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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2133/1995

New Delhi, this 13th day of August, 1996

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Pyare Lal
Gali No.23, House No.A-3
Sadh Nagar, Palam Colony, New Delhi .. Applicant

(By Shri Yogesh Sharma, proxy for Shri V.P.
Sharma, Advocate)

vs.

Union of India, through

1. The General Manager
Northern Railway
Baroda House, New Delhi
2. The Dvl. Railway Manager
Northern Rly, Bikaner
3. Asstt. Engineer
Northern Railway, Rewari
4. Chief Permanent Way Inspector
Northern Railway, Rewari .. Respondents

(By Shri B.S. Jain, Advocate)

ORDER(oral)

This application has been filed under section 19 of the AT Act in which it is claimed that the applicant has not been paid the officiating allowances in the post of Head Clerk, Rewari for the period between 1.5.85 and 24.7.89.

2. The brief facts of the case are that the applicant, who has retired from service w.e.f. 30.9.89, submits that he had been performing the duty of Head Clerk on the oral orders of the Chief Permanent Way Inspector (CPWI) in the vacant post of Head Clerk for the above period. He submits that on the retirement of one Shri Basant Bihari on 30.4.85 as Head Clerk, CPWI (R-4) directed the applicant, who was Senior Clerk, to work as Head Clerk which he performed between

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1.5.85 and 24.7.89. The scale of pay of the post of Senior Clerk is Rs.1200-2040 (RPS) and that of Head Clerk is Rs.1400-2300 (RPS).

3. Shri Yogesh Sharma, learned counsel submits that although the applicant had made representation to the respondents on 20.3.91 followed by another representation on 18.5.95, no reply has been received from the respondents. He submits that R-4 by his letter dated 20.1.89 had recommended the applicant's case for payment of officiating allowance as Head Clerk for the aforesaid period. He also refers to the letter issued on behalf of Sr. Divisional Personnel Officer dated 29.9.88 showing that at Rewari there were two posts of *clerical* staff, one of Senior Clerk and one post of Head Clerk on that date (Annexure A-5).

4. The applicant has also filed MA 2783/95 for condonation of delay in filing this OA, in which the reasons given are that, apart from the representations for grant of officiating allowance, the applicant had also pursued his case before the Labour Court under Regn.No.190/91, which was finally withdrawn on 29.4.94. Thereafter he submits that the applicant was very seriously ill and, therefore, has filed this OA on 1.11.95. On the question of limitation, Shri Yogesh Sharma relies on the judgements in Tota Ram Sharma Vs. UOI [(1990) Vol.3 ATJ p.181], P.K.Dutta Vs. UOI [(1991)(1) ATJ 577] and State of MP Vs. Beni Singh [AIR 1990 SC 1308 para 8]. He further submits that, as has been held in the case of P.K.Dutta (supra) no question of limitation arises here as this is a recurring financial loss to the applicant. In the circumstances, he has prayed that an order may be granted declaring that the applicant is entitled for

officiating allowance in the higher grade of Head Clerk (Rs.1400-2300) for the aforesaid period. He submits that he is not pressing any other relief.

5. The respondents have filed their reply denying the above averments. They have also taken the preliminary objection in their reply and filed reply to the MA for condonation of delay stating that the application is barred by limitation. Shri Jain has submitted that Shri Basant Bihari, who had retired on 30.4.85, had in fact retired not as a Head Clerk but as Office Superintendent. The respondents have also denied that the applicant was promoted against the vacant post of Head Clerk as claimed by the applicant. Shri Jain also submitted that R-4 was not the competent authority to pass any such promotion order nor the Assistant Engineer to whom the applicant had made a reference in his representation dated 20.3.91. According to the representation, the applicant was promoted as Head Clerk from 25.7.85 and worked in that post till his retirement on 30.9.89 for which the benefits in that post have been granted. In the circumstances, the respondents state that the application may be dismissed.

6. Shri B.S. Jain, learned counsel has submitted that the decision in Dutta's case cannot help the applicant inasmuch as the applicant had been late in making the representation for officiating allowance till his first reference dated 20.3.91, i.e. well after his retirement. He has also denied the receipt of the subsequent representation in 1995. Another point the learned counsel referred to is that the applicant was well aware that under the law he should have filed the necessary application in time before the CAT and

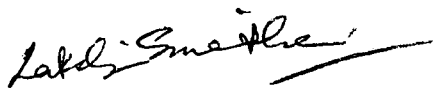
not pursue his remedy before the Labour Court. On this ground also he submits that the claim is barred by limitation.

7. I have seen the records and considered the arguments advanced by both the parties. On the question of limitation, it is an admitted fact that while the applicant claims officiating allowance in the grade of Head Clerk with effect from 1.5.85 to 24.7.89, his first representation in this matter had been submitted only on 20.3.91. It is also relevant to note that the applicant had retired from service on 30.9.89. The cause of action had arisen to the applicant on 1.5.85. This application itself has been filed on 1.11.95, i.e. after a period of 10 years. Shri Yogesh Sharma has submitted that since the representation submitted by the applicant was still pending before the respondents, the case is not barred by limitation. This submission cannot be accepted because even the first representation made by the applicant suffers from laches and delay having been submitted late by nearly six years after he claims he officiated in the higher post. As rightly pointed out by the learned counsel for the respondents, there is no satisfactory explanation given by the applicant for the delay in submitting his representation ^{late} or in filing this OA. Further, the reasons given in the MA for condonation of delay are also unsatisfactory and, therefore, the OA is liable to be dismissed on this ground alone.

8. Apart from the above, the application was also considered on merits. While Shri Yogesh Sharma contends that the order dated 29.9.88 shows that there was a post of Head Clerk at Rewari, this does not help the applicant because it does not show that ^{the post was vacant from 1985 and} he was promoted against that post for

which he has claimed officiating allowance from 1.5.85. The applicant has failed to show any order passed by the competent authority directing him to work in the higher post of Head Clerk during the period from 1.5.85 to 24.7.89. The respondents have denied that any such order has been issued by the competent authority promoting the applicant to officiate in the post of Head Clerk and no such order has also been produced by the applicant except stating that he has officiated in that post in pursuance of an oral order passed by R-4. Therefore, on the materials on record the applicant has failed to establish that he has officiated in the higher post which justifies any interference in the matter.

9. In the above facts and circumstances of the case, I find no merit in this application. It is accordingly dismissed both on the grounds of limitation and merit. There shall be no order as to costs.


(Mrs. Lakshmi Swaminathan)
Member(J)
13.8.1996

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