

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 147 of 1989

New Delhi this the 23rd day of February, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

Shri S.C. Verma
R/o Railway Kothi T/14B,
Northern Railway,
Zonal Training School,
Chandausi,
District Moradabad.

...Applicant

By Advocate Shri J.K. Bali

Versus

1. Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

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

...Respondents

By Advocate Shri N.K. Aggarwal

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The controversy pertains to the appointment of the applicant as a Section Controller. According to him, he should have been appointed to that post way back in 1972. He was appointed later on. Therefore, the prayers in this O.A. are these:

(i) The respondents should be directed to give to the applicant his rightful seniority over those illegally promoted earlier to him.

(ii) The respondents may be directed to fix the pay of the applicant as a Section Controller in the grade of Rs.450-750 with effect from 06.04.1972.

2. A counter-affidavit has been filed on behalf of the respondents. A rejoinder-affidavit too has been filed. Counsel for the parties have been heard.

3. A preliminary objection has been taken by the learned counsel for the respondents that this is a highly

belated application and, therefore, it is liable to be thrown out on that ground. This application stands admitted. On 12.04.1989 while admitting the O.A., this Tribunal left the question of limitation open to be examined at the stage of final hearing.

4. The averments, as material in the application are these. A new channel of promotion effective from 06.04.1972 was introduced. The applicant on 06.05.1972 applied to the Divisional Superintendent, Moradabad for promotion as Section Controller. In spite of repeated representations, he did not get any response. He continued to represent. He was ultimately promoted as Section Controller only in 1976 on an ad hoc basis which was later on regularised on 22.10.1976. Even after his promotion, he continued to represent for not being assigned proper seniority. With effect from 1.1.1984, he was promoted as Deputy Chief Controller in the grade of Rs.700-900. Vide letter dated 13.02.1988, the General Manager (P), Northern Railway published a seniority list of Depty Chief Controllers. The applicant made a representation vide his letter dated 6.3.1988 to the effect that he should be assigned seniority over persons junior to him and who have been given appointment sometime in 1972. The applicant continued to pursue his case for seniority and proforma fixation through the Northern Railway Man's Union and All India Railwaymen Federation. The last reply from the Railway Board is dated 6.6.1988. The Board have expressed their inability to revise the decision already conveyed vide his letter dated 23.06.87.

5. The learned counsel for the respondents has placed for our perusal the original file of the department. This file contains a noting dated 18/21.9.1980 of the ADRM.

.3.

According to this document, the applicant met the ADRM on 18.09.1980 and the position was explained to him in detail. He (the applicant) was told that as far as his representation regarding his seniority upto 1972 is concerned, the position was explained to him and he was fully convinced. His representation had been examined and a proper reply given. There is no case to re-examine or to re-open the same. It is thus clear that the applicant was finally explained the position on 18.09.1980. It is obvious that the cause of action for agitating the matter accrued to the applicant on 18.09.1980. We may note that the present O.A. had been filed in this Tribunal on 18.01.1989. Evidently the cause of action arose even before the birth of this Tribunal which took place in the year 1985. On the face of it, this is a highly belated application and is, therefore, liable to be rejected.

6. Learned counsel for the applicant has invited our attention to a judgment of this Tribunal in the case of B. Kumar Vs. Union of India & Others, ATR 1988(1) CAT 1. Paragraph 12 of this judgment is relevant. In it, it is emphasised that it would be equitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it. The position, therefore, is that the department should examine the matter afresh on merits. If this is done, in the eye of law, a fresh decision will come into existence

84

....cont. page 4/-

(G)

.4.

and a Government servant would be entitled to seek his redress against the fresh decision even though the earlier decision has gone against him. On the material on record, we are not satisfied that subsequent to the aforementioned note of the ADRM, the matter of the applicant regarding his being given appointment in the year 1972 was not really examined on merits afresh and thereafter rejected. This case, therefore, does not advance the case of the applicant.

7. The application is rejected but without any order as to costs.

(B.N. DHOUNDIYAL)
MEMBER (A)
23.02.1994

(S.K. DHAON)
VICE CHAIRMAN
23.02.1994

RKS
230294