

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 678/2003
MA NO. 682/2003
and
OA NO. 1602/2003

(S)

This the 27th day of May, 2004

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HON'BLE SH. V.K. MAJOTRA, VICE CHAIRMAN (M)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

OA NO. 678/2003

K.P.S.Sahota,
s/o Sh. S.S.Sahota;
Accounts Assistant under
Dy. C.A.O./TA/N.Rly.,
State Entry Road,
New Delhi.

Residential Address:-

K.P.S.Sahota,
SE-23, Singalpur Colony,
Shalimar Bagh,
Delhi.

OA NO. 1602/2003

Satya Vir Singh,
S/o Sh. Lal Singh,
Accounts Assistant under
Dy. C.A.O.(TA),
State Entry Road,
New Delhi.

Residential Address

Satya Vir Singh,
House No. WZ-1002,
Tate No.16,
Sadh Nagar, Palam Colony,
New Delhi.

(By Advocate: Sh. G.D.Bhandari)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The F.A. & C.A.O.,
Northern Railway,
Baroda House, New Delhi.
3. The Dy. Chief Accounts Officer (TA),
Norther Railway,
State Entry Road,
New Delhi.

(By Advocate: Sh. R.L.Dhawan)

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O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

By this common order we decide two common OAs referred to above.

2. The relevant facts which have prompt us to decide both these OAs by way of a common order are that both the applicants had been proceeded departmentally though they were issued separate chargesheets but the allegations against them were the same to the effect that they while working as Accounts Assistant they had committed serious misconduct as they had adopted unfair means for qualifying Appendix-III (IREM) Examination of 1989 and they had failed to maintain absolute integrity and acted in a manner which is unbecoming of a railway servant. Thus, they contravened Railway Service Conduct Rules. Both of them were held guilty and by separate orders of even date, i.e. 20.10.99.

3. A penalty was imposed upon the applicants of reduction to lower grade of Rs.4000-6000 to Junior Accounts Assistant for 4 years with immediate effect. Both of them had preferred an appeal against the order dated 20.10.99. The appellate authority after consideration of appeal had reduced the punishment of reduction to lower grade from 4 years to 2 years in case of applicant in OA-678/03. In case of Satyavir Singh the appellate authority had reduced the punishment for 3 years from 4 years. The order in appeal was passed in both the cases on 20.7.2000. Satyavir Singh filed a revision petition on 18.7.2001 which was not entertained vide order dated 24.10.2002 whereas other applicant K.P.S.Sahota did not file

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any revision petition. Ultimately the impugned orders of rejection of appeal was passed on 20.7.2000 by the authorities concerned were challenged. In order to challenge the same applicant K.P.S.Sahota filed the OA on 24.3.2003 and applicant Satyavir Singh filed OA on 23.6.2003.

4.. Respondents raised a preliminary objection that since the final order had been passed on 20.7.2000, OA is highly belated and same cannot be entertained. Since the limitation period prescribed in such like matters is one year under Section 21 of the AT Act, so OA should be dismissed on the ground of limitation itself. However, Sh. Bhandari appearing for the applicants submitted that this Tribunal vide order dated 30.7.2002 had allowed an OA of a similarly placed person who was involved in a similar case, so the applicant is entitled to get the benefit of the said judgment and plea of limitation cannot come in his way.

5.. In support of his contention, learned counsel for applicant referred to a judgment in case of K.C.Sharma and others vs. Union of India 1998 (1) SLJ 55 wherein it is stated that application filed by similarly placed person should not be rejected for bar of limitation. Relying upon the same, learned counsel for applicant submitted that in this case also the applicant like Sudhir Kumar was chargesheeted and penalty had been imposed upon the applicant as it was imposed upon Sudhir Kumar, so applicants are similarly placed person so bar of limitation is not attracted.

6.. Counsel for applicant also referred to another judgment given in OA-622/2003 in case of Sh. Jagan Lal Koli wherein also applicant who had appeared for the same examination and

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had adopted unfair means and was punished with a penalty of reduction to lower grade, his OA was also allowed as the Court had come to the conclusion that the findings recorded by the enquiry officer were perverse. Since the same were based on surmises and conjectures without any reliable evidence to hold the applicant for adopting unfair means. So punishment awarded to that applicant was also set aside and quashed. Learned counsel for applicants submitted that in this case also the same is the situation as applicants are similarly placed, so bar of limitation cannot be attracted.

7. In our view this contention of the counsel for applicant has no merits because the law as laid down by the Hon'ble Supreme Court in K.C.Sharma's case is concerned that we find that the Court had not held that if a case is of a similarly placed person then bar of limitation should not be allowed. Rather the Court had stated that the delay should have been condoned as in para 4 of the judgment the Hon'ble Supreme Court stated as under:-

"Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of OA No.774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to the same relief in the said application is allowed. The appellants would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in OA Nos.395-403 of 1993 and connected matters."

8. No application for condonation of delay has been filed in OA-1602/2003 but applicant in OA-678/2003 has filed an application for condonation of delay but is unable to substantiate the ground for delay. Moreover, we may mention that in case of K.C.Sharma the dispute relate to considering of running allowance as a pay for the purposes of determination of pension and since in an earlier judgment the Hon'ble Supreme Court had decided the issue regarding the running allowance, so a principle of law had been laid down whether for running allowance is to be treated as a part of pay or not.

9. Whereas the cases in hand are altogether different because both these cases relate to disciplinary proceedings and we are not sure whether in the enquiry held in these cases whether any evidence was available or not. Each enquiry conducted against the applicant cannot be said to be the same enquiry or a similar enquiry. Moreover, they have been punished by a separate order though of even dates but the fact remains that the enquiry against each of the applicant had been held separately, so facts which have come on record during the enquiry can also be altogether different in both the cases. Applicant cannot ask for complying a judgment which had been given in some other enquiry case.

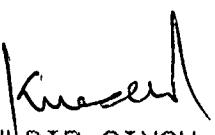
10. It is also stated by the counsel for the respondents that the examination in which the applicant Sudhir Kumar had adopted unfair means for which enquiry was held against him, that examination was altogether a different one whereas the applicant had adopted unfair means in a subsequent examination which was held on a different date so on that score also

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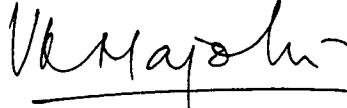
applicant cannot claim the benefit of same judgment of the plea that a case of similarly placed person has been decided earlier.

11. On the contrary, we are of the considered view that since the applicant had been punished by a separate order, his appeal has been decided by a separate order so cause of action to challenge the same had arisen to the applicant on the date when their appeal was rejected and the applicants were supposed to file the OA within one year of the date of passing of the final order in their appeals. Since that has not been done within time, so we find that the both the OAs are badly barred by time, the same are dismissed.


(KULDIP SINGH)

Member (J)

'sd'


(V.K. MAJOTRA)

Vice Chairman (A)

27.5.04