

Central Administrative Tribunal
Principal Bench, New Delhi.

(9)

OA-1782/95

New Delhi this the 30th Day of May, 1996.

Hon'ble Sh. B.K. Singh, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

1. Sh. Bani Singh,
S/o Sh. Banwari Lal,
Divl. Statistical Inspector,
Northern Railway,
Baroda House,
New Delhi.

2. Sh. Sanjay Girdhar,
S/o Sh. H.K. Girdhar,
Divl. Statistical Inspector,
Northern Railway,
Bikaner.

3. Sh. M.S. Bharti,
S/o Sh. Prem Singh,
Divl. Statistical Inspector,
Northern Railway,
DRM Office, Lucknow.

Applicants

(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India,
through the General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi.

Respondents

(through Sh. N.K. Aggarwal, advocate)

ORDER
delivered by Hon'ble Sh. B.K. Singh, Member (A)

This application under Section 19 of the
Administrative Tribunals Act, 1985 has been filed

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against Order No.752-E/283-VIII(Inspectors)E-IIIA
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dated 6.12.1994.

The admitted facts of the case are that applicant No.1 while working in the Ministerial Branch applied for the post of Divisional Statistical Inspector which was circulated to all eligible candidates. Sh. Bani Singh was duly selected. He started working in the Inspectorate cadre of Statistical Branch. There are two more persons who have joined this application, they are Sh. Sanjay Girdhar and Sh. M.S. Bharti. It is not disputed that the applicants applied for the post of Statistical Inspector and it is also not disputed that the promotion from the post of Head Clerk or the Statistical Inspector is to the rank of Superintendent in the grade of Rs.2000-3200/- and the eligibility for promotion is on the basis of seniority-cum-suitability since these are non-selection posts. The Statistical Inspectors' cadre consisted of only 9 posts as against a large number of posts in the Ministerial cadre numbering 400 or so. These two cadres were merged and the letter dt. 29.11.1971 was issued when the Statistical and the Ministerial cadre were treated as one unit for purposes of promotion. Subsequently the cadre was bifurcated by another order of the Railways and a notice to this effect was

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issued vide letter No.752-E/223-76(EiiiA) dated /5/1979.

The contents of the notice are extracted below:-

"It has been decided that the cadre of Statistical Inspector grade Rs.550-750(RS) and Asstt. Supdt. grade Rs.550-750(RS) for further promotion as Senior Statistical Inspector in grade Rs.700-900(RS) and Superintendent grade Rs.700-900(RS) should be maintained separately with effect from 1.5.1979 and also that Sr. Statistical Inspector/Statistical Inspector and Superintendent/Assistant Superintendent should be eligible for promotion as Compilation Officer Class II Services."

A copy of the extract of the notings from the file has also been produced before us which is taken on record. This notice was circulated to all concerned and was made effective from 1.5.1979 after the necessary draft was approved by FA&CAO who is the competent authority in such matters. It has also been brought to the notice of the Tribunal that both the recognised and registered Unions of Northern Railway have communicated their concurrence to the bifurcation of the cadre as back as April 26th and April 30th, 1979. After this bifurcation came into being the applicants wanted their reversion to the Ministerial cadre and this was not agreed to by the respondents after such a lapse of time. Annexure A-3 filed by the applicants indicates that the applicant No.1 wanted his reversion to the Ministerial cadre on 3.3.1988. This is his first representation. The second representation is dt 3.10.1988 which is placed at

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Annexure A-4 of the paperbook.

The learned counsel for the respondents during the course of arguments raised preliminary objection regarding the maintainability of this application No.1782/95. He vehemently argued that this application is not maintainable under Section 21 of the A.T. Act, 1985 because this is hit by delay and laches. The cause of action arose to them in 1979 and this application has been filed on 21.9.1995. The law laid down by the Hon'ble Supreme Court in case of S.S. Rathore Vs. State of M.P. (AIR 1990 SC10) is that an aggrieved person must approach the court for relief within one year if no representation/appeal has been filed and six months after if an appeal/representation has been filed. It further stipulates that repeated unsuccessful representations do not extend the period of limitation. The same view was held by the Hon'ble Supreme Court in case of State of Punjab Vs. Gurdev Singh (1991(4) SCC#) that an aggrieved party must approach the competent court within the statutory time limit prescribed since after the expiry of that statutory time limit the court cannot grant the relief sought for. In one of the latest judgements in case of Secretary to Govt. of India & Ors. Vs. Sivaram Mahadu Gaikwad (1995 ATC 635)

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the Hon'ble Supreme Court have held that the limited power which is vested with the Tribunal is prescribed under Section 21 and before condoning the delay there must be a misc. application. When a misc. application is filed, the Tribunal is expected to apply its mind to the causes of delay and only when an exemption is granted that the matter can be heard and adjudicated upon on merits. No such application seems to have been filed in this case. The same view has been held by the Hon'ble Supreme Court in case of Ex-Captain Harish Uppal Vs. U.O.I. (JT 1994(3)P.126) that delay defeats equity and the court should help those who are vigilant and not those who are indolent. The parties are expected to pursue their rights and remedies promptly and if they just slumber over their rights, the court should decline to interfere. In case of U.O.I. Vs. Ratan Chandra Samanta (JT 1993(3) SC 418) the Hon'ble Supreme Court have reiterated the view that delay deprives of the remedy available and if the remedy is lost the right also is lost.

Secondly the applicants are also estopped once they applied voluntarily for the post of Statistical Inspectors in the same grade and pay and left their parent cadre in 1971-1972 and after a lapse of 16 years in 1988 the applicants cannot

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claim that they should be reverted to their parent chances cadre when their promotion/got minimised as a result of bifurcation. They are estopped from making such a request once the option was exercised by them. It has been held by the Hon'ble Supreme Court in case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla (AIR 1986 P.1043) that such action amounts to acquiescence and results in estoppel. Thus, without entering into the merits of the case, the application is dismissed as one hit by delay and laches and also by principles of estoppel.

There will be no order as to costs.

A. Vedavalli
(Dr. A. Vedavalli)
M(J)

B. K. Singh
(B. K. Singh)
M(A)

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