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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1173/1991. DATE OF DECISION: March 26, 1993.

Ajendra Kumar Mittal Applicant.

V/s.

Union of India & Another Respondents.

CORAM: Hon'ble Mr. J.P. Sharma, Member (J).
Hon'ble Mr. S.R. Adige, Member (A).

Shri S.K. Sharma, counsel for the applicant.
Shri Shyam Moorjani, counsel for the respondents.

(JUDGMENT OF THE BENCH DELIVERED BY
HON'BLE MR. J.P. SHARMA, MEMBER(J)

JUDGMENT

The applicant at the relevant time was posted as Dy. C.O.S., North-Eastern Railway, Gorakhpur, and filed this application under Section 19 of the A.T. Act, 1985, on 3rd May, 1991, assailing the seniority list of 1.12.82.

The applicant is aggrieved by the interpolation of the names of certain outsiders in the seniority list of IRSS dated 26.10.78. The case of the applicant is that in the seniority list of 1982, thirteen new names after the batch of 1971 Examination and above the batch of 1972 Examination have been inserted. The applicant belongs to 1973 Examination and so these 13 persons have been placed above him in the seniority list issued on 1.12.1982. The applicant had made a representation on (Annexure 4.7), but the respondents did not reply and, therefore, he filed a writ petition No. 9069/1983 before the Hon'ble High Court of Allahabad. The applicant has alleged that he had raised the issue through supplementary affidavit in the Civil Writ Petition

No. 9069/1983. The writ petition was transferred to the CAT Allahabad and was dismissed on 30.3.90. According to the applicant, the CAT Allahabad neither allowed the argument nor gave judgment on this issue. The SLP against the same was also dismissed by the Hon'ble Supreme Court in April, 1991.

2. In this application, the applicant has prayed for grant of the following reliefs: -

- (a) Appointment of 'Outsiders' in IRSS cadre be declared as illegal and these 'Outsiders' be expelled from Stores Cadre (IRSS).
- (b) Payment of damages of Rs.5,000/- towards physical discomfort and mental agony.
- (c) Suitable action against respondents for violating Fundamental Rights and thereby failing in their duties to give respect to the Constitution of India.
- (d) Award of cost of Rs.1,000/-.

3. The applicant has filed M.P. No.1540/1991 for condonation of delay. It is averred in the M.P. that the applicant had filed a writ petition in the High Court of Allahabad and after its transfer to CAT, Allahabad Bench, and dismissal on 30.3.90, he preferred SLP before the Hon'ble Supreme Court, which was dismissed on 25.4.1991 and that, as such, he was prevented from filing this application in time.

4. The respondents contested this application and took the preliminary objection that the present application is hopelessly barred by time and also by the principle of

res-judicata. It is also stated that the application is bad for non-joinder of necessary parties. On merits also, it is averred that absorption of the temporary Assistant Officers / Engineers into Indian Railway Stores Service was under statutory Recruitment Rules. These officers on absorption in IRSS were assigned seniority in accordance with the orders then in force on the basis of principles of seniority laid down in the Railway Board's letter No.E(O) L 72/SR-6/29, dated 30.11.1976. The said principle (v) reads as under: -

"Principle (v) - Officers recruited as Temporary Assistant Officers (Unclassified), on permanent appointment to the Junior Scale (Class I) in various Indian Railway Services may be granted weightage in Seniority on the basis of half of the length of the service, counted from the date of their joining service as Temporary Assistant Officers (Unclassified) to the date of their permanent appointment to the Junior Scale (Class I) of the respective service, subject to a maximum weightage of five years."

The respondents have also annexed a copy of the same as Annexure R-I. Thus, it is stated that the temporary officers who were recruited between 1955 and 1967 were absorbed as it was not in public interest to continue them as 'unclassified' and thus keep them without any avenue of promotion. The respondents, therefore, prayed that the application be dismissed as barred by limitation, res-judicata, non-joinder of necessary parties as well as being devoid of any merit.

5. We have heard the learned counsel for the parties at length. Firstly, the challenge here is to the seniority list of 1.12.1982 and the respondents have specifically stated in reply to para 4.7 to 4.10 of the application that the subject-matter of the present O.A. was the subject-matter

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also before the CAT, Allahabad and the said Bench has been pleased not to grant any relief in this regard.

It is obvious that the applicant cannot re-agitate this matter a second time. In the rejoinder to this particular averment in the counter reply, it is only stated that the subject-matter (main) in the previous O.A. was entirely different. However, the applicant has not filed either a copy of the earlier writ petition / T.A. or the copy of the judgment by which the said T.A. was dismissed by the CAT Allahabad Bench by the order dated 30.3.90. The contention of the learned counsel for the respondents is, therefore accepted that the applicant had earlier assailed his supersession in the writ petition No.9069/1983 and since the same has not been allowed, the applicant cannot re-agitate the same issue in the garb of challenging the seniority list circulated on 1.12.1982. The present application, therefore, is barred by the principles of res-judicata.

6. The present application is also hopelessly barred by limitation because the cause of action had arisen to the applicant on 1.12.1982 and when the applicant had assailed his grievance in the writ petition No.9069/1983, he could assail his present grievance for judicial review if he had not done so then, for getting the relief in respect of revision of seniority list as per his allocation. The present application has been filed in May, 1991 and is thus hopelessly barred by time.

7. In the M.P. for condonation of delay, the applicant has not taken any substantial ground to show that he was prevented by sufficient cause from assailing his grievance

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within the period of limitation. Merely narration of facts in the Miscellaneous Petition that the applicant had filed a writ petition or that he was pursuing the remedy in SLP before the Hon'ble Supreme Court will not make it a justifiable case for condonation of delay. The respondents have opposed the said M.P. In view of this, M.P. for condonation of delay does not show any reasonable or sufficient cause and, as such, it is rejected.

8. The applicant in his O.A. has also prayed for the deletion of the names of certain alleged 'Outsiders' from the seniority list of 1.12.1982, and he has mentioned certain officers in para 4.3 of his application. None of them has been made a party in the present application. None of them, therefore, can be condemned as unheard. If the applicant wanted any particular relief against them, as he has prayed that appointment of 'Outsiders' in IRSS cadre be declared as illegal and these 'Outsiders' be expelled from Stores Cadre, then all such persons who were likely to be affected in the event of the relief being allowed, should have been arrayed as respondents in this case. Thus, the present O.A. is also barred by the principle of non-joinder of necessary parties. The respondents have specifically stated that the names of the alleged 'Outsiders' have been added as per the instructions issued and the same has been quoted above.

9. In view of the above facts and circumstances, the Original Application is dismissed as barred by time as well as barred by the principles of res-judicata and non-joinder of necessary parties and so also the M.P. No.1540/1991. The parties shall bear their own costs.

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(S.R.ADIGE)
MEMBER (A)

Domaray
26.3.93
(J.P. SHARMA)
MEMBER (J)