

05.12.2007

OA No.139/2001

Mr. C.B. Sharma, Counsel for applicant.
Ms. Kavita Bhati, Proxy counsel for
Mr. Kunal Rawat, Counsel for respondents.

Heard learned counsel for the parties. For the reasons dictated separately, the OA is disposed of.


(J.P. SHUKLA)
MEMBER (A)


(A.K. YOG)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 06TH day of December, 2007

ORIGINAL APPLICATION NO. 139/2001

CORAM:

HON'BLE MR. JUSTICE A.K. YOG, , JUDICIAL MEMBER
HON'BLE MR. J.P. SHUKLA, ADMINISTRATIVE MEMBER

N.K. Godha son of Late Shri Raj Mal Godha, aged about 54 years, resident of 2238, Chokari, Modi Khana, Maniyaron Ka Rasta, Jaipur, retired (voluntarily) from the post of Accountant Shastri Nagar, Head Post Office, Jaipur.

By Advocate: Mr. C.B. Sharma

.....Applicant

Versus

1. Union of India through its Secretary, Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Sr. Superintendent of Post Office, Jaipur City Postal Division, Jaipur.

By Advocate: Ms. Kavita Bhati proxy to Mr. Kunal Rawat (Sr. Standing Counsel)

.....Respondents

ORDER (ORAL)

Heard learned counsel for the parties.

2. This OA was filed in the year 2001. Initially it was rejected on the preliminary objections being raised by the respondents that it is time barred. Preliminary objection so raised by the respondents was accepted by the Tribunal and this OA was dismissed vide order dated 25.05.2001. Against the

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said order, applicant approached the Hon'ble High Court by filing Writ Petition No. 3645/2001 before the Hon'ble Rajasthan High Court. The Rajasthan High Court allowed the said writ petition by remitting back the matter to this Tribunal to decide the OA of the applicant on merit.

3. In that view of the matter, the applicant filed MA No. 106/2006 for hearing this OA on merits, hence this matter was been listed for hearing before the Tribunal.

4. From the facts stated in the OA, it is apparent that the main contention of the applicant is that he is entitled for all the benefits as extended to Mr. N.L. Khandelwal by the CAT, Jaipur Bench vide its order dated 03.02.1997 (Annexure A/3) in the case of N.L. Khandelwal in OA No. 255/1996.

5. The respondents dispute the above contention of the applicant contending the case of Mr. N.L. Khandelwal (supra) is on different facts and on different footing and, therefore, the applicant is not entitled to claim parity vis-à-vis N.L. Khandelwal and the judgment rendered in his case.

6. It is evident from perusal of respective pleadings of the parties that the parties are at variance on factual aspects.

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7. However, it is borne out from the record of this case that after the order of CAT in the case of N.L. Khandelwal(supra), the applicant approached the authorities concerned and requested them to extend the same benefits at par with Mr. N.L. Khandelwal, who was junior to him. Copies of the letters/representations have been filed as Annexures A/4, A/5, A/7. The applicant also claim to have served notice dated 05.06.2000 (Annexure A/8).

8. When the respondents failed to take any action/decision on the above Representation/Notice, the applicant being constrained to filed the present OA No. 139/2001. The authorities, according to the applicant, have so far failed to consider and decide his claim/grievance.

9. Normally parties who have failed to approach the Court/Tribunal should be ignored and cannot get benefits of adjudication in the case of third parties. There is, however, an exception. In the matter of admission in educational institutions, or service matters - particularly 'seniority' - State as ^{an} ~~is~~ a Model-Employer' should correct its mistake treating all concerned equally irrespective of the fact whether one has approached Court/Tribunal. All affected persons, ^{an} ~~or not an~~ whether they have approached Court/Tribunal, should ^{an} ~~is~~ be taken into account and relief should be granted to all while 'State' implements judgement/order at the instance of one -- who approached ^{an} ~~is~~ Court/Tribunal. The above principle has been approved by the Apex Court in the case of T.P. Roshna, AIR 1979 SC 765. The above ratio is based on the principle that every aggrieved person

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- because of 'inaction or illegal action' of the State (a MODEL EMPLOYER)
 - should not be compelled to approach Court/Tribunal and burden it with
 unavoidable litigation. Failure^{as} of aggrieved person to approach Court/Tribunal
 can be for various factors/circumstances beyond one's control i.e. financial^{as} ^{as} constraints^{as}
 living at far flung place, deprived of adequate facilities to be aware^{as} of one's^{as} right/
 legal claim^{as} /lack of knowledge^{as} /lack of suitable advice^{as}, etc.

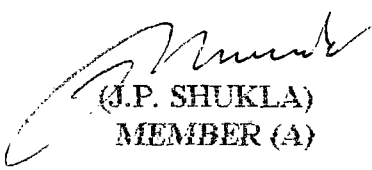
10. The applicant claimed promotion and consequential benefits on the
 ground of parity on the basis of the order of the CAT in the case of N.L.
 Khandelwal (referred to above). We cannot deprive the applicant of the said
 benefit on account of the judgement rendered in the case of N.L. Khandelwal, if
 he succeeds to prove parity.

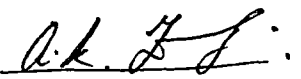
11. In view of the observations made above, we are of the view that the
 question of parity can be decided efficaciously and effectively by the respondent
 authorities. For this, the applicant should approach the concerned competent
 authority to consider his claim for grant of privilege/benefit on the ground of
 'PARITY' with N.L. Khandelwal (supra).

12. Accordingly, we direct the applicant to file within four weeks a certified
 copy of this 'order' alongwith copy of this OA as well as 'additional
 representation', if so advised before concerned Respondent authority and the
 said authority, if 'certified copy' is furnished within the period as stipulated,

above, decide the Representation/Additional Representation (if any), within eight weeks from the date of receipt of the certified copy of the order (stipulated above) exercising unfettered discretion on the basis of relevant rules and record before it. It is made clear that we have not entered into the merit of the case at this stage.

13. With these observations, the OA is disposed of with no order as to costs.


(J.P. SHUKLA)
MEMBER (A)


(A.K. YOG)
MEMBER (J)

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