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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-2208/98
MA-2324/98
MA-1502/99

New Delhi this the 5th day of January, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

1. K.S. Upadheya son of Sh. R.B. Lal,
R/o 40 Shiv Puri, Ghaziabad (UP).
2. Ashok Kumar son of Sh. Badam Singh,
R/o 224/1, Railway Colony,
Kishan Ganj, New Delhi.
3. Sunil Karketa, Statistical Inspector,
presently at DRM Office, Allahabad(UP).
4. M.S. Bharti, Statistical Inspector,
presently at DRM Office, Lucknow (UP).
5. Sanjay Girdhar, Statistical Inspector,
Baroda House, New Delhi. ...Applicants

(By Advocate Shri V.P. Sharma)

-Versus-

1. Union of India through the
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi. ...Respondents

(By Advocate Smt. Meera Chhibber)

O R D E R

By Reddy, J.-

The applicants are Statistical Inspectors working under the Northern Railway in the grade of Rs.550-750. As per the applicants Statistical Inspectors and Assistant Superintendents who are also in the grade of Rs.550-750 are entitled to be promoted to the next higher post of Superintendent, on the basis of selection, from the combined seniority list of both the posts. It is the case of the applicants that the Railway Administration has taken a wrong decision in its letter dated 5.2.79 that the cadres of



Statistical Inspector and Assistant Superintendent, for further promotion as Senior Statistical Inspector and Superintendent, should be maintained separately w.e.f. 1.5.79. It was submitted by the applicants that this decision was contrary to the Railway Board's decision contained in their letter dated 3.2.72. It is the grievance of the applicants that the said bifurcation is wholly unauthorised. It affects the promotional avenues to the Statistical Inspector inasmuch as in 1994 there were as many as 29 posts of Superintendent whereas the posts of Senior Statistical Inspector in the equivalent grade were limited to three only.

2. It is contended by the learned counsel for the applicants that the decision of the Railway Administration dated 5.2.79 was not only not approved by the competent authority but it was also a fictitious one as no bifurcation was ever done in the official records. The applicants made several representations right from 1994 against the bifurcation of the promotional channel but they were all rejected.

3. The respondents raise the plea of limitation stating that the cause of action if any had arisen as early as in ~~in~~ 1979 when the streams of promotion were bifurcated to the knowledge of the applicants. It is submitted that as they were aggrieved by the said decision the applicants should have questioned the impugned decision of 1979 before the appropriate judicial forum or before the Tribunal after the Tribunal came into existence in 1985.

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4. It is also submitted that there were two streams of recruitment and promotion for the Statistical Branch in the Railway Ministerial staff and Inspector staff. The channel of promotion of Ministerial Staff and Inspector Staff was decided, with the approval of the competent authority, to maintain them separately w.e.f. 1.5.79. Thereafter, the staff cannot go from one cadre to another cadre at their own convenience whenever they desire. Thus it is contended by the learned counsel for the respondents that the decision of bifurcating the streams of promotion having been taken as early as in 1979 by the competent authority and having been implemented, it is not open to the applicants to question the same at this point of time. It is, therefore, contended that there are no merits in the OA.

5. The first question to be considered in this case is whether the decision contained in the proceedings dated 2.5.79 are contrary to the Railway Board's decision contained in their letter dated 3.2.72. It is true that in the Railway Board's letter dated 3.2.72 (Annexure A-1) there was an existing practice in promoting the senior most person from the combined Statistical Ministerial Officer and Statistical Inspector to the post of Statistical Superintendent. As per this letter the applicants who are the Statistical Ministerial staff were entitled for promotion to the posts of Statistical Supdt. along with the Assistant Supdt. The impugned letter dated 2.5.79 appears to have changed this process of promotion and two separate streams were made for

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promotion. Thereafter, the Statistical Inspectors are only entitled for promotion in the line of ministerial staff i.e. to the post of Senior Statistical Inspector and Assistant Superintendent are entitled for promotion of Superintendent. By virtue of this decision the applicants were no more entitled to the posts of Superintendent. It is the case of the applicants that there was no such decision at all and even if there is one that is contrary to the Railway Board's earlier letter dated 3.2.72 as the decision was taken only by the Railway Administration and not by the Railway Board. The assertion has been stoutly denied by the respondents in the counter as well as in their arguments of the learned counsel for the respondents. To decide this question we have directed the learned counsel for the respondents to make available the proceedings dated 2.5.79. The learned counsel, however, submits on written instructions that the file No.7520/233/76/Estt which contained the above proceedings has been destroyed as per the instructions issued in terms of PS No.9896.

6. In the counter-affidavit it is clearly stated that the decision dated 2.5.79 was taken with the approval of the competent authority, i.e., FA&CAO/WST and that as per the decision the Ministerial Staff and Inspectors cadre were maintained separately w.e.f. 1.5.79. In view of the above averments and in the circumstances, it cannot be said that the above decision was taken only by the Railway Administration and not by the Railway Board.

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7. In the judgement in OA-1782/95 dated 30.4.96 of the Principal Bench of the Tribunal the decision as on 5/79 was extracted. The learned Judge in that case also stated that the recognised and registered unions of the Railway Board have communicated their concurrence to the bifurcation as back as in April, 1979. The OA, however, was dismissed on the ground of delay and laches and also by the principles of estoppel. It is, therefore, clear from the above decision that the applicants are not entitled for promotion in the stream of Superintendent.

8. In our view the second objection as to limitation also appears to be acceptable. The applicants are appointed after 1979 and by that time the two streams stood bifurcated. It is also the case of the applicants that aggrieved by the 1979 proceedings the applicants had made representations as early as in 1994 but the representation was rejected on 6.12.94. At least the applicants should have questioned the said rejection before the Tribunal immediately thereafter. The question of delay and laches has also been considered by the Tribunal in the above decision in OA-1782/95. In the above OA no application has been filed for condonation of delay. It is trite law that delay defeats the rights of the parties and that the court should not help the litigants who are not vigilant in protecting their rights. Thus, as held in Union of India v. Rattam Chandra Sammanta, JT 1993 (3) SC 418 by the Hon'ble Supreme Court, delay deprives the remedy available and if the remedy is lost right also is lost. Relying upon the above judgement the Tribunal in the above OA dismissed the OA on the

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ground of delay and laches. The instant OPA is in 'pari materia' in the above case and is, therefore, liable to be dismissed on limitation also.

9. In the circumstances the OA is dismissed, both on limitation as well as merits. No costs.

R. K. Ahooja
(R.K. Ahooja)
Member(A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)

'San.'