

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 94/2002.

Jaipur, this the 10th day of May 2005.

CORAM : HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. A. K. BHANDARI, ADMINISTRATIVE MEMBER.

Ravi Kumar Sharma S/o Shri G. L. Sharma
Aged about 32 years, R/o House No.34,
C/o Sushil Verma, behind Gas Godown, Janakpuri
Mala Road, Kota.

.... Applicant.

By Advocate : Shri S. K. Jain.

Versus.

1. Union of India through General Manager,
Western Central Railway, Church Gate, Mumbai-20.
2. The General Manager (E), Western Railway,
Church Gate, Mumbai 20.
3. Divisional Railway Manager, Western Railway,
Kota Division, Kota.

... Respondents.

By Advocate : Shri Tej Prakash Sharma.

: O R D E R :

By A. K. Bhandari, Administrative Member.

This Original Application has been filed by the applicant under
Section 19 of the Administrative Tribunals Act, 1985, to seek the
following reliefs :-

"i) That by an appropriate order or direction, the impugned
order dated 18.9.2001 Annex. A/1 rejecting the
representation of the applicant be quashed and set aside and
the respondents be directed to give appointment to the

applicant with effect from the date when Deepak Sharma had given appointment on the post of Ticket Collector.

ii) Any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble applicant, looking to the facts and circumstances of the present case."

2. The brief facts of the case as stated in the OA are that the applicant was appointed as Junior Clerk on regular basis and in view of notification issued in September 1996, inviting applications for appointment on the post of ticket Collector, Commercial Clerk, Train Clerk, Officer Clerk etc., he applied for the post of Ticket Collector and was duly selected his name having been placed at Sl. No.1 in the panel, thus prepared on 28.10.96 (Annexure A/2). Thereafter vide order dated 8.10.97 (Annexure A/3) he was intimated that after being relieved the selected candidate should have reported to the allotted division for training. The DRM Kota, Respondent No.3, intimated by this letter that applicant has not joined the training as yet and, therefore, within seven days he should report on duty. Further that by his letter dated 9.1.97 (Annexure A/4), applicant intimated that due to the fact that date of his marriage is very near the date of training, he was not able to join the same due to which reason, he may be allowed to join the next batch of training. The DRM in consequence, informed that his request of postponement of attending training has been accepted and he is required to join the next batch on dated 4.2.97 (Annexure A/5). These facts were apprised to Respondent No.2 by Respondent No.3 vide his letter dated 5.2.97 (Annexure A/6). However, thereafter the applicant came to know that his name has been

deleted from the panel of Ticket Collectors. He, therefore, made representation dated 8.7.97 which was forwarded by Respondent No.3, on the same date vide Annexure A/7/A/8. When nothing was heard, the applicant filed representation dated 18.5.01 (Annexure A/9) wherein he also stated that one Shri Deepak Sharma had also appeared in the test in 95-96 with the applicant and had been successful but he did not join training for two years and thereafter vide letter dated 19.11.98 he was relieved to join the training of Ticket Collectors. The applicant, therefore, prayed that he too should be given the same benefit. This application was forwarded by Respondent No.3 vide his letter dated 22.5.01 (Annexure A/10). Respondent No.2 sought Respondent No.3's comments on his application by his letter dated 27.6.01 (Annexure A/11). Respondents No.2 thereafter rejected the representation by his order dated 18.9.01. The same was communicated to the applicant vide Senior Divisional Personnel Officer, Kota, vide letter dated 1.10.01 (Annexure A/1). In letter dated 18.9.01, it is stated that the name of the applicant had been deleted on ground that he did not join training on 18.11.96.

3. The applicant has taken a ground that this order is illegal because applicant has shown his inability to join the training due to his marriage on 18.10.96 and had represented to Respondent No.3 requesting that he may be allowed to join subsequent training course. In fact, the Respondent No.3 had intimated to the applicant

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that he may join the training in the next batch vide letter dated 4.2.97 and the same was accepted and forwarded to Respondent No.2, and intimated to applicant also. Secondly, he was not relieved by his office to join the training in the second batch and without considering his request dated ^{xx}4.2.97, on which extension was granted by Respondent No.3 he has been barred and his chance for becoming Ticket Collector has been denied. The applicant also stated in his representation that training programme was orally intimated to him and he was not given anything in writing. That he was not relieved to join the course commencing from 18.11.96. Further that action of the respondents is discriminatory because one Shri Deepak Sharma was allowed to join as Ticket Collector two years later about which he has stated in his representation dated 8.7.97 and applicant demanded equality of treatment but the same has been denied. Even if, Shri Deepak Sharma was relieved later due to administrative reason but applicant has also not been relieved for joining training by the respondents and the two cases cannot be treated on different footings.

4. Respondents have filed detailed reply. They have also raised some preliminary objections, namely, the applicant has approached the Tribunal without following alternative remedy which is provided under the Act as he has not filed any representation against the order which is under challenge, secondly this application is barred by law regarding limitation as he is claiming relief against an order

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removing him from the panel far beyond the permissible time limit. It is also stated in the preliminary objections that the letters dated 1.10.01 and 18.9.01 are merely a reiteration of earlier replies against which he should have approached the Tribunal at appropriate time. The fact that his name from the aforesaid panel dated ²⁸18.10.96 had been removed vide letter No. Established/Bh.V.Pr/890/0/G.D.C.E/95-96 Part-II dated 10.2.97 was very well to the knowledge of the applicant but he is concealing this order which fact needs to be noted by the Tribunal.

5. In Parawise reply, it is stated that in the order dated 28.10.96 along with which list of 35 selected Ticket Collectors was issued and name of the applicant was at Sl. No.1 in the list, it was clearly mentioned that if any empanelled employee fails to report for training, it will be presumed that he is unwilling for the post and another willing candidate ^{Ed from the panel} will be considered in his place. In the same order, applicant who was at Sl. No.1 of the Panel was required to attend training from 18.11.96 to 14.1.97. But he did not report for training. At later date he informed that his marriage was fixed for 16.2.97. ^{Ed} But he could have easily attended training from 18.11.96 to 14.1.97 but he did not do so. Nor did he request Kota DRM to relieve him so that he could attend the said training from 18.11.96 to 14.1.97. In terms of the same order dated 28.10.96 when he failed to attend the training his name was deleted from the Panel vide order dated 10.2.97 but the applicant has not made any

application, nor raised any request against order dated 10.2.97. Further that applicant has not made any application to respondents between 28.10.96 to 18.11.96 either to relieve him or to not relieve him for training due to marriage, but he simply ignored the conditions spelt out in order dated 28.10.96. Since the applicant had failed to attend training, without sufficient reason, removal of his name from the Panel is justified. In terms of conditions laid out in the original order dated 28.10.96 another eligible candidate was picked up and sent for training and the entire quota of vacancies of Ticket Collectors in Kota Division has since been filled up. Further that at the time of filing of this OA, there is no vacancy of Ticket Collector in Kota Division for the persons selected in the year 95-96. Further that case of Shri Deepak Sharma is entirely different from the present case, as Deepak Sharma was also in the Panel, but his name was far below and he came to be considered only when persons with higher position in the Panel failed to attend the training and their names were removed from the Panel. On the basis of above facts, the ground of illegality and arbitrariness is denied. Further that marriage having been fixed on 16.2.97, which is one month after the first training course and the applicant could have easily joined the training from 18.11.96 to 14.1.97.

6. The applicant has filed rejoinder denying the contentions of the respondents. In the rejoinder, applicant has emphasized Annexure A/5, being letter of DRM, Kota, dated 4.2.97 by which he

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was informed that he may attend the next training course. The applicant has also filed additional affidavit stating therein that he could not attend the second course because of marriage and that not attending first course was entirely due to respondents not relieving him and that without relieving him by the respondents, the Railway Medical Officer would not have entertained him for medical examination which was also a pre condition to join the training. The applicant in this affidavit he has tried to show more cases of promotion and training in subsequent courses, about which there is no specific mention in the original application or rejoinder.

7. In view of the new facts brought in by the applicant in the additional affidavit, Learned Counsel for the respondents has given a detailed additional affidavit in reply but in view of the rules of pleading which prohibit any additional pleadings after rejoinder without the permission, additional affidavit filed by the applicant and the reply thereto are not being considered while deciding this OA.

8. Parties were heard at length.

9. Both the Counsel for the parties reiterated their earlier pleadings and Counsel for the Respondents emphasized and raised objection of limitation. It was stated that the cause of action having arisen way back in the year 1997 when applicant's name was struck down from the panel for not attending the training, the

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present OA ^{can} has not ^{been} taken up in 2002, specially when no request for condonation of delay has also been made.

10. We have given careful consideration to the facts and pleadings ^{but} we would first deal with the question of limitation and as to whether the OA is maintainable or is hit by the law of limitation. As is borne out from the pleadings the initial cause of action seems to have arisen to the applicant on issuance of order dated 7/10.2.97 when his name was struck down from the panel, ^{on} ~~order dated~~ 28.10.96, because he failed to participate in the first training course commencing on 18.11.96. Although no specific mention of this order has been made anywhere in the OA but we are inclined to believe that he was aware of this order because reference to the same has been drawn in his application dated 8.7.97 ^(A-8) ~~by~~ by which he requested that he may be considered for the next training programme. The respondents have raised a preliminary objection about the concealment of this fact also. Filing of non statutory representations or giving reply by respondents thereafter as well as informing that he has been already replied cannot give fresh cause of action. In this view of the matter, The last reply received by the applicant dated 1.10.01 (Annexure A/1) cannot be considered the starting point of cause of ^{action} ~~limitation~~. Therefore, this OA ought to have been filed in ^{or before} 1998. However, it has been filed in 2002. Thus, there is a delay of about four years. No application for condonation of delay has been filed in the matter. Therefore, we come to the

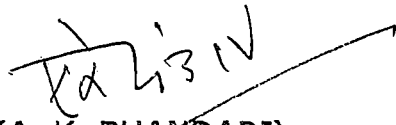
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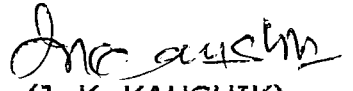
positive conclusion that the OA has not been filed within the limitation as per Section 21 of the Administrative Tribunals Act, 1985.

11. As far as the legal position is concerned, the same is fairly set at rest that repeated and non-statutory representation would not extend the limitation. This proposition of the law has been settled by the Apex Court in a Constitution Bench consisting of 7 Judges in the case of **S. S. Rathore vs. State of Madhya Pradesh**; [AIR 1990 SC 10]. Thus, applying the aforesaid proposition of law this OA^{is} highly belated and is time barred. Admittedly, no~~y~~ application for condonation of delay has been filed on behalf of the applicant. Law position on this^{is} stands concluded by the Hon'ble Supreme Court in case of **Ramesh Chand Sharma etc. vs. Udham Singh kamal and Others**, 2000 (1) ATJ 178, wherein their Lordships of Supreme Court were dealing with the case of promotion. In that case the Original Application was entertained on merits by the Tribunal despite the fact that there was no application for condonation of delay. Their Lordships of the Supreme Court turned down the judgement of the Tribunal holding that until and unless there is an application for condonation of delay and the delay is condoned, the Tribunal should not examine the merits of the case. Applying this law laid down by the Hon'ble Supreme Court we are barred from entertaining this application.

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12. In these premises, the Original Application is not maintainable and the same is hit by law of limitation being barred by time, the same stands dismissed accordingly without going into the merits of the case. No costs.


(A. K. BHANDARI)
ADMINISTRATIVE MEMEBR


(J. K. KAUSHIK)
JUDICIAL MEMBER

P.C./