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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1598/90

DATE OF DECISION 10-7-91

CHHOTTEY LAL

... APPLICANT

- Versus -

UNION OF INDIA & CRS.

... RESPONDENTS

Shri H. P. Chakravorty

... Counsel for the Applicant

Shri M. L. Verma

... Counsel for the Respondents

CCRAM : HON'BLE SHRI JUSTICE RAM PAL SINCH, VICE CHAIRMAN(J)

HON'BLE SHRI P. C. JAIN, MEMBER (A)

J U D G M E N T

(Judgment of the Bench delivered by Hon'ble
Shri P. C. Jain, Member (A))

The applicant who was working as Personnel Inspector, DRM's Office, Central Railway, Jhansi, is aggrieved by his non-regularisation in the said post and the reversion order dated 16.10.1990 from the said post to his substantive post of Senior Clerk (P). In this application under section 19 of the Administrative Tribunals Act, 1985, he has prayed for the following reliefs :

- *1. That quashing the impugned order dt. 16.10.1990 (Ann. A-1), the respondents be directed to release the promotion of the petitioner for the post of Personnel Inspector Grade Rs. 425-640 (RS)/ 1400-2300 (RPS) on the regular basis and fix the seniority according to rules keeping in view the seniority of lower grade and adhoc period of present grade.
2. That besides consideration of the petitioner for higher grades and posts, the cost of the petition and any other such relief, to which the

petitioner be found to be entitled, be also granted to the humble petitioner."

As an interim relief the applicant has inter alia prayed for suspending the operation of order dated 16.10.1990, and that the respondents be restrained from reverting him from the present post and grade otherwise than in accordance with law and Disciplinary and Appeal Rules, 1968. The Tribunal by the order dated 8.11.1990 directed, as an interim measure, to maintain status quo qua the applicant as on that date.

2. As the pleadings in this case were complete, it was decided by the Tribunal in the hearing on 25.2.1991 that the OA should be finally heard and disposed of at the admission stage itself. We have perused the material on record and have also heard the learned counsel for parties.

3. The relevant facts, in brief, are that the applicant joined as Office Clerk in the grade of Rs.260-400/- in the Central Railway and he was promoted as Senior Clerk in the grade of Rs.330-560/-(RS) in October, 1982. Vide office order dated 30.7.1985 he was promoted and posted as P.I.(E) in the grade of Rs.425-640/-(RS) in DRM 'P' Office, Jhansi purely on ad-hoc basis in a vacancy which accrued due to the sickness of Shri K. P. Chaturvedi, CPIPM and ad-hoc promotion of one Shri S. K. Mishra PI(I), Jhansi in the grade of Rs.550-750/- in the linked vacancy. This office order stated that the employee will not claim any prescriptive right upon promotion in seniority over the senior and empanelled employees. He joined as PI on 16.8.1985 in pursuance of the above office order. He continued to work on the post of PI until the impugned

office order dated 16.10.1990 was passed by which he was ordered to be reverted to his substantive post of Senior Clerk (P). This reversion has been ordered on the ground that all the vacant posts of PIs in the grade of Rs.1400-2300/- have been filled up in pursuance of the selection of 7.9.1990.

4. The applicant belongs to Scheduled Caste community and it is contended by him that he qualified in the selection comprising of written test and viva voce held for the post of PI in the grade of Rs.1400-2300/- in 1986/1987. He contends that inspite of his having qualified in the selection and having rendered about five years of service in the grade, orders for his regular promotion have not been passed so far while some of his juniors have been promoted to the above post. He filed representations but to no effect. It is asserted by the applicant that he ought to have been regularised on the post of PI grade Rs.1400-2300/- before his junior Shri A. K. Jain was given ad-hoc promotion in 1989. It is also his contention that he is sufficiently senior even among the general category candidates and as such denial of regular promotion to him is violative of Articles 14 and 16 of the Constitution of India. He has also contended that in the selection held in 1990 for the post of PI he was not allowed to compete. In his MP No. 3176/90 the applicant has also tried to make out a case that in the three selections held for the above post from 1983-84 to 1990, nine candidates have been empanelled in which only one was a SC candidate but he too did not join as PI as he had been promoted as Head Clerk. As such there was a backlog of SC quota and at least two points/posts came to the quota of the SC candidates and he should be given one of these posts in view of his having qualified in the

selection and also in view of his seniority in the lower grade. It is also stated that in 1990 when the applicant was not allowed to appear in the selection, S/Shri A. K. Jain, K. K. Mishra and Vilgaiyan, who were junior to him in the seniority list of the lower grade have been inducted in the post of PI. It is also stated that vacancy of one post belonging to SC category became available w.e.f. 13.11.1990 on account of Shri Nandan Prasad (SC), Chief PI, running on sicklist since 13.11.1990 and who is due to retire on superannuation on 31.12.1990. As such he should be rehabilitated by accommodating him in the above vacancy.

5. The respondents have opposed the application by filing a counter reply. The case of the respondents is that the reserved quota has already been filled up; that the applicant was working on the post of PI purely on ad-hoc basis and was to be reverted to his substantive post when the empanelled candidate became available. They have also stated that in the selection held in 1986-87 the applicant was not declared suitable and that a panel of three candidates was declared on 30.4.1987 and posting orders were issued on 4.5.1987. It is also stated that the applicant was working on ad-hoc basis against the ad-hoc roster point prior to the orders of the High Court of Madhya Pradesh at Jabalpur dated 26.2.1985 and because the persons placed on this panel were already working on ad-hoc basis as PI and no additional person was found suitable, he was made to continue on ad-hoc basis. On the availability of the empanelled candidate he was reverted. It is further contended that as per the rules, the question of regular promotion does not arise as the applicant was not empanelled in the selection for the post, and that the

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juniors referred to by the applicant were promoted as they were all on panel. The respondents have placed reliance on the judgment of the Madhya Pradesh High Court according to which the Personnel Branch, Jhansi Division has to maintain promotion to the extent of 15% and 7½% reservation quota for SC/ST communities respectively, and the prescribed quota is already filled. It is also stated that the applicant being junior in the grade of Rs.1200-2040/-(RPS), the question of regular promotion in the grade Rs.1400-2300/-(RPS) does not arise. The respondents have also raised a preliminary objection that the OA is barred under section 20 and 21 of the Administrative Tribunals Act, 1985.

6. We may first take up the preliminary objection. As regards the challenge to the impugned order dated 16.10.1990, which was incorporated by amendment of the OA filed in July, 1990, there can be no dispute that this part of the challenge and the prayer is within limitation. Thus in this regard the application cannot be said to be barred by section 21 of the Act. As regards the bar of section 20 of the Act *ibid*, it is true that the applicant has not availed of the departmental remedies as provided for therein inasmuch as no representation against this order is shown to have been made and if any such representation had in fact been made, he did not wait for a period of six months before approaching the Tribunal in this regard (Full Bench judgment dated 12.4.1990 of the CAT in OA No.27/90 - B. Parmaswara Rao Vs. Divisional Engineer, Telecommunication, Eluru & Anr.). As regards the prayer for regular promotion on the basis of selection held in 1987 it is undisputedly barred by limitation. The applicant has also filed an MP (1884/90) for condonation of delay in which it is stated that he

"putforth his requests of regularisation vide many representations few are dated 13.8.87 & 23.3.90 and no orders acceding the request or denying it, have been passed as yet. The cause of action for regularisation of posting as P.I. Gr. 1400-2300 is of recurring nature however, keeping in view continuous officiation and passing selection therefor in 1987, the petitioner deserves to be rehabilitated by relaxing him from the rigidity of limitation period." It is well settled that repeated representations do not have the effect of extending limitation (Gyan Singh Mann vs. High Court of Punjab & Haryana & Anr. - 1980 (4) SCC 266; and S. S. Rathore vs. State of Madhya Pradesh - AIR 1990 SC 10). Further, the applicant has not at all tried to explain the delay and thus the petition for condonation of delay does not disclose any cause, what to say of sufficient cause, for accepting the request for condonation of delay. MP-1884/90 has, therefore, to be rejected. As regards the prayer for regular promotion or regularisation in the post of PI on the ground of his having continuous officiation in the post for five years, it cannot be stated that limitation will not apply to this part of the prayer as the amended OA was filed before the impugned order of reversion was passed. Thus we have to consider the OA only with regard to his grievance of denial of regular promotion to the post of PI.

7. It is not in dispute that the post of PI to which the applicant is claiming regular promotion is a selection post and unless a candidate qualifies in the selection he has no legal right to be regularly promoted to such a post. The applicant has asserted that he had qualified in the selection held in 1986-87 but the respondents have categorically denied it and they have also filed a copy

of the office note dated 30.4.1987 by which the provisional panel of three candidates was announced. The name of the applicant did not appear in that panel. Admittedly he did not sit in the selection held in 1990 as he was not allowed to do so. Thus there is nothing before us to show that he had qualified in the selection and as such was entitled to promotion on a regular basis in preference to those who may even have been junior to him in the lower grade but who had qualified in the selection and were also empanelled.

8. Learned counsel for the applicant strongly urged before us that he was not empanelled in the 1987 selection because he belongs to a reserved category and on the same ground he was not allowed to appear for the selection held in 1990. As regards the selection of 1987, we have already pointed out above that the challenge to that selection by the applicant at this stage is barred by limitation. The respondents have relied upon a judgment of the High Court of Madhya Pradesh at Jabalpur in Misc. Petition No. 1583/84. In that case the broad issue involved was whether the Railway servants belonging to Scheduled Caste/Scheduled Tribe communities could claim promotion to higher posts in excess of the prescribed reservation quota. After referring to a number of judgments of the Hon'ble Supreme Court, the Division Bench of the M.P. High Court held as below :

"8. We are of the opinion that in the circulars of 20.4.1970, 29.4.1970 and 11.1.1973, 15% reservation for SC and 7½% for ST is to the posts and not to the vacancies as and when they occur. The 40 point roster is the medium for filling reserved vacancies to the extent of 15% for SC & 7½% for ST candidates. Thus the limits of reservation are not to exceed the limits laid down in the circulars. Therefore, as soon as 15% and 7½% total 22½% has been reached by promotion of reserved candidates the further promotion on the basis of reservation would come to an end and promotion were to be made as if there was no reservation. The 40 point roster, which was the medium for the reserved

candidates, would also come to an end and cease to be applicable provided the limit of 15% & 7½% total 22½% of the reserved candidates has been reached. The Railways are not justified in applying 40 point roster as and when vacancies occur in any grade. The reservation is to the posts and not to the vacancies. It is not correct to say that 15% for SC & ST is the minimum quota of reservation and not the maximum. If that be so, what will be the maximum quota of reservation which has nowhere been laid down. The circular dated 21.2.76 is an extension of carry forward rule from 50 to 66½% and it has to be read in that light. So it has been said that the prescribed quota is the minimum and not the maximum i.e. for carry forward rule 22½% for SC and ST candidates is the minimum and not the maximum which has been fixed at 66½%. Here we are not concerned with carry forward rule. The Supreme Court in Akhil Bhartiya Soshit Karmahari Sangh v. Union of India (supra)* has said that the Board shall take care to issue instructions to see that in no year shall SC and ST candidates be actually appointed to substantially more than 50% for the promotional posts."

9. We have not been shown by the learned counsel for the applicant that the above judgment was reversed or modified by any other judgment or order. The respondents have categorically stated in their counter reply that the quota reserved for SC candidates was already full and, therefore, the applicant could not be considered against a reserved vacancy.

10. In the light of the foregoing discussion, the OA ✓ is devoid of merit and is accordingly dismissed at the admission stage itself leaving the parties to bear their own costs.

11. The interim order passed on 8.11.1990 is also vacated.

(P. C. JAIN)
(P. C. JAIN)
MEMBER (A)

(RAM PAL SINGH)
(RAM PAL SINGH)
VICE-CHAIRMAN (J)

Pronounced by me today in the open court.

(RAM PAL SINGH) 10.7.1991
(RAM PAL SINGH)
VICE-CHAIRMAN (J)