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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

O.A. No. 2119 of 2001

Date of order: 11.7.2003

Coram: Hon'ble Smt. Lakshmi Swaminathan, VC(J)  
Hon'ble Sh. C.S.Chadha, Member (A)

Ms. Renu Sethi,  
Senior Catering Inspector,  
Parliament House Annexe (Catering),  
under General Manager, Northern Railway,  
Baroda House, New Delhi.

....Applicant

versus

1. The General Manager,  
Northern Railway, Baroda House,  
New Delhi.
2. Shri Ramit Rekhi,  
Senior Catering Inspector,  
Parliament House, Annexe(Catering),  
New Delhi.

...Respondents

Present: Mr. B.S.Mainee, for the applicant.  
Mr. E.X.Joseph, learned Sr. counsel with  
Shri R.L.Dhawan, Advocate for respondent  
No.1.  
Mr. Rmaesh Gautam, Advocate for respondent  
No.2.

O R D E R  
(Hon'ble Mr. C.S.Chadha, AM)

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The applicant was appointed as a Unit Catering Manager under the Railways in the scale of Rs. 330-560 on an ad hoc basis on 22.1.1981. The said post was upgraded to the scale of Rs. 425-640 w.e.f. 1.7.1982. Applicant was screened for a higher post on 12.4.90. She claims that she was to be screened for



regularisation as Unit Catering Manager ("UCM" for short), but was wrongfully screened for the post of Store-cum-Accounts Clerk in the grade of Rs. 950-1500. She, therefore, filed OA 1706 of 1990. That OA was allowed on 22.8.94 and the respondents were directed to screen her afresh for the post of Unit Catering Manager and not for the post of Store-cum-Accounts Clerk, as the Tribunal considered that her qualification was sufficient for eligibility for selection as UCM. She was accordingly screened for the post of UCM on 19.4.95 and vide order, Annexure A-10, dated 8.5.95, she was regularised in the post of UCM in the grade of Rs. 1200-2040 with effect from the date of screening i.e. 19.4.95. Aggrieved by this order, she filed yet another OA No. 1700 of 1995, praying for regularisation in the grade of Rs. 1400-2300 from the actual date of working as UCM. The said OA was only partially allowed on 17.8.88 with a direction that she be regularised on the post of UCM in the scale of Rs. 12000-2040 w.e.f. 13.8.90. She felt aggrieved by this order and, therefore, filed a Review Petition before the Bench. The Review Petition came to be rejected vide order, Annexure A-15 as being barred by limitation. Thereafter she filed a writ petition No. 1160/2000 before the Hon'ble High Court on 29.4.2000. The High Court vide its order dated 27.7.2001 gave the following directions:-

" As it is, we are not in a position to grant either relief to petitioner. She finds fault with impugned Tribunal order on the ground it should have ordered her regularisation from the date of initial

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engagement on the analogy of her rival contender Rekhi. But that was not a case set up by her at all. Nor was Sh. Rekhi impleaded a party by her there or here. In the circumstances, the Tribunal directing her regularisation from 13.8.1990 can't be faulted.

We also find no scope to examine petitioner's claim or entitlement for promotion to the post of Chief Inspector (Catering) because that is not an issue before us.

In the circumstances, we dispose off this petition by providing that petitioner shall be at liberty to reagitate the issue of her retrospective regularisation and promotion to the post of Chief Inspector (Catering) on whatever grounds may be available to her by taking an appropriate remedy."

This O.A. has, therefore, been filed in pursuance of the aforesaid directions of the High Court. She has now prayed for grant of retrospective seniority to her in the grade of UCM from the date respondent No.2 Ramit Rekhi was regularised as such and has also asked for consequential benefits.

Before going deep into the merits and demerits of her claim, it would be necessary to point out certain other facts of the case.

The main grounds taken by the applicant are that respondent No.2 was appointed much after her i.e. on 27.1.1984, while she was officiating in the grade of

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UCM (Rs. 330-480) w.e.f. 22.1.1981; respondent No.2 was appointed in a lower grade of Assistant Catering Manager in the scale of Rs. 260-430 w.e.f. 21.11.1984 and had been her junior and subordinate. It transpires that after both of them were screened for the post of Store-cum-Accounts Clerk in the revised scale of Rs. 950-1500, both of them filed OAs before the C.A.T. While the history of the applicant's OAs and subsequent litigation has been traced above, in the case of respondent No.2, in OA 1924/91, decided in his favour, he was regularised as Assistant Catering Manager in the scale of Rs. 975-1540 w.e.f. 13.1.1987. As a result of respondent No.2's regularisation as ACM w.e.f. 13.1.1987, he was further screened for promotion to the grade of UCM (Catering Supervisor) w.e.f. 10.8.90, whereas the applicant through her litigation and by the judgment of the Tribunal in OA 1700/95, was regularised in the scale of Rs. 1200-2040 w.e.f. 13.8.1990. She followed an independent route of remedy by approaching the Tribunal in a Review petition and thereafter the High Court by filing a writ petition, whereas respondent No.2 was satisfied with his regularisation w.e.f. 10.8.90. While the litigation of the applicant was pending in the Tribunal/High Court, further development took place. Respondent No.2 having been regularised, rightly or wrongly, to the post of UCM w.e.f. 10.8.90, became senior to the applicant. We are not going into the reasons why he became senior because apparently the orders of regularising both the applicant and respondent No.2 to the said post in the scale of Rs. 1200-2040 were as a result of two independent orders in OAs in each of which the other person was not a party. As a result of

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this seniority, respondent No.2 got promoted to the next grade i.e. Catering Inspector-II in the scale of Rs. 1400-2300 (revised scale: 5000-8000) w.e.f. 1.3.93, while the applicant got promoted to the same post four years later i.e. w.e.f. 12.3.97 and she never challenged the promotion order of respondent No.2. Further, respondent No.2 received yet another promotion to the grade of Rs. 1600-2660 (revised scale: Rs.5500-9000), as Catering Inspector-I w.e.f. 17.4.96, whereas the applicant received the same promotion 3 years later i.e. on 23.4.99. Both of them became entitled to the next promotion of Chief Catering Inspector in the grade of Rs. 6500-10,500. It is only when the selection of the Chief Catering Inspector was due that one of the impugned orders i.e. Annexure A-2 came to be passed on 2.4.2001. This impugned order was merely a notice for selection to the post of Chief Catering Inspector in which the seniority of Sh. Ramit Rekhi was shown at Sr. No.1 and that of the applicant Ms. Renu Sethi at Sr. No.2. Aggrieved by this as well as by the order of the Tribunal dismissing her Review Petition, the applicant filed a writ petition No. 1160/2000 in the High Court.

Before we proceed to analyse the merits and the reliefs claimed by the applicant, we must closely examine the order of the High Court. To our mind, the Hon'ble High Court's order has cleared the following main issues:

- i) That in view of the fact that the applicant had not impleaded Sh. Rekhi as a party in the OA before C.A.T., the decision of the Tribunal directing her regularisation to the

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post of UCM in the scale of Rs.1200-2040

w.e.f. 13.8.90 cannot be faulted..

- ii) That the applicant was at liberty to re-agitate the issue of her retrospective regularisation and promotion to the post of Chief Inspector (Catering).
- iii) That she may reagitate the issue on whatever grounds that may be available to her.
- iv) Such reagitation, if grounds existed, should be by taking an appropriate remedy.

It is, therefore, very clear that the issue of her regularisation w.e.f. 13.8.1990 in the scale of Rs. 1200-2040 has been even upheld by the High Court and cannot now be reopened as it would operate <sup>as</sup> res judicata. The Hon'ble High Court clearly mentioned that the relief claimed by the applicant from the High Court was regarding consideration of promotion to the rank of Chief Inspector (Catering) in preference to respondent No.2, a relief which the High Court rightly decided, could not be granted to her and that is why the Hon'ble High Court directed that she may raise this issue before C.A.T. and at that time, if reasonable grounds existed, reagitate the issue of her retrospective regularisation. We are afraid that she filed the present OA without going into the merits and demerits of her case for promotion as Chief Inspector (Catering) in preference to respondent No.2 and has reagitated only the issue which has already been settled even by the High Court. We are afraid that the issue of her seniority as UCM once found to be without any infirmity by the High Court, cannot be reopened by this Tribunal now.

As regards her claim vis-a-vis respondent No.2 for the post of Chief Catering Inspector is

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concerned, she has not claimed any relief directly in this OA. However, as this was argued at length before us, we would like to point out that the post of Chief Catering Inspector is three steps above the post of UCM and while she has been continuously reagitating her priority and seniority over the claim of respondent No.2 to the post of UCM, she has never challenged her two subsequent delayed promotions as compared to respondent No.2. As pointed out earlier, after Unit Catering Manager, on two occasions she received the next promotions 3/4 years after respondent No.2 was promoted to the subsequent grades. Initially when respondent No.2 was promoted to the post of Catering Inspector Gr.II on 1.3.1993 and she was promoted on 12.3.97, she kept silent and did not challenge or impugn respondent No.2's promotion perhaps because she thought that her pending OA for her seniority as UCM will solve her problem. She did not make respondent No.2 a party to any such litigation. Thereafter while she was still in the grade of Rs. 1200-2040 (Revised to Rs. 4000-6000), on 17.4.96 respondent No.2 got promoted to the grade of Rs. 5500-9000, she got promoted to a lower grade of Rs. 5000-8000 on 12.3.97 and to the grade of Rs. 5500-9000 on 23.4.99 and she did not challenge both the earlier promotions as Catering Inspector II and Catering Inspector-I of respondent No.2. We are afraid that this delay and overlooking the cause of action which accrued in 1993 and 1996, has damaged her claim by delay and laches and she cannot be now allowed to raise this issue at the time of the last named promotion as Chief

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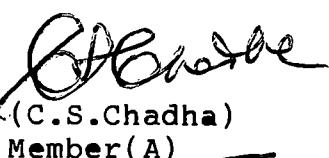
Catering Inspector. Merely by challenging the earliest seniority without linking it with the seniority of respondent No.2 in the grade of UCM and without challenging his subsequent two promotions, applicant has no locus standi now to claim that respondent No.2 is junior to her. We have not been fully apprised of all the facts leading to respondent No.2's earlier regularisation, but there is no doubt that both the regularisations have been done by independent orders of the Tribunal. The right remedy for the applicant would have been to make respondent No.2 a party at the appropriate time and get her seniority as she claims from the Tribunal. The delay and laches due to her sleeping over the matter while respondent No.2 got two promotions far ahead of her, do not permit her to raise this issue and get retrospective seniority while being considered as Chief Catering Inspector. The Hon'ble High Court directed her to raise this issue "on whatever grounds may be available to her". We find that the grounds taken are not available to her because she acquiesced in the earlier promotions to the grades mentioned above of respondent No.2 far earlier than her and never challenged them. The right remedy available to her could have been that when she learnt that respondent No.2 had been regularised as UCM prior to her, she should have challenged that order and made him a party. Further, prior promotions of respondent No.2 as Catering Inspector-II and Catering Inspector-I should have also been challenged by her while she pursued the matter only for retrospective regularisation as UCM in the Tribunal and the High Court.

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The High Court order basically relates to her claim to the post of Chief Inspector (Catering) and related to it, if at all, her earlier seniority. As we have discussed above, the feeder cadre for the post of Chief Catering Inspector is Catering Inspector-I and she was definitely found three years junior to respondent No.2 on that ground. Since she did not challenge that seniority, she cannot do so now and, therefore, her claim for being considered in preference to respondent No.2 for the post of Chief Catering Inspector has no legs to stand on.

In effect, we find that her major claim by impugning the order, Annexure A-1 dated 8.5.95, cannot be considered because that order followed by the Tribunal's order, led to her aforementioned regularisation w.e.f. 13.8.90, which has been upheld even by the Hon'ble High Court. Although she has not claimed this benefit directly in her OA, she cannot be considered to be having a superior claim for being considered as Chief Catering Inspector in preference to respondent No.2 on the grounds mentioned above. The OA is, therefore, dismissed. No costs.

  
(C.S.Chadha)  
Member(A)

  
(Smt. Lakshmi Swaminathan)  
Vice Chairman(J)

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