

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1858/88

Date of decision: 24.9.1990

Gopal Kishan & Others

Applicants

Vs.

Union of India & Others

Respondents

PRESENT

Shri B.S. Maine, counsel for the applicants.

Shri O.P. Kshatriya, counsel for the respondents.

CORAM

Hon'ble Shri Justice Amitav Banerji, Chairman.

Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgment of the Bench delivered by Hon'ble

Shri B.C. Mathur, Vice-Chairman.)

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, Shri Gopal Kishan and 6 other class III staff of the Northern Railways have challenged impugned orders No. 754-E/44/Loose/P-4 dated 8.9.1988 passed by the Divisional Railway Manager regarding their seniority.

2. The brief facts of the case, as stated in the application, are that all the applicants who were appointed in class IV in Northern Railways during the years 1959 and 1966 were promoted to Class III posts as Fuel Issuers/Stores Issuers/Material Clerks/Coal Checkers/Tool Checkers etc. on different dates from 1964 to 1971. The regular selection for the aforesaid posts was, however conducted in 1976 and all the applicants were found suitable and their promotion was regularised from 1976. However, the respondents have not counted their ad hoc promotion to class-III prior to 1976 while assigning the seniority to the applicants. According to the seniority list issued in August 1981 (Annexure A-4 to the application), the staff who were promoted/appointed after the ad hoc promotions of the applicants have been declared senior to the applicants. The claim of the applicants is that as established by this Tribunal and the Hon'ble Supreme Court, the seniority of the staff whose continuous ad hoc promotion is followed by

regularisation has to be assigned from the date of ad hoc promotion and as such, they should be declared senior to those who were appointed to class-III at a later date. The applicants have cited the Supreme Court's judgment in the case of Narender Chadha & Others Vs. Union of India & Others - ATR 1986 (1) p.49 - and this Tribunal's judgement in the case of S.C. Jain Vs. Union of India & Others - A.T.R. 1986 (2) p. 346 - which confirm that once an ad hoc appointee is eventually regularised, the regular appointment would relate back to the date of ad hoc promotion. The applicants represented in 1982, 1983, 1985, 1987 and 1988 to the respondents and although they were given assurance that their cases would be looked into, the respondents failed to do so. Only on 8.9.1988, the respondents advised the applicants that their cases have been examined by the competent authority and it was decided that the seniority already assigned warranted no change. It has been stated that in terms of the Railway Board's circular dated 31.10.1972, nominally an empanelled employee should be appointed against a selection post, but in case where no empanelled employee is available and it becomes inevitable to make local arrangements, it should be made for as short a period as possible, but not more than three months and where such a period exceeds three months, it should be with the specific sanction of the C.P.O./Addl. C.P.O. of the Northern Railway. It has also been laid down by the Railway Board in another letter dated 23.2.1974 that the seniormost persons should normally be promoted in the ad hoc arrangement unless found unsatisfactory. In terms of General Manager, Northern Railway's letter dated 13.12.77 it has been laid down that all cases of local ad hoc arrangements which are likely to continue beyond three months must be reviewed by the Divisional Railway Manager personally and if any ad hoc officiating arrangement in higher grades are continued for more than six months, the matter must be referred to the headquarters for being submitted to the General Manager. The Railway Board in their letter dated 4.11.70 has given a direc-

tion that even if the selection cannot be finalised for any reasons, the ad hoc promotees must be put through a selection with the fixed batch and retained in higher posts only if they pass written tests and are considered suitable for the selection post so that there will be no occasion for replacing them by any junior man selected later on ad hoc basis. Ad hoc promotees should not be retained in higher posts beyond six months, unless they have, in the meantime, qualified in the tests. It has been further directed by the Railway Board that care should be taken to see while forming panels that employees who have been working on ad hoc basis quite satisfactorily are not declared unsuitable. A large number of incumbents who were junior to the applicants and have been promoted after the ad hoc promotion of the applicants have wrongly been declared senior and they are being promoted as Senior Clerks. The applicants have stated that the respondents have failed to give any reason for declaring the departmental candidates as well as direct recruits who were promoted/recruited after the promotion of the applicants as senior to the applicants.

3. It has been further stated that the applicants had represented to the D.R.M., Northern Railway on 19.3.85 (Annexure A-5 to the application) mentioning that in the Diesel Sheds, Loco Sheds, General Stores, etc./ were assigned seniority as clerks with effect from 1963/1972 based on Railway Board's circulars dated 27.4.63 and 24.10.72, but they were given different seniority from the date of their actual appointment to the grade,

4. The respondents in their reply have denied the claim of the applicants on grounds of misjoinder as each applicant has different a cause of action because of different dates of their joining and promotion. It has been stated that the staff is not promoted on the basis of seniority, passing suitability test and by selection in viva-voce and that the ad hoc period being a stop-gap arrangement only, cannot be counted towards seniority which is assigned after passing the suitability/selection tests.

5. The respondents have also denied that any representations were received in 1982, 1983, 1985 and 1987. They received

only one representation in 1988 and a reply was sent to them. As such, the case of the applicants is barred under Limitations under Section 21 of the A.T. Act and this application has to be rejected on this ground alone. They have also emphasised that ad hoc promotions in this category are ordered on the basis of work charge posts which are purely local arrangements to pull on the job-work for short duration subject to the requirements of the job and availability of funds.

6. In their rejoinder the applicants have stated that they were working against regular posts although on ad hoc basis till their regularisation and these were not work charged posts.

7. The learned counsel for the respondents cited the case of V.K. Mehra Vs. Secretary, Ministry of Information & Broadcasting - A.T.R. 1986 (1) C.A.T. 203 - where the Tribunal has held that where the cause of action took place more than three years prior to the establishment of this Tribunal, this Tribunal has no jurisdiction. He said that the selection of the staff who had appeared in the written test had been declared in March 1976 in order of seniority and so it is too late for the applicants to raise this matter. The seniority list issued vide Annexure A-4 to the application was circulated by the Divisional Personnel Officer in 1981 and cannot be challenged now. Shri Maine, however, said that the cause of action took place when the law was laid down in the case of Narender Chadha that seniority will count from the date of continuous ad hoc appointment which is regularised at a later date. He also said that the respondents had finally rejected the case of the applicant only in 1988, but Shri Kshatriya said that this was not a fresh decision, but only confirmation of the old decision.

8. Since the preliminary objection regarding the maintainability of the case on grounds of limitation has been raised, we have to examine whether hearing of this case is barred by limitation.

Section 21 (2)(a) of the A.T. Act is very clear that the Tribunal shall not admit an application where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act. In other words, where cause of action took place prior to 1.11.1982, this Tribunal has no jurisdiction. The same has been confirmed by this Tribunal in the case of V.K. Mehra Vs. Secretary Ministry of Information & Broadcasting (supra).

9. We may also refer to the case of P.L. Shah Vs. Union of India others - 1989 (1) S.L.R 573. This was a case of payment of subsistence allowance. The applicant was being paid subsistence allowance @ 50 per cent of his salary. Subsequently, on 6.5.1982, the Government passed an order reducing the subsistence allowance to an amount equivalent of 25 per cent of his salary. The order was challenged more than 5 years after 6.5.1982. The Ahmedabad Bench of the Central Administrative Tribunal dismissed the O.A. on the ground that the cause of action in the above case have arisen prior to 1.11.1982 which was the earliest period mentioned in Section 21 of the A.T. Act. A plea was raised that the above view was correct. Their Lordships of the Supreme Court observed:

"... In the circumstances of the case we are of the view that even though no relief could be given to the appellant in respect of the period which was beyond three years from the date on which the Tribunal commenced to exercise its powers under the Act...."

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The Supreme Court came to the conclusion that the cause of action arose every month in which the subsistence allowance at the reduced rate is paid. Two principles are settled.- (i) that it is not open to go for the purpose of limitation beyond 1.11.1982, and (ii) that where the cause of action arises month by month, provisions of Section 21 of the A.T. Act would not come in the way. In the present case, the determination of seniority is final and complete from the moment the order is made. The cause of action does not arise every month like payment of salary or payment of pension or payment of subsistence allowance.

10. The argument of the learned counsel for the applicants that the cause of action took place when the law was laid down by the Supreme Court in the case of Narender Chadha is also not tenable as no law as such has been laid down in that case. If given effect to, it could give a handle to anyone who was in service at any time before the A.T. Act became operative. The basis of the cause of action cannot be the decision of a court. The decision of the Supreme Court in another case is not an order under Section 19 of the A.T. Act. The cause of action arises only when it actually took place. This is a case where seniority of various persons was assigned during the period 1963 to 1972 and if representations were not made till 1985, subsequent representations cannot extend the limitation period. (See S.S. Rathore Vs. State of Madhya Pradesh- AIR 1990 SC 10). The respondents have denied that any representations were received in 1982, 1983, 1985 and 1987 and that the impugned order dated 8.9.1988 was only confirming the earlier decision and was not a fresh decision on any representation as such.

11. We are of the opinion that in the present case, the cause of action took place more than three years prior to the establishment of this Tribunal and as such, is barred under limitation. In the circumstances, it is not necessary for us to go into the merits of the case. The application merits rejection on grounds of limitation alone and we order accordingly. In the circumstances, the application is dismissed. There will be no order as to costs.

B.C. Mathur
(B.C. MATHUR)
VICE-CHAIRMAN (A)

24.9.90

AB
(AMITAV BANERJI)
CHAIRMAN

Pronounced by me in
the open Court today the 24th
September, 1990.

B.C. Mathur
(B.C. Mathur)
Vice Chairman
24-9-90