

Central Administrative Tribunal, Principal Bench

O.A.No.1452/95

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

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New Delhi, this 6th day of June, 1997

Prabhjot Singh
s/o Sardar Nirmal Singh
58 years
r/o House No.8
Road No.9, Punjabi Bagh Extension
New Delhi - 110 026.
formerly working as
Senior Accounts Officer
Northern Railway
New Delhi. ... Applicant

(By Shri J.K.Bali, Advocate)

Vs.

Union of India through

1. Secretary
M/o Railways
Rail Bhawan
New Delhi.
2. General Manager
Northern Railway
Baroda House
New Delhi. ... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant became a Section Officer (Accounts) (S.O. for short) on 29.5.1978 in the Northern Railways. In 1977, the Railways introduced a scheme for Limited Departmental Competitive Examination for filling up 25% of the vacancies for promotion to the post of Assistant Accounts Officer (AAO in short). On his third attempt the applicant succeeded in the Examination held in August 1979 and by an order dated 22.3.80 he was promoted to officiate as AAO Class II. However, in 1982 the Railways altered the eligibility condition laying down that only Section Officers with five years regular service in the Grade will be qualified to compete in the Limited

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Departmental Examination. The panels prepared from 1979 to 1981 were also scrapped. The applicant apprehending his reversion filed a writ petition in the Delhi High Court. This writ petition was transferred to the Tribunal and registered as T-873/85 which was decided on 18.5.89. The requirement of five years qualifying service was upheld. As regards the other reliefs sought for by the applicant, the Tribunal held as follows:-

"We uphold that the promotion of the petitioner as a result of the empanelment in 1979 should not be disturbed, but in regard to the seniority, he will be entitled to the same from the date he actually became eligible to appear for the Ltd. Deptt. Competitive Exam.

2. The applicant's grievance is that respondents did not implement the aforesaid decision of the Tribunal in letter and spirit. During the pendency of the case before the Tribunal, he was reverted as S.O. on 2.3.83 but was promoted again on 21.5.84. He submits that even though in terms of the aforesaid decision of the Tribunal his promotion was not to be disturbed, the respondents failed to take into account the period from 29.6.83 to 31.5.84, during which period he was wrongfully asked to work in the lower post, for purposes of refixation of his pay. As a result, he suffered loss in his emoluments ~~at~~ such date that he was due to be promoted as Senior Accounts Officer (S.A.O.). Further the applicant was, as a result of the decision of the Tribunal, regularly promoted on completion of five years qualifying service as Accounts Officer w.e.f. 5.9.84. For his next promotion, he required three years qualifying service and he was thus due for promotion as SAO from 5.9.87 but he was actually promoted only w.e.f. 5.7.89. On this account also, his pay had to be refixed. The applicant has since retired from the Railways w.e.f. 4.12.89 on

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his absorption in RITES. He has now approached the Tribunal seeking a direction to respondents to regularise his service as AAO for the period 29.6.83 to 31.5.84 when he was illegally made to work as Section Officer, to fix his pay as if he had never reverted, to advance the date of his promotion as SAO on the basis of NBR from 5.7.89 to 5.9.87 consequent upon change of his seniority because of his regularisation as AAO w.e.f. 5.9.84, to pay him all the consequential arrears, to revise his retirement benefits and to issue a revised LPC so that the RITES in which he moved over could also take further action for revision of his pay.

3. The respondents in their counter submit that the O.A. is barred both by limitation and resjudicata. They state that in the first O.A. decided on 18.5.89, the relief claimed by the applicant that he may be considered to have a substantive appointment to the post of AAO from 1980 onwards was turned down and it was held that the applicant was entitled to regularisation and seniority only from the date when he became eligible in terms of the qualifying service as SO. Thus, the relief sought for by him for treating his period of reversion as period spent in the post of AAO is now barred by resjudicata as the whole matter has been adjudicated upon and settled. Further, if his grievance is that he was illegally reverted from 29.6.83 to 31.5.84, the application is now hopelessly time barred having been filed in 1995 after a gap of more than 11 years. As regards his claim of promotion as SAO from an earlier date on completing three years qualifying service, the respondents explain that under the rules he was not automatically to be promoted. The post of SAO is filled from amongst directly recruited

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Class I officers with four years service and from amongst Class II officers who have been substantively promoted to Class I, by selection through UPSC. It is only when neither of these categories of officers are available that Class II AAOs, category to which the applicant belonged, are promoted as SAO purely on ad hoc basis after being adjudged by a duly constituted DPC. The concerned DPC had cleared the applicant for promotion on ad hoc basis as SAO only on 5.7.89. He was thus given the benefit of NBR only from that date.

4. We have heard the ld. counsel on both sides. The ld. counsel for the applicant has sought to rebut both the objections on grounds of resjudicata and limitation. He argued that the applicant has accepted the decision of the Tribunal in the earlier OA in as much as he has not objected to his regularisation as AAO w.e.f. 5.9.84. It is only in respect of the non-implementation of the order in respect of the period of reversion as S.O. and the subsequent late promotion as SAO that he has come before the Tribunal in the present OA. This is a fresh cause of action and is not barred by resjudicata. As regards limitation, he relied on the judgements of this Tribunal in B.Kumar Vs.UOI & Ors. ATR 1988(1) CAT 1, in which it is held that even where no statutory provision exists for making a representation, if the respondents consider and dispose of a representation on merits made after rejection of earlier representation, it would extend the limitation. In the present case, the ld. counsel states that the last application of the applicant was rejected by the impugned letter dated 11.1.1995 (A-1). In any case, the respondents filed an SLP against the order of the Tribunal which was disposed of by the Supreme Court.

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on 23.8.95. In the circumstances, the applicant could approach the Tribunal only after the matter had reached a finality.

5. The learned counsel for the respondents on the other hand pointed out that the applicant had filed a Contempt Petition No.116/1992 which was disposed of on 16.10.1992. The Tribunal while disposing of this petition had observed that the directions of the Tribunal as contained in the judgement of 1989 had been fully implemented and the contempt petition did not survive. Thus, the directions of the Tribunal having been fully implemented, the applicant was now barred from coming before the Tribunal in a fresh O.A. for the same reliefs.

6. We have carefully considered the matter, having heard the arguments on both sides and also gone through the various judgements and orders cited by the parties. The first question is regarding the limitation and resjudicata. The first relief claimed by the applicant is in regard to reversion for the period 1983 to 1984. The Tribunal in its order dated 18.5.1989 had directed that the promotion of the petitioner as a result of empanelment should not be disurbed. However, the fact remains that he had been reverted in the mean time. The applicant came before the Tribunal in a contempt petition. The matter was thus before the Tribunal. As noted above, the Tribunal after examining the contention of the party, came to the conclusion that its directions had been complied with. It is thus not open now for the applicant to say that the directions were not complied with and on that basis he is entitled to compensation by

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way of refixation of his pay as if he had never reverted. The matter has already been settled in terms of the order dated 18.5.1989 in O.A. and order dated 16.10.1992 in CP and cannot now be reopened at this stage. The second question is regarding the promotion of the applicant as SAO from 1987 instead of 1989. The respondents have explained that as per the rules, there was no automatic promotion for the Class II officers, the category to which the applicant belonged, but they could be considered for ad hoc promotion only in the event direct recruits and promotees to class I category were not available. Such ad hoc promotion was also to be made by means of a DPC. It is not alleged that the case of the applicant was not considered by the DPC. For this reason, we do not find any substance in the claim of the applicant that since he had completed three years service in 1987, his right to appointment on ad hoc basis accrued from that time. The applicant had also on similar ground claimed promotion as AAO from 1982 on the basis that he had completed five years qualifying service, having been promoted as SO in 1977. During the contempt proceedings, the respondents explained that it was not possible to promote the applicant on completion of qualifying service of five years since an earlier batch of promotees was still to be adjusted. Consequently, the applicant's promotion only w.e.f. 21.5.1984. It is obvious that the mere completion of qualifying service does not automatically entitle a government servant to promotion. Hence this prayer of the applicant also has no merit.

7. In the light of the above discussion, we therefore hold that the relief No.1 sought by the applicant regarding the period 29.06.1983 to 31.5.1984 is barred by

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resjudicata. Prayer No.2 is not barred by resjudicata and limitation, but has however no merit because the applicant was only entitled to consideration and could not claim automatic promotion as SAO on completion of the qualifying service. The O.A. is accordingly dismissed. No order as to costs.

R.K. Ahuja
(R.K. AHUJA)
MEMBER(A)

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

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