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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2141/2002

New Delhi this the 13th day of July, 2004.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

1. Sh. P.S. Dwivedi,
S/o Sh. J.P. Dwivedi,
R/o House No. T-42A,
Near Manokanama Mandir,
South Colony, Moradabad,
UP. presently at New Delhi.

2. S.K. Gupta,
S/o late Sh. N.C. Gupta,~
R/o House No. M-16A,
Near Railway Hospital,
Moradabad, UP
presently at New Delhi.

..... Applicants

(through Sh. Jagdev Singh, proxy for Dr. Surat Singh,
Advocate)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divl. Railway Manager,
Northern Railway,
Moradabad, UP.

..... Respondents

(through Sh. R.L. Dhawan, Advocate)

ORDER

Hon'ble Shri Shanker Raju, Member(J)

Applicants through this O.A. seek benefit of
past service towards seniority rendered from 1980 to
1988 on the post of Section Controller.

2. Applicants were working as Assistant
Station Masters on permanent basis and had been put to

officiate without conferment of any right of regularisation on the post of Section Controller. They have passed P-16 test. Though a selection process was initiated in 1987 for regularisation, applicants had not participated. Subsequently they were regularised w.e.f. 3.8.1988.

3. Learned counsel of the applicant states that the applicants are continuously representing to the respondents and their request was turned down on 13.11.2001 which has given them a cause of action. As such the O.A. is within limitation.

4. In so far as non-impleadment of the affected parties, it is stated that principle of law is involved.

5. By referring to a decision of Apex Court in Direct Recruit Class-II Engineering Officers' Association & Ors. Vs. State of Maharashtra & Ors. (1990(2) SCR 900) it is stated that their services are to be regularised from the initial appointment and ad hoc officiation which is in accordance with rules is to be treated as regular service.

6. Learned counsel states that as per Chief Personnel Officer letter dated 14.10.1997 it has been recommended to grant seniority to the applicants as Section Controllers from 27.5.1980.

7. On the other hand Sh. R.L. Dhawan, learned counsel of the respondents took a preliminary objection by relying upon the decision of the Apex Court in M.V. Ravindernath Ors. Vs. U.O.I. & Ors. (2001(10)SCC 475) to contend that if the present claim is allowed the applicants would march over others in the seniority. As such those who are affected parties, their non-impleadment is fatal in law and OA suffers from the vice of non-joinder of parties.

8. As regards limitation, it is stated that in view of R.C. Sammanta & Ors. Vs. U.O.I. (JT 1993(3)SC 418) as the cause of action had arisen in 1980 as well as in 1988 filing the O.A. after more than 10 years the applicants have lost their remedy and right by lapse of time. As there is no application for condonation of delay moved by the applicants, the Tribunal has no suo moto power to condone the delay.

9. On merits it is stated that the applicant on passing of P-16 test had not participated in 1987 for selection for promotion as Section Controller. Seniority in a grade commences, as per Rule 302 of IREM Volume-I, from the date of regular promotion after due process. As the applicants had not been appointed as per rules, the ad hoc officiation would not count towards seniority.

10. Learned counsel further states that in the light of decision in S.S. Bajwa Vs. State of

Punjab (1998(1)SC SLJ 168) issue of seniority cannot be reopened after a considerable time which would unsettle the settled position. It is stated that the repeated representations would not extend the period of limitation and reliance has been placed on a Constitution Bench decision of the Apex Court in S.S. Rathore Vs. State of M.P. (AIR 1990 SC 10).

11. We have carefully considered the rival contentions of the parties.

12. By grant of relief to the applicants they would certainly march over the other Section Controllers in the seniority list. Being affected parties, their non-impleadment would render this O.A. as not maintainable which shall by the principle of non-joinder of necessary parties. The Apex Court in Ramarao & Ors. Vs. All India Backward Class Bank Employees Welfare Association & Ors. (2004 SCC(L&S) 337 clearly rules that non-joinder of affected party being necessary claim is illegal.

13. As regards limitation is concerned, cause of action has arisen in 1988 when the applicants were regularised as Section Controllers. They have slept over their right and had not come to this Tribunal. Approaching the Tribunal after a considerable period of time would have an effect of unsettling the settled position in the matter of seniority which cannot be countenanced in view of

decision in Bajwa's case as well as in the light of K.R. Mudgal Vs. R.P. Singh (1988(4) SCC 531). Moreover, there is neither any valid ground of delay nor any application has been made to this effect by the applicants. This Court has no inherent power to suo moto condone the delay in the light of the decision of the Apex Court in Ramesh Chand Sharma Vs. Udham Singh Kamal & Ors. (2000 SCC (L&S) 53). The contention of the applicant that the order has been passed in 2001 denying the request cannot extend the limitation. Entertaining this OA to unsettle the settled position i.e. seniority already finalised in the grade of Section Controllers would be bad in law.

In the result, for the forgoing reasons, O.A. is dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)

/vv/