

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 442 of 2013

Present : Hon'ble Mr. Gokul Chandra Pati, Member(A)
Hon'ble Mr. Swarup Kumar Mishra, Member(J)

Akrur Pradhan, aged about 51 years, S/o Sri Uttam Pradhan, Vill - Sanagaon, PO-Jilinda, Via-Narasinghpur, dist.-Cuttack, working as Chief Office Superintendent under the Senior Divisional Commercial Manager/East Coast Railway/Khurda Road.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda. Pin-751023.
2. Chief Commercial Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda. Pin-751023.
3. Chief Personnel Officer, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda. Pin-751023.
4. Divisional Railway Manager, East Coast Railway, Khurda Road, At/PO-Jatni, Dist.-Khurda, Pin – 752050.
5. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, At/PO-Jatni, Dist.-Khurda, Pin – 752050.
6. Senior Divisional Commercial Manager, East Coast Railway, Khurda Road, At/PO-Jatni, Dist.-Khurda, Pin – 752050.
7. Sri Prasanna Kumar Rana, Chief Office Superintendent working in the Office of Dy. Chief Commercial Manager (Claims/Refund), E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda, Pin-751023.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on: 14.01.2019 Order on : 24.1.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this Original Application (in short OA) seeking the following reliefs:-

“(a) To quash the dtd. 04.06.2013 under [Annexure-A/33]
(b) And to direct the respondents to promote the applicant w.e.f. 01.11.2003 as OS-1 under restructuring of cadre at par with Respondent No.7.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;

And for which act of your kindness the applicant as in duty bound shall ever pray."

2. The applicant initially joined under the respondents as Junior Clerk on 12.8.1988 in Electrical Department and was promoted as Senior Clerk. On his option he was transferred to Senior Claims Office, Bhubaneswar with termination of his lien under Electrical Department. Subsequently the cadre of Claims Office was transferred from CCM Office at the zonal level and merged with Divisional Commercial Cadre of Khurda Road Division. In that cadre, the applicant was promoted as Head Clerk and then as OS Gr.II. After creation of new zonal office at Bhubaneswar w.e.f. 1.4.2003, as per the guidelines of the option from the staffs to be absorbed in zonal cadre was called for. The last date for submitting option was 31.10.2003. At this point of time, claims Office was taken over by Chief Personnel Officer under the zonal office separating it from the Commercial Cadre of Khurda Road Division. Earlier, Railway Board had issued guidelines for restructuring of Group C and D cadre providing for additional promotional facilities. It was stated by the applicant in OA that such bifurcation of the cadre was illegal, improper and arbitrary since as per the restructuring circular the benefit will be available for the persons who are working in a particular cadre on 31.10.2003 on the basis of total cadre strength. It is also stated that due to bifurcation of the Commercial Cadre, its cadre strength got depleted for which the applicant was deprived of promotion to next level i.e. OS Gr.I under the restructuring guidelines. This would have not happened if option was invited from staffs working before Claims Office was re-transferred to CCM's Office at Zonal level from Divisional level. He has grievance against decision which resulted in his non-promotion and he claims promotion to the post of OS Gr.I w.e.f. 1.11.2003 under restructuring.

3. It is further submitted in the OA that applicant's erstwhile junior Mr.P.K.Rana was taken to the Zonal cadre and he was subsequently promoted to Chief OS of the Claims Office, Bhubaneswar under the CCM although he was junior to the applicant as on 1.11.2003. Although the applicant was one of those in the office of CCM under the Zonal Office who was transferred to the Zonal office and his name appears on the letter dt. 13.3.2003 (Annexure A/14), but he was not relieved by the official respondents because of administrative delay. Hence, he could not be spared to Zonal Headquarters till the cut off date on 31.10.2003. This was in spite of letter dated 8.10.2003 which stated that such persons who furnished option should be released by 30.10.2003. The applicant was spared only on 14.10.2004, but he was not accepted in the Zonal cadre since the applicant's transfer order to Zonal Commercial Cadre was valid till 31.10.2003 and hence, the applicant was to be taken back to Division Cadre vide letter dated 26.10.2004 (Annexure A/19 of the OA). Accordingly, the applicant was relieved on 18.11.2004 to join back in the Division vide order dated 18.11.2004 (Annexure A/20).

4. It is further stated in the OA that the applicant represented from time to time starting from 14.12.2004 (Annexure A/21) for transfer to the Commercial Cadre of Zonal Office since he was one of the optees. He again represented on 18.3.2005 (Annexure A/22), 27.5.2005 (Annexure A/23) till 9.6.2008 (Annexure A/27). A letter dated 23.7.2008 (Annexure A/28) was issued clarifying that applicant was working with Sr. DCM, Khurda at the time of formation of cadre of Claims Office. He submitted another appeal dated 30.4.2010 (Annexure A/29) and 14.2.2012 (Annexure a/31). Thereafter, he approached the Tribunal by filing the OA No. 384/2013 which was disposed of with direction to the respondents to consider the applicant's case. Accordingly, the respondents have passed the order dated 4.6.2013 (Annexure A/33) rejecting the applicant's representation dated 14.2.2012 (Annexure A/31).

5. Counter filed by the respondents did not dispute the facts and averred that as per the Railway Board letter dated 30.10.2003 (A/7), the paper lien of the staffs who opted for Zonal Headquarters and they would be considered for posting against Zonal level posts on transfer to the zonal cadre. It is stated that although the applicant was transferred to zonal headquarters, he was not relieved by the division due to administrative reasons before 31.10.2003. When he was finally released on 14.10.2004, his joining was not accepted at the headquarter cadre and he was taken back to division cadre. The reasons for not effecting his transfer to headquarter was communicated to the applicant vide letter dated 15.9.2006 (Annexure-R/1), which has not been challenged by the applicant. It is stated that the respondent no. 7 cited by the applicant for comparison of promotion, belonged to headquarter cadre on transfer and comparison with him is not relevant. The ground of delay has also been mentioned in the Counter.

6. Rejoinder has been filed by the applicant denying the contentions in the Counter. It is stated that the applicant was denied promotion due to arbitrariness of the respondents for not sparing him for the headquarters transfer without any reason. It is further averred that the applicant was a permanent constituent of the Claims office, which was transferred to the zonal level. He again raised the issue that the respondent no. 7 being his junior, was promoted to higher scale under restructuring. But the same benefit was not allowed to the applicant although he was the senior staff of the Claims office.

7. Heard learned counsel for the applicant and the respondents. It is a fact that the applicant is senior to the respondent No. 7 when the later was at the divisional level. But in the year 2003, the respondent No. 7 was transferred to headquarters cadre after giving the option for the same and reporting there for duty within 31.10.2003. But the applicant, who had also opted for transfer to

headquarter cadre, could not be released by the division to report there by 31.10.2003. When he was released on 14.10.2004 and he reported at the headquarters on transfer, his joining was not accepted and he was sent back to divisional cadre vide order dated 14.12.2004 (Annexure-A/220, which was accepted by the applicant without any challenge of the order dated 18.11.2004 (Annexure-A/20) sending him back to the divisional cadre. If he was aggrieved for not being allowed transfer to headquarters cadre, it was necessary for him to have challenged the same decision then.

8. Further, when the respondents intimated the reasons for not accepting him against his transfer to headquarters cadre vide order dated 15.9.2006 (Annexure-R/1), which has not been challenged by the applicant, who went on submitting representations from 2005 till 2012. The order dated 18.11.2004 (A/20) has never been challenged by the applicant although he was aggrieved by his non-transfer to the headquarters commercial cadre. In other words, the action of the applicant amounts to acceptance of the decision of the authorities not to allow his transfer to the headquarters, for which the applicant was no way responsible. Even in this OA, the said order dated 18.11.2004 and order dated 15.9.2006 have not been challenged. Having accepted the decision and not challenging it within the time stipulated under the Administrative Tribunals Act, 1985, the applicant cannot challenge the said decision or any other decision which was taken during 2003-2004 in 2012. No application explaining reasons for delay as required under section 21 of the Administrative Tribunals Act, 1985 has been filed by the applicant.

9. The respondent no.7 was promoted to OS Gr.-I w.e.f. 1.11.2003 after his transfer to headquarters and after his reporting at the headquarters within the stipulated time. Hence, the applicant and respondent no. 7 belonged to two different cadres as on 1.11.2003 for which claim of parity with the respondent no. 7 is impermissible. If both of them belonged to same cadre as on 1.11.2003, then the applicant should have challenged the promotion order of the respondent no. 7, which was not done in this OA.

10. Even if the promotion of the respondent no. 7 would have been challenged in this OA, the same would not be allowed in view of the delay factor. In the case of *Shiba Shankar Mohapatra & Ors vs State Of Orissa & Ors*, reported in AIR 2010 SC 706, Hon'ble Apex Court, on the issue of delay in respect of the claim for promotion vis-a-vis another employee on the ground of seniority, held as under:-

“22. In *Dayaram Asanand v. State of Maharashtra & Ors.* AIR 1984 SC 850, while re-iterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under Article 226 of

the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.

23. In P.S. Sadasivaswamy v. State of Tamil Nadu AIR 1975 SC 2271, this Court considered the case where the petition was filed after lapse of 14 years challenging the promotion. However, this Court held that aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under :-

"A person aggrieved by an order promoting a junior over his head should approach the Court at least within 6 months or at the most a year of such promotion."

24. The Court further observed that it was not that there was any period of limitation for the Courts to exercise their powers under Article 226 nor was it that there could never be a case where the Courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters."

11. The applicant has submitted representations against the decision not to send him to headquarters commercial cadre from 2005 till 2012 as stated in the OA. But that would not cure the OA of the defect of limitation and delay. In the case of S.S. Rathore vs. State of M.P. reported in (1989) 4 SCC 582, Hon'ble Apex Court has held that "repeated representation/reminders does not give rise to limitation." In the case of Karnataka Power Corporation through its CMD vs. K. Thangappan and others reported in (2006) 4 SCC 322, it was held by Hon'ble Apex Court that the delay cannot be justified by mere making representations. Hence, repeated representations of the applicant from 2005 to 2012 cannot justify the delay in filing the OA to challenge the order dated 18.11.2004 (Annexure-A/20) not to accept his delayed joining at the headquarters in pursuance to his transfer to headquarters commercial cadre.

12. In the circumstances as above, we are unable to interfere in the matter after such a long lapse of time and hold the OA to be barred on the ground of limitation and delay. Hence, the OA is dismissed on the ground of limitation/delay under the provisions of law. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)