

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

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**Original Application No.09/JODHPUR/2013**

Reserved on : 20.01.2020  
Pronounced on : 11.02.2020

**CORAM:**

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)**  
**HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Raghuveer Dutt S/o Sh.Chauthu, aged about 66 years. (Senior Citizen), R/o Khemka Sati Marg, Near Gogomani, Ward No.24, Distt. Churu (Raj.) and last employed as Technical-II under the respondent department at Loco Shed, Churu.

...Applicant

(By Advocate: Shri R.K.Mishra, proxy counsel for Shri Nishant Motsara)

Versus

1. Union of India through General Manager, Northern Western Railway, Jaipur HQ.
2. The Divisional Railway Manager, Northern Western Railway, Bikaner.
3. Divisional Officer, Northern Western Railway, Bikaner.
4. Divisional Personnel Officer, Northern Western Railway, Bikaner.

...Respondents

By Advocate: Shri R.K.Soni)

**ORDER****Per Mrs. Hina P.Shah**

By filing the present OA, the applicant claims that the respondents may be directed to grant proper seniority to him while complying with the ratio decided in Indira Sawhney and M.Nagraj's case. He further seeks direction to the respondents to rectify the seniority list dated 19.02.2003 and promotion list in consequence to the same after applying the ratio of the above cases and keep him before the persons of reserved category, who were promoted giving the benefit of reservation in promotion with all consequential benefits.

**2. Brief facts as stated by the applicant are that:-**

He was initially appointed as Casual Labour on 01.09.1967. Thereafter he was appointed as Fitter Khalasi on temporary basis on 07.03.1968. He became permanent on 31.05.1976. He completed his Fitter trade on 13.07.1980 and was promoted on the post of Fitter Khalasi Helper and he officiated as Fitter Grade-III. In the list of employees, he was shown at serial No.326 and his date of becoming permanent was shown as 31.05.1976. But in the seniority list issued by the respondents for promotion from

the post of Fitter Khalasi to Fitter his name was not included and persons junior to the applicant were included. Thereafter he made a representation dated 16.03.1985 (Annexure-A/4). The Applicant again made a representation to the respondents on 30.12.1986 (Annexure-A/5) that he is getting less as compared to his junior. Thereafter he kept on making representations. Subsequently, he was promoted as Fitter Grade-III on 05.02.1987 and was designated as Fitter Skilled on 22.02.1987. Again he was promoted as FDR Grade II vide order dated 19.08.1998 (Annexure-A/7).

Some employees were declared surplus in Loco Shed and they were deployed in Electrical Department. Accordingly, a seniority list was issued dated 19.02.2003 (Annexure A-8), whereby the date of appointment of the applicant was shown as 07.03.1968 but he was placed at seniority list of FDR-II whereas the persons junior to him has been placed in the seniority list of FDR-I. Aggrieved by the said seniority list, he moved a representation dated 24.03.2003 (Annexure A-9) stating that persons at Sl.No.5 & 7 were wrongly promoted on reservation basis. In the said representation he also pointed out that persons at Sl. No. 1,2,3,5,6&7 belong to reserved category and,

therefore, the seniority list deserves to be corrected. It is his contention that Mohan Lal and Tiku Ram both junior to him are placed above the applicant. He further states that he has been superannuated on 28.02.2006 and is drawing his pension in the scale of Rs.5200-20200, Grade Pay Rs.2400/-. When the respondents did not take any steps to rectify the mistake he sent a legal notice on 18.08.2011 (Annexure A-12) with a request to grant him proper seniority, promotion and consequential benefits. In reply to the said legal notice, the respondents sent a reply dated 09.01.2012 (Annexure A-1). The applicant states that the said reply is nothing but a casual approach on part of respondents without proper application of mind. Therefore he is compelled to file the present OA.

3. The respondents have filed their reply stating that the applicant was initially engaged as a Casual Labour on 01.09.1967 on daily wages in Loco Shed. Then he was engaged as substitute Fitter Khalasi at Loco Shed on 07.03.1968. He was then regularized as Fitter Khalasi in the grade of Rs. 192-232(RS) and was placed on panel of Fitter Khalasi dated 25.01.1974. He became permanent w.e.f. 31.05.1976 vide letter dated 28.12.1976 (Annexure A-3).

Due to upgradation of posts, the applicant was given grade pay of Rs. 210-280/800-1150 w.e.f. 1.8.1978 vide letter date 12.08.1983. Thereafter, the applicant was promoted to the post of Loco Fitter (Skilled) in grade of Rs. 950-1500 (RPS) and he joined as Loco Fitter Skilled on 22.02.1987. As the applicant had officiated as Loco Fitter in Grade of Rs.260-400(RS) on local arrangement w.e.f. 07.07.1983 to 24.11.1984, he was given the benefit of one increment in this grade vide letter dated 18.07.1987 (Annexure R-1) after making adjustment towards non active period. Later on applicant was allowed grade pay of Rs.260-400 of Greaser extending the benefit of re-classification from 01.01.1984 vide letter dated 11.06.1992 (Annexure R-2). The pay of the applicant was refixed in the category of Greaser w.e.f 07.07.1983 (Annexure R-3). The applicant was also promoted as Loco Fitter Grade III w.e.f 01.01.1984 vide letter dated 11.06.1992 (Annexure R-1).

As per 4<sup>th</sup> CPC, his pay was fixed at Rs.905/- w.e.f. 01.01.1986 and at Rs. 920/- w.e.f. 01.08.1986. Later on his pay was re-fixed at Rs.1010/- w.e.f. 01.01.1986 and Rs. 1030/- w.e.f. 01.07.1986 vide Annexure R-2. Due to closure of Steam Loco Shed, applicant was re-deployed as

FDR-III in the grade 260-400/950-1500/- in Electrical Department vide letter dtd.07.06.1994 (Annexure R-4). Subsequently, he was allowed grade of Rs.260-400(RS) of Greaser extending to him the benefit of re-classification from 01.01.1984 in the category of Greaser. His pay was re-fixed in category of Greaser in the grade w.e.f. 07.07.1983 vide Annexure R-3. He was promoted as HSF-II (FDR) in grade Rs.4000-6000 vide letter 19.08.1998 (Annexure A-7).

Respondents reiterate that his date of appointment was wrongly shown in seniority list as 07.03.1968, as he was at that time engaged only as substitute Fitter Khalasi which is evident from his Casual Labour Card (Annexure R-5) and regularised as Fitter Khalasi. He was regularized on the said post after screening vide letter dated 25.01.1974. It is the case of the respondents that Mohanlal (SC) as well as Tiku Ram (ST) were redeployed in Electrical Department as FDR-II i.e. higher grade of Rs. 1200-1800/4000-6000, therefore, they are senior to the applicant as he was redeployed in Electrical Department in FDR-III grade 950-1500/-. Also Mohanlal (SC) and Tiku Ram (ST) being eligible for promotion as FDR-I grade Rs.4500-7000 in

Electrical Department, whereas the applicant was redeployed in Electric Department in FDR-III, grade 950-1500 and he was promoted as FDR-II in grade 4000-6000 in Electric Department vide letter dated 19.08.1998. Thus the date of initial appointment does not play a significant role for assignment of seniority in Electrical Department especially when comparison is being made between FDR-II and FDR-III. Thus the ratio of Indra Sawhney and M. Nagraj is not applicable to the present controversy. Therefore the applicant is not entitled for any relief and the present OA deserves to be dismissed.

4. Heard Shri. R.K. Mishra proxy to Shri. Nishant Motsara for the applicant and Shri. R.K. Soni for the respondents and perused the material available on record.

5. The applicant stated that since he is senior to Shri. Mohanlal and Tiku Ram as per the seniority list where his date of initial appointment is earlier to them, therefore, he is entitled to be granted proper seniority. So far as the question pertaining to limitation, it is stated that the said question was not raised by the respondents earlier. He further stated that as per Annexure A-1 the OA is well within time and, therefore, there is no question of delay and

laches since the payment of less pension is recurring cause of action.

6. The respondents raised the preliminary objection of limitation and also about non-joinder of affected persons not made as party-respondents. The respondents claim that the applicant is challenging the seniority list of 19.02.2003 by filing the present OA in 2013. No Miscellaneous Application is filed for condoning the delay in filing the present OA belatedly. Also the applicant has failed to make the affected persons as party-respondents and therefore, on account of non-joinder of necessary parties, the present OA deserves to be dismissed. The applicant retired on superannuation in 2006. If he had any grievance about wrong fixation of seniority, he should have approached the Court at relevant time for redressal of his grievance .

7. Considered the rival contention of parties.

8. The applicant is claiming promotion at par with his juniors, Shri. Mohanlal and Shri Tiku Ram, but he has failed to make them party respondents who are necessary party to the present case. The plea of the respondents is that the present OA fails on non-joinder of necessary parties to the present OA. After considering the matter on the point of



non-joinder of necessary parties, we are of the view that the OA cannot be entertained behind the back of those who are likely to be affected if the matter is considered on merits.

9. Further, from the material placed on record, it is seen that the applicant had raised his grievance by filing his first representation on 16.3.1985 (Annexure-A/4) claiming seniority over other employees. Thereafter, he made representation 30.12.1986 claiming promotion and fixation as per his initial date of appointment. Vide representation dated 31.3.1987 & dated 11.6.1993, he claimed payment of CPC scale for the period he worked as casual labour. Thereafter vide other representation dated 24.3.2003 he also raised the issue that he worked for 910 days as casual labour and claimed seniority over some persons. The applicant retired on superannuation on 28.2.2006 and thereafter a legal notice on 18.8.2011 was sent which was replied vide letter dated 9.1.2012. Considering the above events, it is clear that the applicant had been raising his grievance from the year 1985 regarding his date of initial appointment and therefore, the cause of action arose at that point of time, but he approached the Tribunal only in

the year 2013 even after about seven years of his retirement in the year 2006. The reply given by the respondents to his legal notice will not keep the issue alive as it is settled proposition of law that repeated representations does not extend the period of limitation. In this regard we would like to refer to judgment of the Hon'ble Punjab and Haryana High Court in CWP No.3124 of 2011 in the case of **Harnam Singh vs. State of Punjab and Ors.** decided 10<sup>th</sup> March, 2014 wherein the Hon'ble High Court has dealt with the issue of delay and laches and observed as under:-

".....

In a recent judgment in [State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others](#), 2013(6) SLR 629, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may deprive him of the benefit which had been given to others. [Article 14](#) of the Constitution of India, in a situation of that nature, will not be attracted as it is well known that law leans in favour of those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under [Article 226](#) of the Constitution of India, yet it should be filed within a reasonable time. An order permitting a junior should normally be challenged within a period of six months or at the most in a year of such promotion. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a person, who allows things to happen and then approach the

court and puts forward a stale claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Any one who sleeps over his rights is bound to suffer. An employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure, deserves to be denied the relief on account of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:

"13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. [In C. Jacob v. Director of Geology and Mining and another](#), (2008) 10 SCC 115, a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:-

"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 representations 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."

22. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced

in law. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

(underline ours)

10. In the above facts and circumstances of the case and looking the matter in the light of the above law propounded by the Hon'ble High Court and by the Hon'ble Apex Court, we are of the view that the claim of the applicant cannot be entertained at this belated stage as it will unsettle the settled position. Therefore, the OA is liable to be dismissed. Accordingly, it is dismissed with no order as to costs.

**(ARCHANA NIGAM)**  
**ADMV. MEMBER**

**(HINA P.SHAH)**  
**JUDL. MEMBER**

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