Application on 28.8.1990 directing the Respondents to treat the applicants as having officiated as Bill Issuers and to pay them the salary of Bill Issuers from 15.11.1984. It was further directed to conduct a written test for promotions to the post of Bill Issuers expeditiously. A written test was conducted, Applicant No.2 could not appear for the test, the rest appeared for the test, but failed as on 21.5.1990. Thereafter, the Respondents passed orders on 19.6.1991 treating the applicants as officiating Bill Issuers from 11.5.1984 and fixed their pay in the pay scale of Bill Issuers. The Respondents also issued orders reverting the applicants to the substantive posts on 8.3.1991, but the same were not operated upon. The applicants, then filed OA Nos. 1234/93 and 38/94 for regularisation as Bill Issuers. These OAs were disposed of on 29.10.1997 directing the Respondents to give the applicants three chances to appear in the written test for their regularisation and not ^{to} revert them till then. On 17.3.1998, the Respondents issued notification for promotion to the posts of Bill Issuers and called several other employees for the selection. The applicants again filed OA No.331/98 for a direction to consider the applicants for regularisation in preference to other employees and not to fill up the vacancies

till they were given three chances. The OA was allowed on 16.10.1998 with a direction to subject the applicants for written examination as per the earlier order dt. 29.10.1997 in preference to other eligible staff. Thereafter, all the applicants appeared in the test and passed on 9.6.1999 and their promotions came to be regularised. The applicants have now approached for regularisation of their services by counting the period of officiation. They are aggrieved by the letter dt. 18.1.2000 informing one of the applicants viz. Ignatius Fernandes that his representation had been examined in detail and the seniority claimed by him was not admissible and he has been assigned correct seniority as Bill Issuer. The applicants want the aforesaid letter to be quashed and set aside and to declare the applicants as entitled to count their seniority as Bill Issuer from 15.11.1984 i.e. the date from which they were granted officiating promotion. The applicants have further demanded promotion to next higher grades of Assistant Catering Manager and Catering Manager by counting their seniority as Bill Issuers from 15.11.1984 w.e.f. the dates their immediate juniors were promoted along with consequential benefits.

2. We have heard the Learned Counsel for the applicant. We find that the impugned order is dt. 18.1.2000. ~~The case~~ of one of the applicants for considering his ad-hoc service from 15.11.1984 for the purpose of seniority was rejected. The applicants have approached this Tribunal on 23.7.2001 i.e. beyond the period of limitation. The actual cause of action has arisen much earlier, when the Tribunal decided the matter on 16.10.1988. However, even assuming that the limitation would

start from the date of decision of the representation, still the application is barred by limitation as it is beyond the period of one year. The Learned Counsel for the applicant tried to argue that the other applicants had also made similar representations and not all representations have been replied and therefore, it cannot be said that the application is totally barred by limitation. Further, according to the Learned Counsel it is a continuous cause of action and therefore, the applicants should not be denied the relief on the ground of limitation. In our considered view, the application is certainly barred by limitation. The Hon'ble Supreme Court has also observed in P.K.Ramachandran Vs. State of Kerala and Anr. (JT 1998 (7) SC 21) that Law of limitation may harshly affect a particular party but it has to be applied with all its vigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. It has been held in the case of Ratam Chandra Sammanta & Ors. Vs. Union of India & Ors. (JT 1993 (3) SC 418), that "delay deprives the person of the remedy available in law. A person who has lost his remedy by lapse of time loses his right as well." A writ is issued by this Court in favour of a person who has some right and not for sake of roving enquiry leaving scope for manoeuvring". Even in the case of S.S.Rathore Vs. State of M.P. (AIR 1990 SC 10), it has been held that cause of action shall be taken to arise on the date of the order of the higher authority disposing of the appeal or representation. Further, it has been held that repeated unsuccessful representations not provided by law do not

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enlarge the period of limitation. In the present case the representation was decided on 18.1.2000 but OA is filed after 1 1/2 years. In the light of these Judgments of the Supreme Court and in view of the fact that the applicants have approached this Tribunal beyond the period of one year from the date of the impugned order and also that the applicants have not given any satisfactory explanation for not approaching this Tribunal within the time limit, we are constrained to dismiss this application on the ground of limitation. We, however, do not order any costs.

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(SHANTA SHASTRY)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.