

Reserved on 07.12.2020

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

M.A./330/00544/2020

In

Diary No. 866 of 2020

Allahabad this the 14th day of December, 2020

Hon'ble Mrs. Justice Vijay Lakshmi, Member- J
Hon'ble Mr. Devendra Chaudhry, Member- A

Muni Lal S/o Badri Prasad, aged about 49 years, R/o Gulmohar H. No. 3
C/6/1, Dayanand Marg, Near Radio Station, Civil Lines, Prayagraj, U.P.
211001.

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Applicant

By Advocates: Shri Ashish Kumar
Shri Anil Kumar

Vs.

Union of India through Secretary Railway Board, New Delhi-110001 and
others.

Respondents

By Advocates: Shri L.M. Singh
Shri Ashish Srivastava

O R D E R

Delivered by Hon'ble Mr. Devendra Chaudhry, Member (A)

The present application (Diary No. 866/2020) has been filed
for modification of seniority list of Group 'B' officers of 2013 with
consequential benefits.

2. Following relief(s) are prayed:

"(i) To modify the All India Seniority list of Group 'B' officers of
Civil Engineering department by placing the applicant above
Sri A.K. Haritas per seniority list published by Railway Board
on 24.09.2013; and

- ii) *Grant all consequential benefits, due to the modification of Group 'B' seniority to the applicant's from due date."*

3. A Miscellaneous Application No 544/2020 has also been filed for condonation of delay in filing of the aforesaid application. This MA mostly states the facts of the case and tries to justify the relief prayer stating grounds emanating from the incidence of Limited Departmental Competitive Examination (LDCE) of 2002 and finally citing the CAT Jabalpur judgement of 07.03.2019 in O.A. 200/435/2012 for being given similar advantage.

4. Based on the objections filed by the respondents on the delay condonation application, it is in the interest of justice to decide the delay condonation application. Hence, we have proceeded to decide the same first.

5. Prior to dealing with the objections filed by the respondents against the delay condonation application, it would be well that the facts of the case as per the applicant are understood in their proper perspective and chronology.

6. An examination of the facts of the case reveals that vide a recruitment process carried out by Railway Recruitment Board (RRB), Bhubaneswar, the applicant was appointed as Inspector of works (IOW) Grade-III on 13.4.1994 and posted at Sambalpur, South Eastern Railway (SER). This post was later re-designated as Junior Engineer Grade-II sometime in 1996. The applicant was promoted on 12.01.1998 to JE grade-1 and posted to Bilaspur SER. That vide notification dated 20.03.2001, 28 posts of Assistant Engineer(AE) in Gp B were notified against 30% LDCE quota for formation of panel of AE for vacancy year 2001 and 2002. The

applicant was eligible as an SC candidate and was shown at SI-1 in the eligibility list and Shri AK Harit was shown at SI-67 and both. A Written Test was held thereafter in which both Mr Harit and he appeared. Based on the written test held on 14.10.2001 he was found successful vide notification dated 25.06.2002 and Mr Harit was not successful in this examination. A Viva was thereafter fixed for being held on 08.08.2002 but was postponed to 22.08.2002 and later again to 09.12.2002 on which date the interview was finally held. Based on the interview results, the applicant was found successful and a final panel of the 09 selected AEs was notified vide GM order **11.12.2002 which was however stated to be subject to final decision pending in the CAT Jabalpur OA 536/2002.** Notwithstanding, on empanelment, applicant was posted as AEN/Con, at Chandrashekharpur Bhubaneswar which post he joined on 08.01.2003. Based on the final judgement in the aforesaid OA No 536/2002 of CAT Jabalpur, the panel was modified vide OM dated 17.09.2004 on the basis of a supplementary written/viva examination held on 16.05.2004/16.07.2004 wherein 08 more candidates were empanelled as AE making the total panel of 17 AE candidates and in this panel Mr Harit was shown at SI-01 and applicant at SI-16 (Annexure-15). **It is stated here that the applicant should have been placed higher to the later selected candidates of 2004 as he was empanelled in the earlier panel notified vide 11.12.2002 and so to that extent the All India Seniority List of Group 'B' officers prepared by the Railway Board for induction into the IRSE-Group 'A' cadre needs to be revised by interpolating the name of the applicant above Shri Harit who was selected later but placed in the same enlarged panel as the applicant. That a review**

DPC may be also held for effecting the above change (para 4.09 of application Dy 866/2020).

7. The applicant has further submitted that he has been wrongly assigned seniority in the zonal allocation carried out when new zones were created vide orders 14.06.2002 and 04.07.2002 and options asked for new zones vide letters 22.08.2002/28.08.2002. That this injustice occurred as his option was not considered inspite of timely submission of the option-application resulting in non-inclusion of the name of the applicant in the list published vide 24.09.2003. That in fact the applicant was forced to accept bottom seniority later in January 2004 when he met Director Estt. Railway Board and that this procedure is violative of circular dated 03.12.1977 of the Railway Board itself. This has resulted in listing of applicant at SI 450 as against that of Mr Harit at SI-354 in the All India Seniority list prepared vide 13.05.2011/01.01.2013 (Annexure-33/34) and that this has further resulted in subsequent similar anomaly of being listed below Mr Harit in subsequent seniority lists and even induction of Mr Harit in Group 'A' ahead of the applicant. That the CAT, Jabalpur on 07.03.2019 in OA 200/435/2012 Arjun Singh vs Union of India &Ors. has ordered modification of the seniority list on basis of induction to Group 'B'. That in fact, the Hon Apex Court viz **Amrit Lal Berry (1975) 4 SCC 714** has also held that -

"...when a citizen is aggrieved by a decision of a Government department and has approached the court and obtained declaration of law in his favour, others in like circumstances should be able to rely on the sense of responsibility of the concerned department and to accept that they will be given benefit of declaration without the need to take their grievance to the court.."

8. That in the Vth Central Pay Commission, para 126.5 also supports the contention of the applicant wherein it is stated that “ *We have observed that frequently in cases service litigants involve many similarly placed employees, the benefit is only extended to those employee who had agitated the matter before the Tribunal/Court. This generates lot of litigation. It also runs contrary to the judgement by the Full Bench of the Central Administrative Tribunal, Bangalore in the case of C. S. Elias Ahmad & others Vs. U.O.I. & others, has held that entire classes of employees who are similarly situated are required to be given the benefit of decision whether or not they party were parties to the original Writ..*”

9. Therefore, the delayed written exam in 2001/2002, the delayed interview, the delayed result, the illegal enlargement of the panel placing applicant below Mr Harit in 2004, the delay in allocation of preferred zone in 2004 inspite of option-application being given earlier, the illegal All India Seniority list of 2011 – all these have caused injustice and hence it is prayed that all the above injustices should be rectified including the seniority list of 01.01.2013.

10. We may now take up the objections filed by the respondents on the above pleas of the applicant.

11. The respondents have filed the Objection against the Delay Condonation Application wherein they have submitted that: -

(i) the delay is sought to be condoned on the basis of an order of the CAT, Jabalpur on 07.03.2019 in OA 200/435/2012 Arjun Singh vs Union of India &Ors. where Tribunal has ordered modification of the seniority list on basis of induction to Group 'B'. That since the

applicant's case is also similar, therefore, he should also be given benefit of the same. The applicant has cited certain other earlier judgements of the Apex Court viz **Amrit Lal Berry (1975) 4 SCC 714 and certain provisions of the Vth Central Pay Commission**. That this is not justiciable as the issue of disputed promotion following the LDCE of 2001/2002, the publication of panel vide 11.12.2002 and enlargement of same vide 17.09.2004 have not been challenged before the Tribunal or any court 16 -18 years ago and to do the same would be unjust to several potential persons whose seniority has been fixed subsequently with the passage of time. Similarly the citation of passage of the Vth Pay Commission was available to the applicant long years ago and the same has not been agitated before any case in the Tribunal nor before the respondents in a timely manner.

(ii) That based on merit of Shri AK Harit, he was placed at SI-2 of the 17.09.2004 panel and the applicant was placed at SI-16. That this placement was not challenged by the applicant in 2004 and now after 16 years the same is being challenged through the current OA on the grounds of (iii) That there is a catena of judgements of the Hon Apex Court wherein it is directed that long standing seniority should not be altered. Following judgements of the Hon' Apex Court are cited:

(a) **B.S. Bajwavs. State of Punjab and others, AIR 1999 SC 1510** wherein it is held that:

"It is well settled that in service matters, the question of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance."

(b) H.S.Vanikani & others Vs. State of Gujarat & others reported in (2010) 4 SCC 301 wherein it is held that:

"25. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in Union of India and Another v. S.K. Goel and Others (2007) 14 SCC 641, T.R. Kapoor v. State of Haryana (1989) 4 SCC 71, Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604. In view of the settled law the decisions cited by the appellants in G.P. Doval's case (supra), Prabhakar and Others case, G. Deendavalan, R.S. Ajara are not applicable to the facts of the case."

(c) K.R.Mudgal 86 others Vs. R. P. Singh 86 others, AIR 1986 SC 2086 is also to the same effect.

(d) Shiba Shankar Mohapatra and others v. State of Orissa and others, reported at (2010) 12 SCC 471 wherein it is held that:

"18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more *res integra*. A Constitution Bench of this Court, in *Ramchandra Shankar Deodhar v. State of Maharashtra* [(1974) 1 SCC 317 : 1974 SCC (L86S) 137] considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110] , wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under: (*Tilokchand case* [(1969) 1 SCC 110], relevant page 115, para 7)

"7. ... a party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

"30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *K.R. Mudgal*, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."

(e) M.Ramakotaiah and others v. Union of India and others, reported in (2007) 14 SCC 405, wherein it is held that:-

"31. Coming to the second issue, the question raised before this Court is whether even after the preparation of a new seniority list by the authority in 2001, which was held to be correct, the list prepared in the year 2000 was still open to challenge. We are of the opinion that once the new seniority list comes into existence, it overrides the previous list. Considering this, it only appeases common sense that once the new list has come into existence and had been held to be valid, the old list would be assumed to have been superseded, thus, making it redundant..."

(f) R.S.Makashi and others v. I.M. Menon and others, reported at (1982) 1 SCC 379 rejected the challenge to a

seniority list as well as the principles of seniority which ruled the seniority list, on the ground of delay and laches by holding as under:

"28. ...`33. ...we must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years

30. ...The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed."

(g) That detailing the complications and defects arising from a challenge to a seniority list long years after it was created, the Hon'ble Supreme Court in **Malcom Lawrence Cecil D'Souza v. Union of India and others, reported at (1976) 1 SCC 599** observed as follows:

"9. Although security of service cannot be used as a shield against the administrative action for lapse of a public servant, by and large one of the essential requirement of contentment and efficiency in public service is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in a seniority list after having been settled for once should not be liable to be re-opened after lapse of many years in the instance of a party who has itself intervening party chosen to keep quiet. Raking up old matters like seniority after a long time is likely to resort in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

(h) **B.S. Bajwa and another v. State of Punjab and others**, reported at (1998) 2 SCC 523 wherein it is held that:

"7. It is well settled that in service matters, the question of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

(i) **Dayaram Asanand Gursahani v. State of Maharashtra and others**, reported at (1984) 3 SCC 523 wherein it is held that

in absence of a satisfactory explanation for the inordinate delay from 8 to 9 years, the challenge to the seniority could not be entertained.

(j) **Shiba Shankar Mohapatra (supra)** disentitled persons to relief, if they were not diligent to their cause, by holding as follows:

21. "29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the latches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum."

Thereafter, the Hon'ble Supreme Court found that the issue of delay and latches goes to the root of the cause and held that the petition ought to be rejected only on the ground of delay and latches in the following words:

"32. ...We are of the considered opinion that the said application ought to have been rejected by the Tribunal only on the ground of delay and latches. The High Court has also not dealt with this issue, however, it goes to the root of the cause. Such an inordinate delay cannot be ignored particularly when the issue of delay has been pressed in service before this Court."

(k) **Ranjan Kumar and others v. State of Bihar and others**, reported at (2014) 16 SCC 187

(l) **Madan Lal and others v. The State of Jammu & Kashmir and others**, reported at (1995) 3 SCC 486, wherein it is held that:

"9. ...It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

(m) **Chandra Prakash Tiwari and others v. Shakuntala Shukla and others**, reported at (2002) 6 SCC 127 wherein it is held that:

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

(n) **Union of India and others v. S. Vinodh Kumar**, reported at (2007) 8 SCC 100 disentitles the candidates from challenging the selection process after participating in the same and knowing fully well the procedure laid out there under.

(o) **Union of India v. Chaman Rana**, 2018 SCC Online SC 294, wherein it is held that in matters regarding promotion in service, there is always an urgency. The aggrieved person must

approach the Court at the earliest opportunity or within reasonable time thereafter, as, in the meantime, a third party right accrues to those who are subsequently promoted.

(p) **Shamsher Singh v. ITBP Force, 2018 SCC OnLine Del 9639, dated 03-07-2018**

12. Thus, the learned respondent counsel has asserted that there are no reasonable grounds mentioned in the affidavit filed in support of the delay condonation application nor any facts that supposedly constitute "sufficient cause" for condoning such inordinate delay. The challenge to the seniority list of the year 2004, is therefore highly belated and barred by laches and the applicant should be estopped from challenging the seniority list of 2004. The seniority list of 2004 had attained finality and should not have been interfered with in light of the several judgements of the Hon Apex Court cited above. That under the circumstances existing in the present case the applicants is not entitled to any relief and the OA is liable to be dismissed.

13. In the Rejoinder Affidavit, the applicant has reiterated the facts as mentioned in his application.

14. The key issue to be decided in the Delay Condonation application is the issue of delay and laches on part of the applicant in approaching the competent court for redressal of his grievance. While the facts of the case are largely agreed with between the two sides as to holding of the LDCE, publication of the panel of 2002, its enlargement in 2004 etc, the key ground taken by the respondents is that after 18 years ie after 2002 (initial panel notification) or after even 16 years ie after 2016 (enlarged panel notification), there can be no justification to revise the seniority lists which has

achieved finality. We are inclined to agree with this view more so in the light of multitudes of cases cited wherein the Hon Apex Court in no uncertain terms has directed that wanton delay in seeking rights would result in their extinguishment and there is no recourse for the long *kumbhakaran* sleep of the applicant. While it is a well known maxim that justice delayed is justice denied it equally well operates that claim delayed is claim lost. And here we have a delay of not one or two or three or four years. Based on the grounds taken by the applicant the delay is of eighteen to sixteen years as per the challenge to the empanelment enlargement of 2004 or the initial empanelment of 2002. The applicant did not deem fit to wake from the Pied Piper deep sleep since 2011 when the 13.05.2011 All India Seniority list was ordered to be finalised and took no steps to agitate his cause before any court. Much water has flowed pass the *Sangam* at Prayagraj into the sea of Bay of Bengal and the applicant remained at sea with respect to his rights and is now coming to fish for the same after more than a decade and a half. We cannot let sympathy for the applicant fog our judgement and as observed in **Farwell LJ in Latham vs Richard Johnson and Nephew Limited (1913) (1) KB 398 that:“..we must be careful not to allow our sympathy with the plaintiff to affect our judgement. Sentiment is a dangerous will o’ wisp to take as guide in the search for legal principles”**

15. It is clear that the applicant had multitudes of opportunities to come to the court first in 2002, then in 2004, then again in 2011 and so on. The judgement of Hon Apex Court of 1975 in the matter of Amrit Lal Berry (*supra*) was available to the applicant in 2002/2004/2011 as also the observations of the Vth Pay Commission including the citation therein of the CAT Bangalore

judgement. All the while he was sanguine for reasons best known. To alter a seniority list of such long years is highly unjustifiable also to the potential multitudes of employees who could get caught in the fishing net of the applicant for no fault of theirs and suffer injury to their seniority rights out of the blue. That is a key logic for the Hon Apex Court not upholding poorly explained delay. In fact in a matter of delay, it has to be justified as per established law accounting for the years, months and days and this is not being too technical an interpretation. It is not an issue of mere technicality to overlook more than a decade of delay and do time contraction for the asking.

16. Thus, after much anxious analysis we are unable to agree to the reasons presented by the applicant for explaining the phenomenal delay and so the delay condonation application does not cut mustard and is liable to be dismissed and is dismissed for the foregoing reasons and discussions thereof. Misc. Application No. 544 of 2020 is accordingly dismissed.

(Devendra Chaudhry)
Member –A

/M.M/

(Justice Vijay Lakshmi)
Member – J