

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 20-1-04

Original Application No. 126/2003, with MA No.145/2003.

Arjun Lal S/o Mangi Ram Meena, aged about 51 years, Head Trans Clerk, Head Quarter at Phulera, Station of North Western Railway, Resident of House No.97, New Guard Colony, Phulera, District Jaipur.

... Applicant.

v e r s u s

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. Divisional Rail Manager, North Western Railway, Power House Road, Jaipur.

... Respondents.

Mr. Nand Kishore counsel for the applicant.
Mr. Shailesh Sharma counsel for the respondents.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Ehandari, Administrative Member.

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The applicant has filed this application thereby praying for the following reliefs :-

"(i) That by an appropriate order or direction, the entire record concerning to the case may kindly be called and after examination, the respondents may be directed to refix the seniority based on panel dated 19.12.1983 (A/2) and grant him all the consequential benefits to the applicant by way of promotion, fixation of pay & seniority as extended to the similarly situated employees, who were placed on the panel dated 19.12.1983 (A/2) alongwith the applicant.

(ii) Any other directions and orders which is deems proper in the facts and circumstances of the case may kindly be allowed in favour of the applicant."

2. The facts of the case are that the applicant was initially appointed in Group 'D' as Knallasi in the year 1978. The respondents advertised certain posts in

Group 'C' in July 1983 for recruitment in Commercial and Traffic Department. There were 26 posts of Commercial Clerks, 11 of Office Clerks and certain posts of Ticket Collector and Telegraph Signallers. The applicant applied for the post, a written test of which was held on 25.09.1983 in which 149 candidates were declared successful. Viva voce was also held in November and December 1983 and the respondents issued panel of candidates vide letter dated 19.12.1983, in which 32 candidates were placed including the name of the applicant at Sl. No.2 of the panel for the post of Telegraph Signaller at Page 5 of the panel, a copy of which is Annexure A-2. It is further alleged that some candidates who were selected for Group 'C' post were deputed for training. At that point of time, the respondents cancelled the panel notified vide Annexure A-2 vide their letter dated 26.07.1984. The issue of Annexure A-3 gave rise to ^aspate^{of} Writ Petitions filed before the Hon'ble High Court. The Writ petition was allowed and it was directed that " the railway administration should take suitable action against the individual candidates selected in the said selected panel in relation to whom irregularities have been found to have been committed in the procedure of the selection board." The review petition filed by the respondents^{of} railways was also rejected. Subsequently, the applicant was given appointment as Telegraphs Signaller vide respondents' letter dated 18.10.1988 (Annexure A-5). The applicant represented his case to the respondents vide letter dated 12.11.2001 (Annexure A-7) to extend the benefit of Manesh Kumar's Judgement who was also selected in the same panel in the year 1983. It is on these facts, the applicant has filed the present application thereby praying for the aforesaid relief.

3. Notice of this application was issued to the respondents who have filed the reply. In their reply by way of preliminary objection, it has been stated that the applicant by way of this application has challenged and prayed for getting his seniority refixed on the basis of panel dated 19.12.1983 by way of the

142

aforesaid application in the year 2003 which is wholly time barred and in view of the fact that the application is barred by the limitation, the application deserves to be dismissed ^{without finding} on merits. Regarding applicability of the judgement dated 06.09.2001 in the case of Mahesh Chand (Annexure A-6), it has been stated that the benefit of seniority was given to the selected employees on the post of Commercial Clerk not with effect from 1983, but the Commercial clerks were given proform seniority who were appointed as Commercial Clerk and since the applicant was selected as Telegraph Clerk, the judgement was not applicable in this case. The appliant in this regard was informed vide letter dated 16.09.1996 by Station Superintendent, Phulera (Annexure R-2). It is further stated that Shri Mahesh Chand who had approached the Hon'ble Court had been granted relief as the judgement was applicable in his case. The representation of the applicant was not received in the office of the respondent as alleged by him. However, representation dated 11.11.2001 by recognised Trade Union was received which was duly replied by the answering respondent vide letter dated 07.05.2002 (Annexure R-3).

4. The applicant has filed a rejoinder. Alongwith the rejoinder, he has also placed reliance on the judgements in the cases of Savita Rani and Ors. vs. Union Territory, Chandigarh and Ors. SLJ 2003 (2) CAT 124, Sat Prakash vs. State of Haryana ATJ 2003 (1) 156, and Sh. Satyendra Kumar Rana and Ors. vs. Govt. of NCT of Delhi and Ors. 2003 (2) ATJ 11.

5. The applicant has also moved an application for condonation of delay. The respondents have filed reply to this application thereby opposing the said application.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. The first question which requires our consideration is whether the present application can be

62

entertained at this belated stage solely on the ground that he has filed the OA after coming to know that in a similar claim relief had been granted by the Tribunal. Before noticing the case law on the point in issue it ^{is} necessary to quote the relevant facts which has bearing on this question. Admittedly the applicant is claiming the relief based on the panel dated 19.12.1983 (Annexure A-2). The respondents have taken the preliminary objection that the application is hopelessly time barred as it has been filed in the year 2003. In the reply, the respondents have also annexed a copy of the letter dated 16.09.1996 whereby the claim of the applicant for seniority on the basis of panel drawn in the year 1983 was rejected vide letter dated 16.09.1996 (Annexure R-2). The applicant has not persuaded his remedy after the rejection of this letter even if it is to be held that the cause of action as accrued in favour of the applicant in the year 1996 when his representation was rejected, although it is not the case set out by the applicant in this OA. The case set out by the applicant in this OA is that the cause of action arose in the year 1983 when the panel was formed and in the year 1984 when the said panel was cancelled and subsequently in the year 1987 when the said panel was restored. The applicant has also stated that the cause of action still accrued as one Shri Mahesh Chand, Head Clerk, has filed OA No.78/97 and the Hon'ble Tribunal has decided the same on 06.09.2001 and thus the cause of action is continued. At this stage it will be relevant to extract Para 10, 11 & 12 of the MA filed for condonation of delay, which reads as under :-

"10. The applicant submits that cause of action arose in 1983 when the panel was formed and in 1984 when said panel was cancelled.

11. That the said panel was restored in 1987. One Mahesh Chand Head Cler filed OA No. 78/97 and the Hon'ble Tribunal decided on 6.9.2001. The OA was allowed. Thus the cause of action continued.

12. That the applicant represented to respondents but with no results. The applicant has a good case on merits, as such it is prayed that the delay, if any may be condoned and oblige."

DR

8. We are of the view that the applicant has not made out any case for condonation of delay. The matter is squarely covered by the decision of the Apex Court in the case of State of Karnataka vs. S. M. Kotrayya 1996 SCC (L&S) 1488. In that case the respondents therein while working as Teacher in the department of Education, availed of Leave Travel Concession but later on it transpired that they had never utilised the benefit of LTC. Consequently, recovery was made in the year 1984-86. Some of the persons filed applications in the Tribunal questioning the power of the Government to recover the same. Thereafter, in August 1989, the Tribunal allowed similar claims and had held that the appellant-Government could not recover the same from the respondents. On coming to know of it, the respondents filed applications immediately in August 1989 before the Tribunal with an application to condone the delay. The Tribunal has condoned the delay by the impugned order. The matter was carried to Supreme Court and the Apex Court in Para 9 held as under :-

"9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) and (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-section (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."


9. Admittedly, the applicant has not given any explanation for delay which occurred within a period mentioned in sub-section (1) or (2) of Section 21 as to why he could not avail remedy of redressal of his

102

grievance before the expiry of period prescribed under sub section (1) or (2) of Section 21. The applicant has also not stated even a single word as to why he has not filed OA when his representation against seniority was rejected in the year 1996 vide Annexure R-2. Further it is not the case of the applicant that he was waiting for the decision in OA filed by Mahesh Chand, Head Clerk, in the year 1997 which came to be disposed of on 06.09.2001 and the OA was filed immediately thereafter. Further decision in Mahesh Chand was rendered on 06.09.2001. The respondents have categorically stated that the applicant has not filed any representation though the representation was received through recognised Trade Union on 11.11.2001 which was replied on 07.05.2002. This part of averment had been made by the respondents in Para 4.(12) of the reply. In rejoinder, the applicant has not disputed this fact. The fact remains that the contention raised by the respondents that the applicant has never filed any representation thereby claiming the benefit on the basis of the judgement rendered by the Tribunal in Mahesh Chand's Case has not been controverted ; rather it has been accepted. The applicant has not shown why it took almost about one and a half year to approach this Tribunal for getting the benefit on the basis of the judgement dated 06.09.2001 in Mahesh Chand case, even if it is held that the case of the applicant is covered by the said judgement. Suffice it to say here that the case of Mahesh Chand relates to the seniority in the cadre of Clerk whereas the applicant was appointed as Telegraph Signaller which is entirely a different category.

10. Thus, we are of the view that the application is hopelessly time barred and deserves to be dismissed on the score without any finding on merit.


11. Learned counsel for the applicant had placed reliance on the judgement of the Apex Court in the case of K. C. Sharma & Ors. vs. Union of India & Ors. 1998 (1) SLJ 54, judgement of this Tribunal in OA No.



562/02 decided on 12.12.2003, Savita Rani & Others vs. Union Territory of Chandigarh SLJ 2003 (2) CAT 124, Satya Prakash vs. State of Haryana ATJ 2003 (1) 156 and in the case of Satyender Kumar Rana & Ors. vs. Govt. of MCT Delhi ATJ 2003 (2) 11.

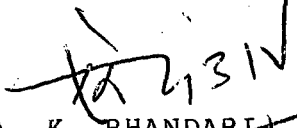
12. With great respect, the said decisions are not applicable in the instant case. In K. C. Sharma's case, the validity of retrospective amendments vide which the benefit of running allowance was reduced from 75% to 45% in respect of period from January 1, 1973 to March 31, 1979 and to 55% for the period from April 1, 1979 onwards was in issue and the appellants were adversely affected by the impugned amendments. They sought benefit of the decision of the Full Bench of the Tribunal rendered in OA No. 774/1994, whereby the Full Bench of the Tribunal has held that no such retrospective effect can be given to the notification. It was in the fact and circumstances of the case that the case was remitted back to the Tribunal to condone the delay and decide the case. As already stated above, the judgement was given " Having regard to the facts and circumstances of the case..... " as can be seen from Para 4 of the judgement. As such the judgement was ordered in the fact and circumstances of that case. The Apex Court has not laid down any law that benefit of judgement can be extended ignoring the statutory provision as laid down in Administrative Tribunals Act 1985. Similarly issue involved in OA No. 562/2002 was regarding exhausting the alternative remedy before filing the OA and the issue regarding application being time barred was neither considered nor raised in this OA and as such the judgement is of no assistance to the applicant.


13. Similarly the decision rendered in the cases of Savit Rani, Sat Prakash & Satyender Kumar Rana & Ors. (Supra) has been given in the facts and circumstances



of the relevant case and as such the same are not applicable, more particularly in view of the law laid down by the Apex Court in the case of State of Karnataka vs. S. M. Kotrayya (supra).

14. Accordingly, we are of the view that this application is hopelessly time barred and the applicant ^{has} ~~was~~ not given any explanation in terms of sub-section (1) or (2) of Section 21 of the Administrative Tribunals Act, 1985. As such the OA as well as the MA deserves to be dismissed without any finding on merit.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)