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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.217/94

Dated: this the 13th day of May, 1997.

HON^{BLE} MR. S. R. ADIGE MEMBER(A).

HON^{BLE} DR. A. VEDAVALLI MEMBER(J)

Shri K.N. Singh,
Chief Carriage & Wagon Inspector,
Northern Railway,
Patiala

.....Applicant.

(By Advocate: Shri B.S. Mainee).

Versus

Union of India through

1. The Secretary,
Railway Board (Min. of Railways),
Railway Bhawan,
New Delhi.

2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

3. The Chief Administrative Officer,
Diesel Component Works,
Patiala

.....Respondents.

(By Advocate: Shri R.L. Chawan).

JUDGMENT

BY HON^{BLE} MR. S. R. ADIGE MEMBER(A).

Applicant impugns order dated 31.7.92 (Annexure-A1) and seeks a direction to respondents to consider him for promotion to a Group 'B' post with effect from the date his juniors have been working on such post in Northern Railway with all consequential benefits.

2. Applicant, who was working as HTE(a Group 'C' post), Northern Railway, was transferred to Diesel Component Workshop (DCW) w.e.f. 30.5.81, when he received promotion in Group C ^{and later on adhoc basis to Group B} from time to time. He filed OA No. 143/PB/91 in CAT Chandigarh Bench

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complaining that while he was expecting orders for his permanent absorption in Group 'B' cadre of DCW he had been illegally repatriated to his parent cadre in Northern Railway vide order dated 5.2.91. That OA was dismissed by judgment dated 1.1.92 in which his assertion that the impugned order dated 5.2.91 was penal in as much as it amounted to reversion to a Class III post in his parent cadre was decisively rejected. Admittedly applicant's challenge to that judgment in the Hon'ble Supreme Court also failed vide order dated 4.2.92.

3. Pursuant to applicant's repatriation, Northern Railway issued impugned order dated 31.7.92.

4. We have heard applicant's counsel Shri Mainee and respondents' counsel Shri Chawan.

5. We note that CAT Chandigarh Bench in its judgment dated 1.1.92 while dismissing applicant's challenge to the order dated 5.2.91 has categorically held that applicant continued to hold lien in his parent cadre (Northern Railway) and all promotions granted to him during his tenure in DCW Patiala were purely adhoc and temporary and did not confer upon him any right for continuation or absorption.

6. Under the circumstance upon applicant's repatriation to his parent department, respondents could adjust him only against a Group 'C' post, which they did vide impugned order dated 31.7.92.

7. Shri Mainee has contended that had the applicant been informed in 1984, 1987 and 1989 that selections for Group 'B' post were being made in his parent department, while he was with DCW Patiala he would have taken his chance but by denying him that information, his juniors in his parent organisation were ahead

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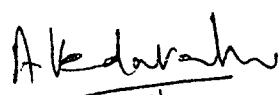
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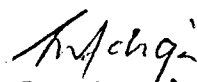
illegally to steal a march over him.

8. Manifestly applicant's cause of action arose when those selections were held in 1984, 1987 and 1989, but this OA was filed on 25.1.94 and hence the claim is barred by limitation under sec.21 AT Act. That apart, it was open to applicant to have raised this ground in OA No.143/PB/91 when he challenged his reversion to a Group 'C' post but by not doing so either in the OA or indeed in the SLP before the Hon'ble Supreme Court, such a claim is now squarely hit by Section 11 Explanation 4 CPC as well as Order 2 Rule 2 CPC. In this connection the ratio of the judgment of the Hon'ble Supreme Court in Commissioner of Income Tax, Bombay Vs. T.P. Kumar 1996(2) ATC 665 squarely applies to the present case.

9. Shri Mainee has sought support from Rule 316 IRM Vol.I, but that Rule is not applicable as the post in Group 'B' to which applicant seeks consideration for promotion, is a selection post. In any case, as the applicant has since retired on superannuation, the question of putting him through an LDC Examination does not arise at this stage. Nor does the question of applicant's adhoc promotion to Group 'B' in DCW Patiala arise, for the purpose of considering him for promotion in his parent cadre, as the two cadres are entirely different, distinct and separate.

10. Under the circumstance, the OA fails and is dismissed. No costs.


(DR.A.VEDAVALLI)
MEMBER(J)


(S. R. ADIGE)
MEMBER(A)

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