

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.346/2005.

Jaipur, this the 9th day of May, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

1. Yadram
S/o Shri Sawan
aged about 46 years,
R/o Gram Jaswant Nagar,
Tehsil Bayana, District Bharatpur,
2. Shivcharan,
S/o Shri Devi Singh,
Aged about 46 years,
R/o Gram Judawai, Tehsil Mathura,
District Mathura.

... Applicants.

None is present for the applicant.

Vs.

1. Union of India
Through General Manager,
Western Central Railway,
Jabalpur (M.P.).
2. The Divisional Railway Manager,
West Central Railway,
Kota Division.
Kota.
3. The Divisional Railway Manager
West Central Railway,
Jaipur.

... Respondents.

: O R D E R (ORAL) :

The applicants, who are two in number, have filed this OA thereby praying for the following reliefs :-

- a) By an appropriate order or direction your Lordships' may kindly be pleased to accept and allow this OA and the respondents may be directed to pay the applicants T.A. and DA for the entire period from the date of their being relieved from Jaipur and Kota Division up to the date they continued the work at Mumbai. The

respondents may kindly be directed to release the said amount equal to applicable to the employees working on temporary duty at Mumbai.

- b) That the respondents may be further directed to release the TA and DA amount of the applicants along with interest @12% per annum.
- c) Any other relief, and any other allowance which is admissible and payable to applicants may also be given to the applicants and the respondents may be directed to pay such amount accordingly with interest.

2. Briefly stated, the facts of the case are that the applicants were engaged as Casual Labour on construction project by the Railway authorities in the year 1984 and 1985, respectively and they were also confirmed the temporary status and subsequently their services were regularized as Gangman. Both these applicants while working in Kota Division were instructed to work at Mumbai in the year 1998. When they were working at Mumbai vide order dated 30.08.2000, applicants' headquarter was shifted from Bandikui to Mumbai. Against this action of the respondents whereby their headquarter was changed arbitrarily and persons junior to them were retained in Kota division, they filed OA before this Tribunal which was registered as OA No.530/2001. Further grievance of the applicants in that OA was that they were not paid TA&DA when they were asked to work at Mumbai. Thus, the prayer was made by the applicants that they be posted in Kota Division and also they be paid TA&DA when they were asked to work at Mumbai. The said OA was disposed of vide judgment dated 25.3.2003 (Annexure A/6) along with another OA and the Tribunal held that since the applicants were holding their lien in Kota Division and

they were temporarily shifted to Mumbai to carry out the construction work and they have been working at Mumbai for the last 5 years, respondents cannot be justified in keeping the applicants away from their family members for years together in the name of temporary transfer. Decision is required to be taken for sending them back to their parent division wherein their lien exists. Accordingly, the respondents were directed to consider the matter of the applicants for retransferring them to their parent division sympathetically by passing an appropriate order within a period of three months from the date of communication of the order. Regarding grant of TA&DA for the period when the applicants served at Mumbai, the said relief was not pressed by the Learned Counsel for the applicants as the applicants were being paid HRA at Mumbai. At this stage, it will be useful to quote Para 5 of the judgment dated 25.3.2003 (Annexure A/6) passed in the case of the applicants, which is in the following terms :-

"5. The objection as to the territorial jurisdiction was not pressed by the respondents. The applicants counsel did not agitate for the TA and DA for Mumbai as the applicants are being paid the House Rent Allowance of Mumbai."

3. Now in this application, the applicants have prayed that the applicants be paid TA&DA for the period when they have served at Mumbai in view of the decision rendered by the Coordinate Bench in the case of Basu and

others vs. Union of India & ors., OA No.426/99 decided on 24.5.2001 (Annexure A/7).

4. Notice of this application was given to the respondents. Respondents have filed reply in which it has been stated that the present OA is barred by the principle of res-judicata as the applicants did not agitate the issue for the relief now claimed in OA No.530/01 and 531/01, which were decided vide judgment dated 25.3.2003 (Annexure A/6). Respondents have also opposed this application on the ground of limitation. It is stated that the applicants have also not moved any application for condonation of delay under Section 21(3) of the Administrative Tribunals Act, 1985, therefore, the application filed before this Tribunal after expiry of the statutory period of limitation cannot be admitted and disposed of on merit in view of the statutory provisions contained in Section 21(1) of the Administrative Tribunal Act 1985. For that purpose the respondents have relied on the decision of the Apex Court in the case of Secy. To Govt. of India v. Shivram Mahadu Gaikwad, 1995 SCC (L&S) 1148 and another decision of the Apex Court in the case of Ramesh Chand Sharma v. Udham Singh Kamal, (1999) 8 SCC 304.

5. The applicants were given repeated opportunities to file rejoinder. However, despite repeated opportunities, rejoinder has not been filed. The matter was adjourned

from time to time and when the matter was listed on 4.4.2006, this Tribunal passed the following order :-

"..... None is present for the applicant even on second round. Let the matter be listed for final hearing on 9.5.2006. It is made clear that in case none appeared on behalf of the applicant on the next date the matter will be decided accordingly."

Even today, none has appeared on behalf of the applicant. Learned Proxy counsel for the respondents was heard. According to me, the present OA is abuse of the process of the Court and is not maintainable in view of the principle of res-judicata as well as on the ground of limitation. As already stated above, the applicants have earlier filed OA No.430/2001 in which the grievance of the applicant was regarding their lien as also regarding the payment of TA&DA for the period when they have served at Mumbai. This Tribunal in earlier OA has directed the respondents to take decision regarding shifting back of the applicants to their parent division from Mumbai division by passing an appropriate order within the stipulated time. Regarding the relief for TA&DA, the same was not pressed by the Learned Counsel for the applicants as can be seen from Para 5 of the order, relevant portion of which has been reproduced hereinabove. As such, the present OA is clearly hit by the principle of res-judicata and also amounts to abuse to the process of this Court and the same is required to be rejected on this score alone. Even otherwise also, the applicants are not

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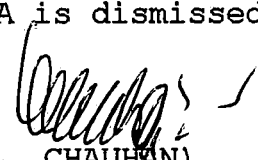
entitled to any relief. The applicants are claiming for TA&DA on the basis of the judgment rendered by this Tribunal in OA No.426/99 decided on 24.5.2001 (Annexure A/7). From the perusal of the judgment, it is clear that the applicants were represented by the same Advocate namely Mr. Rajveer Sharma who is also advocate of the applicants in OA No.530/2000 and 531/2001 and who had made a statement before the Tribunal that the claim for TA&DA is not being agitated as the applicants are being paid HRA at Mumbai. Thus, the Learned Counsel for the applicants while making such statement was aware about the decision rendered by this Tribunal in earlier OA i.e. OA No.426/99 where the applicants were granted such benefit. Thus, it is not a case where the applicants want assistant of the decision which was rendered by the Court subsequently than the passing of the order in their case. Even on this ground, the applicant is not entitled to any relief.

6. That apart, the present application is clearly barred by limitation. The claim of TA&DA pertains to the period from 1998 when the applicants were relieved from Kota Division to work temporarily at Mumbai till they continue in that capacity and were not finally repatriated to Kota Division. It appears that the applicants were shifted to their parent cadre in the year 2003 whereas this OA has been filed in August 2005 beyond the statutory period prescribed under Sub section (1) or

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(2) of Section 21 of the Administrative Tribunals Act, 1985. Further the claim of TA&DA cannot be said to be a continuous cause, as such, the limitation has to be reckoned from the date when the right to receive the same has accrued which in the instant case is from 1998 till 2003. The applicants have neither given any explanation why they have not agitated the matter within the prescribed period, nor the applicants have filed any application for condonation of delay. Thus, in view of the law laid down by the Apex Court in the case of Ramesh Chandra Sharma (supra), such application cannot be heard and entertained. Even on this score also, the OA is liable to be dismissed.

7. Viewing the matter from any angle, the present OA is bereft of merit and amounts to abuse of the process of court. Accordingly, the OA is dismissed.


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./