

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the 21<sup>st</sup> day of December, 2010

**ORIGINAL APPLICATION NO. 232/2010**

**CORAM**

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Lalita Prasad Sharma son of Shri Narayan Sharma, aged about 56 years, Class C employee (Telephone Mechanic) at present working in the office of SDOT, Bandikui, Telephone Exchange, Sikandara. Resident of Kaikunt Nath ji Ka Mandir, Sodala, Jaipur.

.....Applicant

(By Advocate: Mr. Ashwini Jaiman)

VERSUS

1. Bharat Sanchar Nigam Limited through Chief Managing Director, Statesman Building, arakhamba Road, Cannaught Palace, New Delhi.
2. The Chief General Manager, Telecommunication, Bharat Sanchar Nigam Limited, Rajasthan Circle, Sardar Patel Marg, 'C' Scheme, Jaipur.
3. The Principal General Manager, Bharat Sanchar Nigam Limited, Opposite GPO, Jaipur.

.....Respondents

(By Advocate: -----)

**ORDER (ORAL)**

The applicant has filed this OA thereby praying for quashing the order dated 27.11.2009 (Annexure A/1) whereby the representation of the applicant in pursuance of the order dated 18.08.2009 passed by the Hon'ble High Court in DB CWP No. 125/2002 was rejected on the ground that Casual Labour or Regular Mazdoor cannot be promoted to typist post directly without following the rules and procedures. It is further noticed that the applicant had failed to provide any proof of passing the examination for promotion to the post of Typist. The

applicant has further prayed that directions may be given to the respondents to pay him the difference of salary for the post of Typist since his initial appointment to the date actually worked on the post of Typist alongwith interest. It may be stated that the applicant was appointed as Daily Rated employee on 17.05.1978. From the material placed on record, it is also evident that the applicant started working as Phone Mechanic in Group 'C' scale with effect from 05.07.1997. It is for this period since 1978 till he was appointed as Telephone Operator in the year 1997, the applicant is claiming salary of the post of Typist.

2. At this stage, few facts may be noticed. Earlier the applicant had filed OA No. 305/1997 before this Tribunal, which was dismissed vide order dated 11.12.2000, whereby the applicant had sought the following reliefs:-

- "(a) That the respondents be directed to allow and pay the applicant salary and other allowances and other service conditions equal to the regularly employed typist, from the date he joined as daily rated employee under the respondents i.e. 17.5.78.
- (b) That the respondents be directed to regularize the services of the applicant on the post of typist from 17.5.78 and the period from 17.5.78 to the date of regularization be counted for pension and other service benefits."

3. This Tribunal on the basis of material placed on record in Para No. 5 of the order dated 11.12.2000 had categorically held that the applicant was engaged as Casual labour in Group 'D'. He cannot make any claim of parity not only with Group 'C' employees but even with Group 'D' regular employees so long as he is a casual labour. His own representation is a request made by him to consider him for the post

of typist. Even though the respondents have denied receiving such a representation, and such a representation by itself cannot give rise to any claim. It was further observed that the applicant is now working as a Phone Mechanic in Group 'C' scale, which post he has accepted and he cannot put-forth his claim as a matter of right to the post of Typist, which is totally a different category. After recording such findings in Para No. 5 of the judgment, this Tribunal dismissed the OA of the applicant. At this stage, it will be useful to quote Para No. 6 of the order, which thus reads:-

"6. In view of the facts and circumstances of the case, we find no merit in the claim of the applicant. The OA is, therefore, dismissed with no order as to costs. However, the department is expected to examine the case of the applicant sympathetically and if the department has used the services of the applicant as a whole time typist, he may be paid the salary of the post of typist for the period he was so used."

4. Thus as can be seen from the reasoning given by the Tribunal for dismissing the OA of the applicant, it is evident that the applicant had failed to substantiate his claim regarding pay & salary and other allowances at par with the regular employees of Typist from the date he had joined as Daily Rated Employee under the respondents with effect from 17.05.1978. However, while dismissing the claim of the applicant, observation was also made by the Tribunal that Department should examine the case of the applicant sympathetically if the Department had used the services of the applicant as a whole time typist and he may be paid salary for the post of typist for the period he was so used. Such direction was given by this Tribunal on 11.12.2000. The applicant instead of making any grievances regarding the

observations made by this Tribunal for considering his case for payment of salary for the post of Typist if he had worked as a whole time typist challenged the judgment of this Tribunal before the Hon'ble High court by filing DB Civil Writ Petition No. 125/2002. The said Writ Petition was finally disposed of vide order dated 18.08.2009 when liberty was sought by the applicant to file representation before the authorities. At this stage, it will be useful to quote order dated 18.08.2009 passed by the Hon'ble High Court.

"After some arguments, the learned counsel for the petitioner does not want to press this writ petition and seeks liberty to approach the respondents by making a representation for redressal of the grievances.

This writ petition is accordingly dismissed, as not pressed, with the aforesaid liberty."

5. Thus from the order passed by the Hon'ble High Court, as reproduced above, it is evident that the order passed by this Tribunal in earlier OA No. 305/1997 has attained finality. Only liberty was reserved to the applicant to make his representation before the authorities for the redressal of his grievances. Thereafter, the applicant had made representation dated 13.11.2009 (Annexure A/13) whereby he had requested that his claim may be considered sympathetically and his services may be regularized on the post of typist with effect from 17.5.1978 with all consequential benefits or in the alternative he should be paid difference of salary of typist since his initial appointment. At the outset, it may be stated that it was not permissible for the applicant to sought relief for regularization of his services as typist with effect from 17.05.1978 in view of the judgment

rendered by this Tribunal in earlier OA. Further, the applicant could not have been granted the relief regarding payment of difference of salary for the post of Typist from the date of his initial appointment to the date he had actually worked on the post of typist with interest in view of the reasoning recorded by this Tribunal in Para No. 5 of the earlier judgment, the relevant portion is reproduced herein below:-

"The only supporting evidence to establish his claim is the recommendations made by certain officers about his proficiency in typing and the comments on the quality of his work. Such recommendations or appreciations of the work do not provide adequate ground to establish the claim of the applicant that his services were utilized continuously as typist."

Thus as can be seen from the portion, as quoted above, the Tribunal has categorically given the finding that on the basis of material placed on record that the services of the applicant were not utilized continuously as typist, relief regarding payment of salary and allowances equal to regularly employed typist [Prayer (a)] was rejected by dismissing the OA.

6. Thereafter the Tribunal in Para No. 5 had made the following observations:-

"Typist is a post in Group C scale which is filled up after following a due process of recruitment. The applicant was only engaged as a casual labour in Group D. He cannot make any claim of parity not only with Group C employees but even with Group D regular employees so long as he is a casual labour. His own representation, at Ann. A/1, is a request made by the applicant to consider him for the post of typist. Even though the respondents denied having received such a representation, but such a representation by itself cannot give rise to any claim. Further the fact is that the applicant is now working as a Phone Mechanic in Group -C scale, which post he has accepted, and he cannot put forth his

claim as a matter of right to the post of typist, which is totally a different category."

7. We have also perused the representation dated 13.11.2009 (Annexure A/13) filed in pursuance of the order dated 18.08.2009 passed by the Hon'ble High court in DB Civil Writ Petition No. 125/2002. Even in this representation, the applicant had not placed contemporaneous record to suggest that respondents have taken the work of typist from him continuously with effect from 17.05.1978. When the matter was listed before this Tribunal on 19.07.2010, the same was adjourned on the request of the learned counsel for the applicant as we were not satisfied that the applicant was continuously working as Typist with the Department and there was a whole time identity between the work which was being done by the regular typist and the applicant. Thereafter, the applicant had filed additional affidavit. In the additional affidavit, the applicant had stated that he was appointed as Daily Rated employee on 17.05.1978 and was a regular Mazdoor with effect from 06.07.1989. It is further was that he was assigned to work of Hindi and English typing since his initial appointment and he was discharging the duties of regular typist. For that purpose, the applicant has placed on record strips as typed by him collectively as Annexure AA/1. In Para No. 3 of the Affidavit, it has been stated that he was asked to work as Hindi or English typist and in both languages, he used to type addresses, letters and strips. In this regard, he had placed on record Hindi strips typed by him as collectively Annexure AA/2. By way of Annexure AA/4, the applicant has placed on record the typing work done by him from year 1987 to

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1993. It is further stated that work diary of typing from year 1994 to 1997 was taken by the Assistant Director.

8. We have perused Annexure AA/1. From Annexure AA/1, it is evident that in the year 1980, the applicant had typed 3 copies of note sheet on 22.12.1980. Perusal of this letter further reveals that in the year 1981, he had done typing work on 27.03.1981, 05.09.1981, 10.02.1981 by typing one or two letters. In the year 1982, the applicant had placed reliance on letter dated 23.06.1982. At this stage, we wish to reproduce the work done by the applicant during 1980 to 1982 on which reliance has been placed by the applicant as per Annexure AA/1, which thus reads:-

Note sheet:- Dt. 22.12.80 (Three copy (S.D. Bareth, TOA)  
 DR/DMT/Inst./80-81, Dt. 27.03.81 (J.P. Maheshwari, SSD)  
 DR 80-81/1/21 Dt. 5.9.81 (J.C. Sharma, AEAMD)  
 DR/80/C/73 Dt. 10.2.81 (J.C. Sharma, AEAMD)  
 DR/80/C/72 Dt. 10.2.81 (J.C. Sharma, AEAMD)  
 DR/80/C/71 Dt. 10.2.81 (J.C. Sharma, AEAMD)

9. Thus from the portion, as quoted above, it cannot be said that the doctrine of 'Equal Pay for Equal Work' can be invoked. In this case, it cannot be said that the applicant was performing the work of typist continuously and he had done the same or equal nature of work as was done by the regular typist. That part, the applicant is claiming the pay scale of the post of Typist since 1978. The applicant has not placed on record any material on record to suggest that he had done the work of typist in the year 1978 and 1979. It was under these circumstances that the applicant instead of pursuing the matter with

the respondents regarding payment of salary for the post of typist in case his services were utilized as whole time typist did not make any representation nor any grievance regarding the observations made by this Tribunal in earlier OA. Rather he choose to challenge the said order by filing DB Civil Writ Petition before the Hon'ble High Court and rightly so as both the prayer of the applicant regarding payment of salary and allowances of typist at par with regular typist and regularising his service on the post of typist was rejected by dismissing OA on merit and finding given by the Tribunal has attained finality when Hon'ble High Court did not interfere with the findings recorded by this Tribunal.

10. We have heard the learned counsel for the applicant at admission stage. We are of the view that the present OA cannot be entertained for more than one reasons. Firstly, the OA is hopelessly time barred. In this case, cause of action in favour of the applicant had arisen in the year 1978 and thereafter till 1997 when the applicant was not granted the pay scale/salary of the typist. In terms of provisions contained in Section 21 of the Administrative Tribunal's Act, such grievance has to be raised within a period of one year. OA filed in the year 1997 could have entertained grievance upto 1996 and not <sup>prior to</sup> beyond that. That apart once this Tribunal in OA No. 305/1997 had declined the relief for payment of pay & allowances to the post of Typist with effect from 17.05.1978 by dismissing the OA, it was not permissible for this Tribunal to make observations to the respondents to consider the case of the applicant in case the applicant had worked as a Whole time typist. Be that as it may, the applicant had not placed any

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material on record either before the Department or before this Tribunal to come to the conclusion that his services were utilized as a whole time typist. Thus this stale claim of the applicant cannot be entertained at this stage for more than 1 reason. Firstly, the applicant is claiming relief for payment of difference of salary for the post of Typist since his initial appointment i.e. 17.05.1978 to the date actually worked on the post of Typist. In Para No. 3 of the OA, the applicant had asserted that this application is within the limitation period as per provisions prescribed in Section 21 of the Administrative Tribunal's Act, 1985. Section 21 of the Administrative Tribunal's Act does not vest any power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 01.11.1982. In such a case there is no question of condoning the delay in filing the petition but it is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 01.11.1982. The limited power that is vested to condone the delay in filing the application within the period prescribed is under Section 21 provided the grievance is in respect of an order made within 3 years of the constitution of the Tribunal. The Tribunal has jurisdiction under sub-Section (2) of Section 21 to entertain an application in respect of any order made between 01.11.1982 to 01.11.1985. As already stated, in this case OA relates to the grievance in respect of which cause of action has arisen in the year 1978 and more than 3 years immediately preceding the constitution of the Tribunal. Thus this Tribunal has got no jurisdiction or authority to entertain the claim pertaining to the year 1978 onwards. Further we are also of the view that cause of action in such case cannot be said to be a continuous one and cause of action

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has arisen in favour of the applicant when he was denied salary of typist and work of typist was alleged to have been taken from him.

11. Even otherwise also, the present OA cannot be entertained as the applicant has not filed any application for condonation of delay in terms of provisions contained in Section 21 of the Administrative Tribunal's Act. The Apex Court in the case of **Ramesh Sharma vs. Udham Singh Kamal**, 1999 (5) SLR 654, has held that where condonation of delay application is not filed, the OA cannot be admitted and entertained. Even on this ground, this OA is required to be dismissed.

12. Learned counsel for the applicant submits that cause of action has arisen in favour of the applicant only in the year 2009 when the representation of the applicant was rejected on 27.11.2009, which representation was made pursuant to the order passed by the Hon'ble High Court. According to us, the contention so raised by the learned counsel for the applicant deserves outright rejection. The direction given by the Hon'ble High Court to consider the representation without examining the merit has to be construed that such consideration is subject to limitation or delay and laches. The representation so made pursuant to the direction given by the Hon'ble High Court will not extend the period of limitation. Hon'ble Supreme Court in the case of **C. Jacob vs. Director of Geology and Mining and Another**, 2008(2) SCC (L&S) 961, has held that Courts should be circumspect in issuing such direction as it ultimately leads to consideration of case on merits at subsequent stages of litigation as if the cause of action stood

revived due to fresh consideration. It was further held that Department can reject a stale case on the ground of delay alone without examining merits and reply given to an individual does not give rise to fresh cause of action or acknowledgement of jural relationship. At this stage, it will be useful to quote Para Nos. 10 & 11 of the judgment, which thus reads:-

"10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representation unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action."

13. Thus in view of the law laid down by the Apex Court, rejection of the representation of the applicant will not give rise to fresh cause of action. The case before the Apex Court was regarding employee who submitted representation after 18 years and Administrative Tribunal directed disposal of the representation of representation within a period of four months. In subsequent litigation, staleness of the claim was ignored and relief given to the employee because the department in compliance with the court's earlier direction had passed a detailed

speaking order. It was under these circumstances, the Apex court has held that no directions could be given by the Court to decide dead/stale issue and disposal of the representation will not revive the cause of action. The judgment of the Apex Court is squarely applicable in the facts & circumstances of this case. In this case, this Tribunal in earlier OA had categorically rejected the case of the applicant regarding grant of salary to the post of typist with effect from 17.05.1978 including regularization of services of the applicant on the post of Typist. The finding was given by this Tribunal based upon the reasoning given in Para No. 5 of the judgment, relevant portion of such has been reproduced in the earlier part of the judgment. The subsequent OA for the same relief cannot be entertained even if the Tribunal has made certain observation to consider the matter sympathetically in case the applicant was working as a whole time typist.

14. At this stage, we wish to refer to the decision of the Apex Court in the case of **Technical Teachers Training Institute vs. C. Balasubramaniam**, 2010(1) SCC (L&S) 762, whereby the Apex Court has held that the matter cannot be re-opened after the order has become final. As already stated above, this Tribunal had denied relief to the applicant regarding payment of salary of Typist at par with regular typist, although the matter was carried to the Hon'ble High Court and the Hon'ble High Court had not disturbed the findings given by this Tribunal and the Writ Petition filed by the applicant was withdrawn by him. The applicant having suffered the order, which has become final, cannot be permitted to reopen the case again thereby

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again praying that he may be granted the salary equal to that of regular typist by filing subsequent OA. The action of the applicant is abuse of the process of the court.

15. That part, as already noticed above, the applicant had neither placed any material before this Tribunal nor before the authorities to establish that the work of typist was continuously taken from him since his engagement with effect from 17.05.1978. In other words, the applicant has failed to establish that he had qualitatively and quantitatively done the same work as was done by a regular typist so as to attract the doctrine of 'Equal Pay for Equal Work' and the burden to establish this was on the applicant. At this stage, we wish to reproduce the decision of the Apex Court in the case of **State of Punjab vs. Surjit Singh & Others**, 2009(2) SCC (L&S) 696, whereby the Apex Court had held that the principle of "Equal Pay for Equal work" cannot be applied blindly. Principle has undergone a sea change and also noticed that judgment of the Apex court in the case of **State of Punjab vs. Devinder Singh**, 1998 SCC (L&S) 1261 and **Ranbir Singh vs. State of Haryana**, 1998(2) SCT 189 has been partly overruled/ overruled. And thus in Para No. 33 of the judgment, the Apex Court has made the following observations:-

"33.. Yet again, we may also notice that another Bench of this Court in *State of Haryana vs. Tilak Raj*, 2003 SCC (L&S) 828, has clearly laid down the law in the following terms:

"11. A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent worker cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of

equality, it is for the claimant to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principal of 'equal pay for equal work' is an abstract one.

12. 'Equal pay for equal work' is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

Thus even on merit applicant has not made out any case for grant of relief in terms of law laid down by the Apex Court in the case of Surjit Singh (supra).

16. Thus viewing the matter from any angle, we are of the view that the OA is bereft of merit and is accordingly dismissed with no order as to costs.

*Anil Kumar*

(ANIL KUMAR)  
MEMBER (A)

*M.L. Chauhan*

(M.L. CHAUHAN)  
MEMBER (J)

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