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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A.NO.2053/94

New Delhi, the 18th October, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Durga Prasad,
c/o Shri Om Prakash
H.No.5308/B Gali No.II,
Balbirnagar Extension,
Delhi Shahadra-32. Applicant

By Advocate: Shri B.N. Bhargava

Vs.

1. Union of India
through
The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway Division,
Bikaner (Rajasthan).
3. The Sr. Divisional Personnel Officer,
Northern Railway Division,
Bikaner (Rajasthan) Respondents

By Advocate: None

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

The applicant was an original employee of S.B & C.I. - Railway which was subsequently merged in Northern Railway and the applicant was placed on the roll of Bikaner Division of the Railways. In the earlier seniority list of 1952, the applicant was shown senior to one Shri Jagdish Prakash. This position was also repeated in the year 1975 seniority list of Senior Clerk. However, in the seniority list

3

of 1981 of Senior Clerk, the applicant was shown junior and was placed at S.No.28 while the said Shri Jagdish Prakash was placed at S.No.3. The applicant by the letter dated 5.1.82 was given seniority above Shri Jagdish Prakash and Musaddi Lal in the scale of Rs.425-700. Now the grievance of the applicant arises that Shri Jagdish Prakash and Musaddi Lal were given promotion to the higher grade of Rs.550-750 but the applicant was not given the promotion. However, the applicant was given the grade of Rs.425-700 u.e.f. 13.12.83 and was appointed to officiate as Head Clerk. The applicant has retired from service in May, 1985. The applicant while in service has also filed a Civil Suit which was pending before Additional Civil Judge. When Central Administrative Tribunal Act came into force and under section 29 of the A.T. Act, 1985, the case was transferred to the Jodhpur Bench and registered as T.A.No.1520/86 and was dismissed on 28.8.91.

2. The applicant has filed this application on 10.10.94 i.e. about more than 9 years after his retirement. He has prayed that the promotion orders of Shri Jagdish Prakash and Shri Musaddi Lal be quashed as well as the letter dated 16.11.84 by which Shri Jagdish Prakash was promoted in the scale of Rs.700-900. The applicant has also prayed that the Respondents be directed to assign proper seniority to the applicant as per letter dated 5.1.82 (Annexure 5).

3. We heard Shri B.N. Bhargava, counsel for the applicant at length. Firstly, the case is barred by principles of res judicata as the communication dated 10.12.93 addressed to the applicant clearly goes to show that on the representation made before Pension Adalat on 9.11.93 the same was considered and since the seniority issue was considered in T.A.1520/86 that cannot be re-opened. The applicant has not filed the copy of the order of Jodhpur Bench. In para 4.8 of the Original Application the applicant has only referred to the fact that the case was dismissed by C.A.T., Jodhpur not on merits but on technical ground. When an issue has been judicially reviewed and the case has been decided by Civil Court, the issue already before the Civil Court cannot be re-agitated even the Civil Court has dismissed the claim based on that issue on technical grounds. Thus, the present application does not lie at all.

4. The second hurdle is of limitation. The applicant who retired in 1985 in the month of May has come in October, 1994 for the relief of assignment of seniority and promotion which according to applicant was denied to him while juniors to him S/Shri Jagdish Prakash and Musaddi Lal were promoted in November, 1984. Firstly after retirement the applicant cannot assail any of such matters. This is not a case of pension or salary for which the applicant's counsel argued that there is no limitation. He has placed reliance on case of M.Y. Bhide Vs.

Chief Engineer, Civil Department of Posts and Another reported in 1993(1) SLJ 50. This case does not apply to the fact of this case because the applicant wants assignment of seniority and also promotion.

5. The case of the applicant is fully covered by the case of Ratam Chandra Samanta & others Vs. Union of India reported in 1994(26)ATC 22. The Hon'ble Supreme Court in this case considered the case of a casual labour/^{employed} in the Railways. The Railways did not offer him reemployment and after a gap of 15 years he approached the court for the grant of the relief. The Hon'ble Supreme Court held that even if a right exists, if the remedy exhausted by delay, laches and limitation he cannot be granted the relief. In the present case the applicant also is having his grievance of seniority. In the seniority list issued on 10.2.83, he has shown junior to Shri Jagdish Prakash though there is an order of 5.2.82 that he should be shown senior to Shri Jagdish Prakash, still he has not been considered for promotion against the upgraded post in a ministerial cadre of Engineering Department. He cannot now much after his retirement claim that benefit even if his contention is accepted though the promotion is based on the appraisal of the service record. In a service matter also a person has to come within the limitation for redressal of his grievance as held by Hon'ble Supreme Court in the case of State of Punjab V. Gurdev Singh reported in (1991) 4 SCC 1 and in the case of S.S. Rathore V. Union of India reported in AIR 1990 S.C. 10. The applicant cannot after a period of 9 years of his retirement claim his

6

promotion vis-a-vis his junior Shri Jagdish Prakash only on account of making a claim before the Pension Adalat. The contention of the learned counsel that the applicant was agitating his claim cannot bring the case within the limitation. It is contended that he has been given a reply by the respondents only on 10.12.93 but that is with respect to his application dated 9.11.93 addressed in a Pension Adalat. Thus, on account of limitation also, the present application is not maintainable.

6. The application does not make out a prima-facie case for admission and is therefore dismissed at the admission stage in limine with no order as to cost.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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