

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 10th day of November, 2005

ORIGINAL APPLICATION No.326/2004

CORAM:

HON'BLE MR. A.K.AGARWAL, VICE CHAIRMAN (ADMN).
HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Kamal Nath Kanna
s/o late Shri Brij Nath Khanna,
aged about 52 years,
r/o 33,34 Shiv Nagar,
Near Alok School,
Jawad Bye Pass Road,
Kankroli, District Ransamand (Raj.)

.. Applicant

(By Advocate: Mr. P.V.Calla)

Versus

1. Union of India through
General Manager,
North Western Railway,
Headquarters Office,
Opposite Railway Hospital,
Jaipur.
2. Divisional Railway Manager,
Ajmer Division,
North Western Railway,
Ajmer.

.. Respondents

ORDER (ORAL)

The applicant has filed this Original Application
thereby praying for the following reliefs:

- I. by an appropriate writ, order or directions the respondents may be directed to allow on the post of Booking Clerk till he attained the age of superannuation.
- II. By an appropriate order or direction the respondents may be directed to made available the following documents, if any inquiry initiated:-
 - i) Copy of charge memo containing the charges;
 - ii) Copy of the order of appointment of Inquiry Officer;
 - iii) Copy of the evidence if any recorded by the Inquiry Officer
 - iv) Copy of the inquiry report in case the inquiry initiated by an officer other than the Disciplinary Authority, and
 - v) Copy of final order out come of the disciplinary action.

The above documents are required to file an appropriate appeal if any order imposing penalty issued.

- III. by an appropriate writ, order or directions quash and set aside the verbal order or termination and direct the respondents to grant all consequential benefits as if treating the applicant on duty through out;
- IV. Any other relief to which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicant.

2. Briefly stated, facts of the case as stated by the applicant in the OA, are that the applicant was initially appointed on the post of Assistant Booking Clerk by the Divisional Office, Ajmer Division of the Western Railway vide letter dated 26.7.1976. It is further stated that the applicant was promoted on the post of Luggage Clerk in the scale of Rs. 330-560 on 30.10.1984. Thereafter in the year 1990, he was transferred from Railway Station, Ajmer to Railway Station, Kankroli as Booking Clerk as the post of Booking Clerk/Luggage Clerk are at par and are in the revised scale of Rs. 1200-2040. It is further stated that pursuant to his transfer order dated 13.1.1990, the applicant was relieved and he joined at the new place of posting at Railway Station Kankroli as

Booking Clerk at Kankroli on 19.1.1990. It is the case of the applicant that after joining at Kankroli Railway Station, he availed leave of four days w.e.f. 20.1.1990 to 23.1.1990. It is further stated that while working at Railway Station, Kankroli in the said capacity he was relieved to join at Railway Station Kanod on 6.5.1992. It is further case of the applicant that he reported for duty at the new place of posting on 10.5.1992 after availing 3 days medical leave w.e.f. 7.5.92 to 9.5.92 but he was not allowed to join and was asked to contact the Station Superintendent, Mawali. The grievance of the applicant is that when no order regarding further posting was issued to the applicant, he submitted representation dated 14.10.1993, but of no avail. It is further stated that thereafter he submitted reminders on 7.3.1994, 7.8.2995, 1.9.1995, 19.11.1996, 25.1.1997 and 22.2.1997, reference of which has been made in the representation dated 13.4.2004 (Ann.A3) but the applicant has failed to place on record any of such representation. Thereafter the applicant served a legal notice dated 1.9.2005 (Ann.A4) for his reinstatement in service. In the said notice it has been stated that neither any chargesheet nor any notice has been received by the applicant but he was verbally told by the Divisional office that he has been removed from service. In the said notice, the applicant has pleaded that he could not have been

removed without following the procedure as contemplated under the Discipline and Appeal Rules and he has also requested that if disciplinary proceedings are initiated against him, the required documents may be made available to him, otherwise his client may be taken in service. It is on the basis of these averments that the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. We have heard the learned counsel for the applicant at admission stage. We are of the view that the present application is hopelessly time barred and no relief can be granted to the applicant as prayed for.

3.1 Admittedly, as per own showing of the applicant he was not allowed to join on the post of Booking Clerk on 10.5.1992 pursuant to his transfer from Railway Station, Kankroli to Railway Station Kanod when he was relieved from the Railway Station Kankroli on 6.5.1992. The submission made by the applicant in the OA is that though he reported for duty on 10.5.1992 but no further posting was given by the Station Superintendent, Railway Station, Mawali. The applicant has not put any contemporaneous record to justify such action. In case he was not allowed to join by the Station Superintendent, Mawali on 10.5.1992, he could have taken up the

matter with the higher authorities. Even as per own showing of the applicant, he for the first time, made representation before the authorities after a lapse of more than 1 $\frac{1}{2}$ years on 14.10.1993 which ^{representation} has not been placed on record by the applicant. It is further case of the applicant that he has been repeatedly sending reminders in the year 1994, 1995, 1996 and 1997 and lastly on 13.4.2004 but of no avail. Such a contention raised by the applicant cannot be accepted. The cause of action in favour of the applicant has arisen on 10.5.1992 when he was not alleged to have been permitted to join duty by the Station Superintendent, Railway Station, Mavali. Even if it is accepted that the applicant has made the first representation on 14.10.1993, the applicant has not given any explanation why it took practically 1 $\frac{1}{2}$ years for him to make first representation to the higher authority namely Divisional Commercial Officer, North Western Railway. It is well settled law that repeated representation will not extend period of limitation, rather the applicant has taken strange plea in this OA that the OA is within limitation. At this stage it will be useful to quota para 3 of the OA, where such averment has been made and thus reads:-

“3. Limitation:

The applicant further declares that the cause of action is also within the limitation period prescribed under Rule 21 of the A.T.Act, 1985.”

3.2 In almost identical case, the Apex court has held that where the applicant has not made any application for condonation of delay, the OA cannot be entertained and admitted and the same has to be rejected. This is what the Supreme court has held in the case of Ramesh Chandra Sharma vs. Udhamp Singh Kamal, 1999 (5) SLR 654 (SC).

3.3 It will be useful to quota the judgment of the Hon'ble Apex Court in the case of Y.Ramamohan and others vs. Government of India and others, (2001) 10 SCC 537 where the Supreme Court held that disposal of repeated representations made by the employee would not justify condonation of delay in filing the application. In that particular case, the appellant had approached the Tribunal in 1990 for quashing common gradation list which was communicated to him on 3.5.1983. The Tribunal rejected the application as barred by time. Their Lordships of the Supreme court upheld the order of the Tribunal and observed as under:-

“In the case in hand, when the Tribunal has recorded a finding in the earlier case that the gradation list had been duly communicated

in the year 1983, we must assume that the applicants knew of the gradation list assessing them the year of allotment as 1976, in 1983, and therefore, the so called representation filed by the appellants to the Central Government after disposal of the earlier application filed by the direct recruits is nothing but a subterfuge to get a period of fresh limitation. This method adopted by the appellants disentitles them to any relief. That apart, the gradation list of the year 1983 allotting 1976 as the year of allotment to the appellants has almost settled the seniority list, which need not be disturbed after this length of time."

3.4 In Director of Settlement and others vs.

D.Ram Prakash, 2002 (1) SLR 306 (SC), the Supreme Court reversed the order of Andhra Pradesh Administrative Tribunal and held that the Tribunal should not have entertained the application ignoring the period of limitation. The facts of the case were that seniority of the respondent in the cadre of Surveyor was determined taking his entry into service w.e.f. 1.2.1978. In the year 1985, he filed representation claiming that the period of training from 1.10.1971 to 1.2.1972 shall be counted for the purpose of fixation of seniority. The same was rejected. In 1996, he made fresh representation which was rejected on 17.10.1998. Thereafter, he filed an application before the Tribunal. The Tribunal accepted the application and directed the non-applicants to count the period of training for the purpose of fixation of seniority of the respondent. The Lordships of the Supreme Court reversed the order of the Tribunal and held that it should have rejected the claim on the

ground of limitation as provided under Section 21 of the Act.

4. Thus, viewing the matter from the law laid down by the Apex Court in the aforesaid cases, we are of the view that the present application is hopelessly time barred and as such, no direction can be given to the respondents to permit the applicant to work on the post of Booking Clerk till he attains the age of superannuation after a lapse of about 13 years. Further, as can be from para 8 of the legal notice dated 1.9.2005 the applicant has pleaded that he was verbally told by the Divisional Office that he has been removed from service. In case the applicant has been removed from service, in that eventuality, how the applicant can be permitted to join on the post of Booking Clerk so long as the order of removal from service, if any, passed by the respondents is not quashed. Further, we are also not inclined to issue directions to the respondents to make available the documents regarding initiation of inquiry and passing of the final order thereby imposing penalty on the applicant as the Tribunal is created for adjudicating the service disputes of the parties and it is not the function of the Tribunal to issue directions to the authorities to make available the documents especially when the applicant has failed to show that he has

infact made any such representation before the authorities and his said request was rejected.

5. For the foregoing reasons, the present OA is dismissed at admission stage. No costs.


(M.L.CHAUHAN)

Member (J)


(A.R.AGARWAL)

Vice Chairman

R/