

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

20.04.2012

OA No. 188/2008 with MA 245/2008

Mr. Nand Kishore, Counsel for applicant.
Mr. Sandeep Bhagat, Proxy counsel for
Mr. P.K. Sharma, Counsel for respondents.

98 On the request of the learned counsel for the
applicant, list it on 25.04.2012.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S. Rathore)
Member (J)

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25/04/2012

OA No. 188/2008 with MA No. 245/2008

Mr. Nand Kishore, Counsel for applicants.
Mr. P.K. Sharma, Counsel for respondents.

Heard.

O.A. and M.A. are disposed of
by a separate order on the separate-
sheets for the reasons recorded therein.

Anil Kumar

[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 25th day of April, 2012

ORIGINAL APPLICATION No. 188/2008

With

MISC. APPLICATION NO. 245/2008

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. Permanand son of Shri Hanuman Prasad, aged about 38 years, working as TTE, North Western Railway. C/o DCTI, North Western Railway, Jaipur. Resident of Plot No. 138, Near 200 feet Bypass Vikas Nagar, Hirapura, Jaipur.
2. Bhika Ram Sharma aged about 38 years, working as TTE, North Western Railway, C/o CTI Sleeper, North Western Railway, Jaipur. Resident of Railway Quarter, Ganpati Nagar, Jaipur.
3. Vijay Kumar Sharma son of Shri Satish Kumar Sharma, aged about 48 years, working as TTE, North Western Railway, C/o CTI Sleeper, North Western Railway, Jaipur. Resident of Railway Basant Vihar, Bandikui, District Dausa.
4. Ram Babu Sharma son of Shri Phool Chand aged about 49 years, working as TTE, North Western Railway C/o CTI Sleeper, North Western Railway, Jaipur, Resident of Railway Colony, Behind Loco Shed, Phulera, District Jaipur.

... Applicants

(By Advocate : Mr. Nand Kishore)

Versus

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

... Respondents

(By Advocate : Mr. P.K. Sharma)

ORDER (ORAL)

The applicants have filed this OA claiming for the following reliefs:-

- (i) That the respondent letter dated 12.5.2008 may be treated bad in law and arbitrary and set aside (Annexure A/1).
- (ii) The respondents may be further directed when S/Shri Ganesh Narain Sharma, Mahavir Singh, Radha Mohan

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Mathur and Kailash Narain Meena are given seniority, the same should not be denied to the applicants but we should also be awarded, the benefit of past service rendered by the applicants before redeployment in the present seniority units, since some of the staff who have filed the OA against the surplus staff was dismissed by the Hon'ble Tribunal and on ground of equity and natural justice the said OA was dismissed by the Hon'ble Tribunal and also by the Hon'ble High Court page nine of Annexure A/7.

- (iii) Any other directions and orders which is deems proper in the facts and circumstances of the case may kindly be allowed to the applicants.

2. The facts, as stated by the applicants in brief, are that applicant no. 4 was appointed as Khallasi on 01.05.1978 and was posted at Loco Shed Phulera and he was granted temporary status from 17.02.1983 and promoted as Fitter from 21.06.1988. The applicants nos. 1 to 3 were appointed as Apprentix Fitter in Loco Shed on 01.01.1989. That on 02.02.1996, the applicants were declared surplus due to change of gauge in Mechanical, Commercial and Traffic Departmental. The applicants submitted their option to respondent no. 2 on 30.04.1996 (Annexure A/3). The name of the applicants appeared at sr. nos. 51, 63, 80 and 81 of the said letter.

3. That a suitability test was held on 20.07.1996 and the applicants have qualified in the written examination (Annexure A/4). The name of the applicants appeared at sr. no. 8, 22, 25 and 41 of the said letter. An interview was also held and the applicants were declared successful in the final test and their names were placed in the select list vide respondents letter dated 31.01.1997 (Annexure A/5). The name of the applicants appeared at sr. no. 2, 13, 15 and 18 of the said letter. The applicants were deputed for training from 11.01.1997 to 03.04.1997 vide respondents letter dated 03.02.1997 (Annexure A/6).

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4. The applicants represented to the respondents that the benefits awarded to S/Shri Ganesh Narain Sharma, Mahavir Singh, Radha Mohan Mathur and Kailash Narain Meena in OA No. 65/2004 decided by the Tribunal on 25.07.2007 of giving the benefit of past service should also be given to the applicants but respondent no.2 rejected the claim of the applicants vide letter dated 12.05.2008 (Annexure A/1). Aggrieved by this decision of the respondents, the applicants have filed this OA.

5. The respondents have filed their reply. In the reply, the respondents have stated that the judgment of the CAT in OA No. 65/2004 decided on 25.07.2007 was not a judgment in rem and the applicants could not derive any advantage on the basis of the said judgment passed by the Tribunal, which is sub-judice before the Hon'ble High Court in appeal and, therefore, at this stage the applicant cannot claim any benefit on the basis of the said judgment in OA No. 65/2004.

6. That consequent upon the declaring surplus in Mechanical, Commercial and Traffic Departments due to change of gauge in the year 1996, the applicants exercised their option in writing declaring each that he is ready to be absorbed on the post of Ticket Collector at the bottom seniority and accordingly, they were absorbed on the post of Ticket Collector in the year 1996. Therefore, now after a lapse of more than 11 years, the present OA is highly belated and not maintainable. That the Tribunal has dismissed an identical OA No. 473/2003, Rajveer & Others vs. Union of India & Others, decided on 27.11.2007. That in the case of two judgments with different views on similar subject matter, the later will prevail, which is OA No.

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473/2003. Thus the present OA has no merit and, therefore, it should be dismissed on the ground of limitation as well as on merit.

7. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that he has filed an MA for condonation of delay and, therefore, the delay be condoned and to support his averments, he referred to the judgments of the Hon'ble Supreme Court in the cases of **State of Karnataka & Others vs. C. Lalitha**, 2006 (1) SCT 596 and **Sanjay Singh & Another vs. U.P. Public Service Commission Allahabad**, 2007 (1) SCT 754 and he argued that in view of the ratio laid down by the Hon'ble Supreme Court in these cases, the delay may be condoned. He further argued that the applicants are claiming the benefits awarded to Shri Ganesh Narain Sharma & Others in OA No. 65/2004, giving them the benefit of past service. He further submitted that the respondents should not discriminate between the applicant and Shri Ganesh Narain Sharma & Others, who were applicants in OA No. 65/2004. The facts & circumstances of the present OA and OA No. 65/2004 are similar and, therefore, the applicants are entitled to similar treatment. He further argued that seniority of the applicants be regulated in accordance with the Rule No. 311 of the IREM Vol. I Revised Edition 1989. This principle was upheld by the Hon'ble Tribunal in OA No. 65/2004 that the staff rendered surplus by the Railways, if absorbed in another seniority list, are entitled to the benefit of past service. Since the Tribunal has already directed the respondents to award the seniority of the past service to the similarly situated persons, the same cannot be denied to the applicants. Learned counsel for the applicant referred to the judgment of the Hon'ble Rajasthan High Court in the case of **G.K. Gandhi & Others vs. Union of India & Others** [DB Civil Writ

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Petition No. 3236/2000] and other connected matters decided on 02.02.2007 in which Hon'ble High Court had held that transfer/absorption of the private respondents being in the interest of the Railway administration and not on compassionate grounds, they were rightly allowed the benefit of past service. Therefore, the present OA may be allowed.

8. On the contrary, learned counsel for the respondents argued that the order of the CAT in OA No. 65/2004 was not a judgment in rem and the applicant cannot derive any advantage on the basis of the said judgment. He further argued that this OA has been filed after a lapse of 11 years and, therefore, it is barred by limitation and on this ground alone, the OA is liable to be dismissed. He further argued that Hon'ble Tribunal's order passed in OA No. 65/2004 has been challenged in the Hon'ble High Court and its decision is pending before the Hon'ble High Court. He further argued that an identical OA No. 473/2003, **Rajveer & Others vs. Union of India & Another**, was dismissed by the Tribunal and order in this OA was passed on 27.11.2007, which is later in date than the order of the Tribunal in OA No. 65/20094. Therefore, the order passed in OA No. 473/2003 should prevail being the order later in date. He further argued that the applicants have exercised their option in writing declaring that each one of them is ready to be absorbed on the post of Ticket Collector at bottom seniority. Accordingly, they were absorbed on the post of Ticket Collector in the year 1996. Thus even on merit, the present OA deserves to be dismissed with cost.

9. We are first considering the preliminary objections of the respondents on the point of limitation. The applicants have filed an MA

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No. 245/2008 for condonation of delay in filing the OA. In this application, the applicants have stated that the respondents have rejected the claim of the applicants vide their order dated 12.05.2008 stating inter-alia that the decision of the Hon'ble CAT dated 25.07.2007 pronounced in OA No. 65/2004 in which they have filed DB Civil Writ Petition before the Hon'ble High Court of Judicature for Rajasthan, Jaipur Bench and the same is pending. The applicants are seeking the benefits awarded to the applicants in OA No. 65/2004 filed by Ganesh Narain Sharma & Others. In support of his claim, he referred to the order of the Full Bench of the Principal Bench reported as **Satyendra Kumar Rana & Others vs. Government of N.C.T. of Delhi & Others**, 2002-2003 ATFBJ 39. He has referred to the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka & Others s. C. Lalitha**, 2006 (1) SCT 596 in which also the Hon'ble Supreme Court has held that persons similar situated should be treated similarly only because one person has approach the court that would not mean that persons similarly situated should be treated differently. He further referred to the judgment rendered by the Hon'ble Supreme Court in the case of **Sanjay Singh & Another vs. U.P. Public Service Commission, Allahabad**, 2007 (1) SCT 754, in which Hon'ble Supreme Court has held that in order to award substantial justice, claim cannot be rejected on the ground of delay.

10. Learned counsel for the respondents referred to the judgment of the Hon'ble Supreme Court in the case of **P.S. Sadasivaswamy vs. State of Tamil Nadu**, 1975 SCC (1) 152, in Hon'ble Supreme Court has held as under:-

".....It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 not is it that there can never be a case where the Courts cannot interfere

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in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claim and try to unsettle matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Courts.

11. The Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others** decided on 07.03.2011 [Petition for Special Leave to Appeal (Civil) 7956/2011] has held that:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

"21. Limitation.-

- (1) A Tribunal shall not admit an application,-
 - (a) in a case where a final order such as it mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
 - (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
- (2) Notwithstanding anything contained in sub-section (1), where-
 - (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

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- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

The application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later.

- (3) Notwithstanding anything, contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clause (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

12. Further the Hon'ble Supreme Court in the case of **Union of India & Others vs. M.K. Sarkar**, 2010 (1) SCC (L&S) 1126, in Para Nos. 14, 15 and 16 has held as under:-

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in **C. Jacob vs. Director of Geology and Mining**, 2008 (2) SCC (L&S) 961, Para No. 9

"9. The Courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere discretion to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the employee gets a relief, which he would not have got on

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account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the latches gets obliterated or ignored."

15.The issue of limitation or delay and latches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a Court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and latches.

16. A court or tribunal before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and latches. Even if the court does not expressly say so, that would be the legal position and effect."

13. The Hon'ble Supreme Court in the case of **E. Parmasivan & Others vs. Union of India & Others**, 2005 SCC (L&S) 125, has held the similar view. In this case, the petitioners, who retired from service between 31.01.1974 to 31.05.1985, filed claim in 1995 for fixation of their pay on promotion in terms of Ministry of Defense OM dated 12.01.1976. Hon'ble Supreme Court in Para Nos. 2 & 3 has held as under:-

"2. The anomaly in the scale of pay of the petitioners arose as early as on 12.01.1976 when the Government of India declined to extend the revised scale of pay in terms of the concordance table to members of the cadres of

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the Store Officers and Administrative Officers. Therefore, the petitioners would have raised objection regarding the anomaly in their scale of pay at that point of time. Even thereafter when they retired from the service they could have made the claim for pay fixation in terms of the concordance table and for calculation of pension on that basis. They did not take any step in that regard till 1995.

3. In the circumstances of the case the Tribunal, in our view, was right in holding that the original application filed by the petitioners was barred by limitation and hence no relief as claimed by them could be granted to them. Thus the petition being devoid of merit is dismissed."

14. We have considered the legal position with regard to the limitation. We are of the opinion that in the facts & circumstances of the case, the ratio decided by the courts in the cases referred to by the learned counsel for the applicant in the cases of **Satyendra Kumar Rana & Others vs. Government of N.C.T. of Delhi & Others** [2002-2003 ATFBJ 39], **State of Karnataka & Others s. C. Lalitha** [2006 (1) SCT 596] and **Sanjay Singh & Another vs. U.P. Public Service Commission, Allahabad** [2007 (1) SCT 754] are not applicable in the present case. On the other hand, the ratio decided by the Hon'ble Supreme Court in the cases of **P.S. Sadasivaswamy vs. State of Tamil Nadu** [1975 SCC (1) 152], **D.C.S. Negi vs. Union of India & Others** decided on 07.03.2011 [Petition for Special Leave to Appeal (Civil) 7956/2011], **Union of India & Others vs. M.K. Sarkar**, 2010 (1) SCC (L&S) 1126 and **E. Parmasivan & Others vs. Union of India & Others**, 2005 SCC (L&S) 125, are squarely applicable in the facts & circumstances of the present case. The cause of action to the applicants arose in the year 1996-97 when they were first appointed as Ticket Collector after having been declared surplus but they have filed this OA only after the order of the CAT in OA No. 65/2004 decided on 25.07.2007, which is almost after 11 years. Therefore, we are not satisfied with the ground taken by the applicants

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in their MA No. 245/2008 for condonation of delay. Hence the MA is rejected.

15. Consequently, the OA is also dismissed on the ground of delay and latches with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ

K. S. Rathore
(Justice K.S.Rathore)
Member (J)