

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May the 1st be
retained

O.A. No. 306/2000
T.A. No.

199

27/11/02

DATE OF DECISION _____

Ganesh Prasad

Petitioner

Mr. S.R. Chaurasia

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. R.G. Gupta

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P.Nagrath, Adm. Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(A.P.Nagrath)
Member (A)

(G.L.Gupta)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 28/11/2000

OA 306/2000

Ganesh Prasad, Driver Internal Transport, Deptt. No.10, Loco Workshop, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Chief Works Manager, Loco Workshop, W/Rly, Ajmer.
3. Dy.CME (Loco), Loco Workshop, W/Rly, Ajmer.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

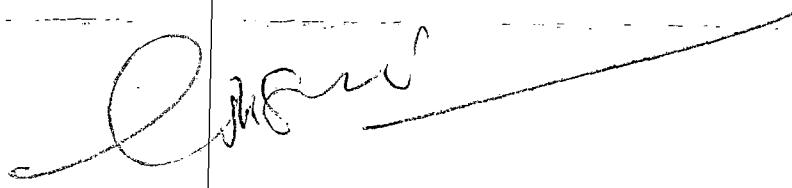
For the Applicant ... Mr.S.R.Chaurasia
For the Respondents ... Mr.R.G.Gupta

O R D E R

PER MR.JUSTICE G.L.GUPTA

Through the instant OA, filed on 11.7.2000, the applicant seeks direction to the respondents to allow him promotion to the post of Fitter Grade-II in the scale of Rs.330-480/1200-1800 w.e.f. 14.7.88 and Fitter Grade-I in the scale of Rs.1320-2040/4500-7000 w.e.f. 19.5.94 as per the decision of this Tribunal in the case of Shamim Khan v. Union of India, decided on 7.10.94, with all consequential benefits and interest.

2. It is averred that the applicant was appointed as Khalasi in 1978 and on passing the trade test for the post of Driver Internal Transport (DIT, for short) he was promoted in the scale of Rs.210-290 w.e.f. 11.11.82 and on the upgradation of the post he started drawing salary in the pay scale of the Skilled category i.e. Rs.260-400. It is further the case for the applicant that the next promotion from the post of DIT scale Rs.260-400 is Fitter Grade-II in the scale of Rs.330-480 as the post of DIT Fitter Grade-III is treated as cognate trade of fitter. It is alleged that in the seniority list of Khalasis the applicant was shown senior to various persons yet persons junior to him i.e. S/Shri Nand Lal & Manphool Singh were fitted in the post of Fitter Grade-III in the scale of Rs.260-400 w.e.f. 3.6.83 and Shri Girdhari Lal w.e.f. 23.8.84 were granted higher pay scale but the applicant was not given the benefit of that pay scale from the date the juniors were given. It is stated that one Shamim Khan, who was junior to the applicant, was given trade test but the applicant was not called for the same and thus equality clause has been violated. The



applicant says that Shamim Khan was promoted as Fitter Grade-II w.e.f. 14.7.88 and Fitter Grade-I w.e.f. 19.5.94 and the applicant ought to have been given the benefit of the same pay scales as he was similarly situated person.

3. In the counter, the respondents' case is that the OA is hopelessly barred by limitation and that Shamim Khan was given benefit of the pay scales on the basis of the decision given in OA 306/92 and as the applicant was not party to the said OA, he is not entitled to have the benefit of the scales.

4. Rejoinder has been filed and reply to the rejoinder has also been filed.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

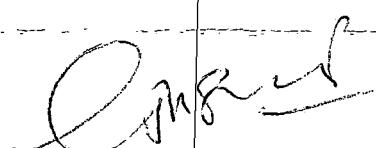
6. The contention of the learned counsel for the applicant was that the applicant is similarly situated person as Shamim Khan and, therefore, he is entitled to have the benefit of the higher pay scale from the dates Shamim Khan got the same, even if the applicant was not party to the OA.

7. On the other hand, the learned counsel for the respondents vehemently contended that the order passed in the case of Shamim Khan was in respect of the applicant of that case and it being not the judgement in rem, the applicant having not approached the Tribunal within the period of limitation, cannot succeed.

8. We have considered the rival contentions.

9. It has to be accepted that the OA has not been filed in time. The applicant is claiming promotion to the post of Fitter Grade-II w.e.f. 14.7.88 and consequential promotion to Fitter Grade-I w.e.f. 19.5.94. The instant OA has been filed on 11.7.2000 i.e. 12 years after accrual of the cause of action. The OA is, therefore, liable to be dismissed on this ground alone.

It has been held by the Supreme Court in the case of Ramesh Chand Sharma v. Udhamp Singh Kamal & Ors., 2000 SCC (L&S) 53, that if an application is filed before the Tribunal after the expiry of the period of limitation prescribed under Section-21 of the Act and condonation of delay is not sought, the Tribunal cannot decide the matter on merits.



The same principle was laid down in the case of Secretary to Govt. of India & Ors. v. Shivram Mahadu Gaikwad, 1995 SCC (L&S) 1148. In the case of Director of Settlement & Ors. v. D.Ram Prakash, 2002 (1) SC SLJ 91, also the same principle was reiterated.

10. The applicant's contention that the period of limitation should be counted from the date of rejection of the representation i.e. 16.8.99, cannot be accepted. It is not the case for the applicant that he had made representation in the year 1988 itself but the same was kept pending by the respondents. The representation was itself made on 30.4.99. The limitation cannot be counted from the date of rejection of the representation.

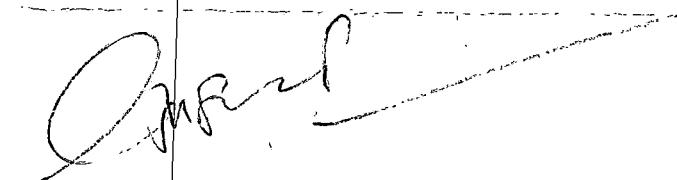
11. The applicant's case is that the Tribunal has granted relief to Shamim Khan in OA 306/92 (486/88), decided on 7.10.94, and the respondents implemented the said order in the year 1999 and, therefore, the OA should be treated within limitation.

The argument is devoid of merit. Shamim Khan had filed OA in the year 1988 itself i.e. well within limitation. The applicant did not care to approach the Tribunal even after the decision on 7.10.94 rendered in the case of Shamim Khan. It cannot be accepted that the cause of action arose to the applicant after the judgement in the case of Shamim Khan was implemented in the year 1999.

12. The OA having been filed after the expiry of the period of limitation, it is liable to be dismissed. It is significant to point out that no application for condonation of delay has been filed by the applicant. Therefore, keeping in view the decisions of the Supreme Court (cited supra) the matter cannot be decided on merits.

13. The mere fact that the applicant has filed this OA on coming to know that in a similar case relief has been granted by the Tribunal, cannot be said to be proper explanation to justify condonation of delay. It has been held in the case of State of Karnataka & Ors. v. S.M.Kotrayya & Ors., 1996 SCC (L&S) 1488, that the explanation that when the applicant came to know of the relief granted by the Tribunal he filed the petition immediately thereafter, is not the proper explanation for condonation of delay. What is required of the applicant is to explain under sub-section (1) and sub-section (2) of Section-21 of the Act as to why he could not avail the remedy of redressal of his grievance before the expiry of the period of limitation.

14. That apart, Shamim Khan has been shown senior to the applicant in the



seniority list (Ann.R/1) dated 12.12.89. The case for Shamim Khan was that persons junior to him i.e. Nand Lal and Manphool Singh had been given higher pay scale ignoring his seniority. In these circumstances, Shamim Khan succeeded in that OA. The applicant has been shown junior not only to Shamim Khan but also to Nand Lal and Manphool Singh in the seniority list. Therefore, no relief can be granted to the applicant on the basis of the decision rendered in the case of Shamim Khan.

15. The learned counsel for the applicant has cited the case of K.C.Sharma & Ors. v. Union of India & Ors., 1998 (1) SLJ 54, in support of his contention that the claim of similarly situated person should not be rejected on the ground of bar of limitation.

A reading of the judgement of K.C.Sharma (supra) shows that the applicant therein had filed an application for condonation of delay before the Tribunal but the same had been rejected. Apart from that, the Full Bench of the Tribunal had already held that the notification in question, so far as it gave retrospective effect, was invalid being violative of Articles 14 and 16 of the Constitution. In view of the totally different fact situation in that case, the applicant cannot be granted relief on the ground of similarly situated person.

The learned counsel for the applicant also placed reliance on the case of Inder Pal Yadav v. Union of India, 1985 (2) SCC 648. It is not understood as to how this case assists the applicant in overcoming the bar of limitation. That was the case where Government had formulated a scheme for regularisation of the casual labour and the same was made applicable from 1.1.84. Their Lordship of the Supreme Court held that the scheme should be applied from 1.1.81.

16. Having considered the entire material on record, we are constrained to hold that the OA is liable to be dismissed on the point of limitation and is hereby dismissed. No order as to costs.


(A.P. NAGRATH)

MEMBER (A)


(G.L. GUPTA)
VICE CHAIRMAN