

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1640/92

T.A.No.

Date of decision 23-9-98

Sh.Chhotey Lal

... Petitioner

Sh.B.S. Mainee

... Advocate for the
Petitioner(s)

VERSUS

UDI through GM(NR)
and Ors

... Respondents

Shri R.L Dhawan

... Advocate for the Respondents

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The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

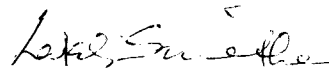
The Hon'ble Shri K.Muthukumar, Member (A)

1. To be referred to the Reporter or
not?.

Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal?

No.


(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 1640/92

New Delhi this the 23 th day of September, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

Shri Chhotey Lal,
S/o Shri Mansukh,
Depot Store Keeper,
Railway Electrification,
Mathura Jn.

... Applicant.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Allahabad.
3. The Chief Project Manager (RE),
Railway Electrification,
Kota

... Respondents.

By Advocate Shri R.L. Dhawan.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the orders passed by the respondents dated 22.8.1990 and 11.1.1991 which he claims do not given him the proper seniority in the parent department of Northern Railway, Allahabad as Assistant Superintendent (Electrical).

2. The applicant was appointed as LDC on 30.7.1963 and was posted at Railway Electrification Project (for short 'RE Project'). He claims that he maintains a lien with Respondent 2 i.e. DRM Allahabad in the Electrical Group for seniority purposes. His grievance is

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that while on deputation to the RE Project, he had been consistently ignored and given a raw deal by Respondent 2. He has submitted that in 1980 the Ministerial cadre had been restructured and a large number of posts had been upgraded and these posts were to be filled up by holding viva voce test only. This selection was to be held on seniority-cum-suitability basis. According to him, one Shri Sonkar has been wrongly given seniority over him.

3. In para 4.10 of the O.A. the applicant has stated that he had represented against the aforesaid injustice of giving undue benefit of seniority to Shri Sonkar as a result of which he has not been promoted as Assistant Superintendent against the upgraded post in 1980 while Shri Sonkar was promoted in that year. Shri Mainee, learned counsel, has submitted that although several selections have been held subsequently to the post of Assistant Superintendent, the applicant has been consistently ignored and no information was conveyed to him. He has relied on the letter issued by one Shri L.N. Joshi, Deputy CEE/R.E.Kota dated 29.3.1991, wherein he has stated that the applicant could not be directed to appear in the selection for the post of Assistant Superintendent prior to 22.9.1990, on account of which he should not be deprived of his seniority. Shri Mainee, learned counsel, has relied on Rule 228 IREM and submits that because of the administrative error in not informing the applicant, as admitted by Shri Joshi in his letter, he should not lose his seniority vis-a-vis his juniors. The applicant was finally called for appearing in the selection in 1990 and he has passed the selection in the first attempt. He has, therefore, submitted that the applicant should be given his

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seniority as Assistant Superintendent from the date Shri Sonkar, his junior was promoted to the post in 1980. He has relied on a number of cases (list placed on record). According to the learned counsel, since the applicant has been strenuously pursuing his case at various level, delay, if any, should be condoned and the respondents cannot take the plea of limitation as they have themselves defaulted in informing the applicant about the selections. As mentioned above, he relies very heavily on the letter issued by Shri L.N. Joshi, Deputy CE-RE Kota dated 29.3.1991 which he states is an indication of lack of notice to him to appear in the examination prior to 22.9.1990.

4. The respondents in their reply have submitted that the application is hopelessly barred by limitation. They have submitted that by the applicant's own admission, he has stated that he had made a number of representations starting from his representation dated 6.11.1981 which is mentioned in the letter dated 22.8.1990. As seen from the documents filed by the applicant himself, he has made repeated representations on 3.10.1988, 4.4.1989, 20.9.1989 and another dated 15.1.1990. They have relied on the judgement of the Supreme Court in **S.S. Rathore Vs. Union of India** (AIR 1990 SC 10). Shri R.L. Dhawan, learned counsel, has also drawn our attention to Annexure A-4 representation of the applicant dated 15.1.1990 in which there is a specific reference to his representation dated 6.11.1981 followed by 10 other representations upto 1989. In this representation, he has stated that he has not been informed either by the Division or by RE administration to "show his ability for promotion" and he had been ignored while giving benefits to his

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junior. The respondents have also submitted that many times the applicant was called to appear in the selection but he has not attended the same, and, therefore, others who had appeared and qualified were appointed to officiate as Assistant Superintendents in the grade of Rs.1600-2660 (RPS). Shri Dhawan, learned counsel, has also submitted that the letters dated 22.8.1990 and 29.3.1991 relied upon by the applicant are inter-office communications which cannot give any fresh cause of action to the applicant. He has also pointed out that even in this letter, it has been stated that the applicant has been called to appear in the selection along with the others in 1987, 1988 and July, 1990 but he had remained absent. They have submitted that he was not due for promotion to the post of Assistant Superintendent grade w.e.f 1.10.1980, and could not also be considered for promotion because he had not qualified in the selection. They have submitted that the applicant appeared in the selection for Assistant Superintendent Grade and was declared suitable and placed in the panel only on 11.1.1991 and is entitled for seniority from that date. The respondents have submitted that the applicant was called to appear in the selections on the dates mentioned in Para 18 of their reply. They have denied that any such d.o. letter had been received from Shri L.N. Joshi dated 29.3.1991 along with applicant's representation by the answering respondents/Respondent 2.

5. The Tribunal by order dated 29.7.1997 had directed the respondents to produce the relevant records, in particular, the file from which Annexure A-10 letter had been issued by Shri L.N. Joshi, ICE/RE Kota and several opportunities were given to them but finally they did not

produce the record. ~~In spite of several opportunities, the respondents failed to produce the relevant file from which the letter of 22.3.1991 has been issued.~~ In the circumstances, Shri B.S. Mainee, learned counsel has vehemently submitted that since the respondents have failed to produce the relevant records, adverse inference has to be drawn against them. He has relied on SLJ 1998(1) CAT P-8.(sic) but the principle is not disputed.

6. By the applicant's own averments, he has impugned the orders dated 22.8.1990 and 11.1.1991. In the representation made by the applicant dated 15.1.1990 he has himself drawn the attention of the DRM, Northern Railway, Allahabad/Respondent 2 to his earlier representations starting from 6.11.1981 to 28.11.1989. The main contention of the applicant in his representations is the wrong assignment of seniority and proforma promotion in the Electrical Group in the Division. In this letter, he has also mentioned that he has not been informed either by the Division or by the RE Administration to "show his ability for promotion" which apparently refers to his being called for selection and he has also complained that the Division has been ignoring him while giving the benefits to his junior. It is, therefore, very apparent from the applicant's own representation dated 15.1.1990 that he was very much aware that he had not been called for the selection by the Division or the RE Project of which he is complaining of in this O.A. for more than a decade. We also note from Annexure A-I letter dated 22.8.1990, which is a letter from the Divisional Railway Manager, Allahabad, addressed to the Dy. Chief Project Manager, Railway Electrification, Mathura (UP) that they have stated that the applicant had been called to appear in the selection

along with others on 17.1.1987, 12.3.1988 and 21.7.1990 but he did not attend the selections but remained absent, for promotion to the post of Assistant Superintendent grade. Admittedly, the applicant had finally appeared in the selection and was declared suitable on 11.1.1991 and had been assigned seniority from that date. It is also relevant to note from another letter dated 29.5.1990 from Shri H.K. Johri, Dy. CPM, addressed to the DRM, Northern Railway, Allahabad, placed on record by the applicant himself where a reference has been made to the 13th representation by the applicant for assigning him correct seniority and promotion in Electrical group of Allahabad Division. In the representation made by the applicant dated 3.10.1988 (A-3) he has stated as follows:

"Further, at the time of filling vacancies caused due to upgradation w.e.f. 1.10.80 as per Rly Board's instructions, I was called to appear in the selection for the post of Assistant Supdt. vide your letter No. 241E/42/Mist/E04 dtd. 13.10.1981. This selection was oral purely based on seniority and confidential reports. Mr. Sonkar was wrongly still placed senior on the aforesaid call letter consequently he was again benefited and promoted as Asstt. Supdt. against that upgradation selection though I appeared immediately after selection vide my representation dated 6.11.1981 for reviewing them (sic) seniority before finalisation of that panel of Asstt. Supdt. but it is regretted to mention here that instead of assigning proper

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seniority I have been ignored to inform for appearing in further selections conducted so many times till now since then. I have also come to know that Mr. Sonkar is working as OS in Gr. Rs.2000-3200 (RPS) in the Division at present since re-structuring affected w.e.f. 01/01/84".

(Emphasis added)

7. From a careful perusal of the above representations and documents placed on record by the applicant himself, it is, therefore, clear that it cannot be stated that the applicant was not aware of the selections being held or of the promotion of Mr. Sonkar prior to his own promotion as Assistant Superintendent. It is also apparent that the applicant has repeatedly made at least 13 representations that he should be assigned his seniority above Shri Sonkar in the grade of Assistant Superintendent from 1981 or 1984. In the light of the applicant's own statements in the various and repeated representations and the facts mentioned in the office letter dated 22.8.1990, that he had been intimated to appear in the selections along with others on 17.1.1987, 12.3.1988 and 21.7.1990, but had failed to attend the same, we are unable to accept the contention of Shri B.S. Mainee, learned counsel, that the applicant was not at all informed to appear in the earlier dates of selections for the post of Asstt. Superintendent. From the documents placed on record by the applicant himself, it is clear that he was very much aware of the selections being held from 1981 onwards. In the facts and circumstances of the case, the contention of Shri

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Mainee that based on the letter of Shri L.N. Joshi dated 29.3.1991, the facts must be presumed against the respondents that they have not informed the applicant of the selections is untenable. The presumption could have helped him if by his own statements the facts were otherwise. Therefore, the case relied on by the applicant will not assist him in the face of his own admissions and facts which are to the contrary.

8. It is settled law that repeated representations will not extend the period of limitation (See. **S.S. Rathore's case (supra)**). Shri Mainee, learned counsel, has also relied on the Tribunal's judgement in **S.P. Singh Vs. Union of India** (O.A. 2153/94), copy of the judgement placed on record, where it has been held that when a representation of the applicant has been examined by the respondents after the O.A. has been filed the O.A. cannot be rejected on the ground of limitation. However, this case is not applicable to the facts of the present case because the applicant is not relying on any order passed by the respondents after the O.A. has been filed on 29.6.1992.


9. The applicant has admitted receipt of the letter dated 24.8.1990 addressed from the office of Respondent 2 to various officers, including Dy. C.P.M./RE, Mathura, asking applicant to attend the supplementary test to be held on 22.9.1990 as he along with some others did not attend the written test earlier on 21.7.1990. In the facts and circumstances of the case, it cannot, therefore, be held that there has been any administrative lapse on the


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part of the respondents so as to entitle the applicant to the benefit of seniority under Rule 228 of the IREM as claimed by him. We have also considered the other submissions made by Shri B.S. Mainee, learned counsel, with reference to the facts in the O.A. but for the reasons given above do not find any merit in the same.

10. In the result, we find no merit in this application which also suffers from laches and delay and is barred by limitation under Sections 20 and 21 of the Administrative Tribunals Act, 1985. For these reasons, the O.A. is dismissed. No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'