

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 10th DAY OF November 2010)

Hon'ble Mr. Justice S. C. Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)

Review Application No.91 of 2005
In
Original Application No. 1082 OF 1999
(U/S 19, Administrative Tribunal Act, 1985)

1. Union of India owning and representing Northern Railway, Notice to be served to the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manger, Northern Railway, D. R .M. Office, Nawad Yusuf Road, Allahabad.
3. The Divisional Signal and Telecommunication Engineer, Northern Railway, D.R.M., Office, Nawab Yusuf Road, Allahabad

.....Applicants

VERSUS

Raja Ram Pal son of Shri Moti Lai, Aged about 44 years, D.R.M., Out House, No.5, Leader Road, Allahabad.

.....Respondents

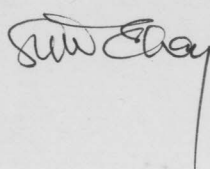
Advocates for the applicants:- Sri A. K. Sinha

Advocate for the Respondents: Sri S. S. Sharma

ORDER

(DELIVERED BY HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER (J))

Instant application has been moved for review of the order dated 24th January, 2005 passed in O.A. No. 1082 of 1999 passed by Hon'ble Mr. Justice P. Shanmugam, V.C. and Hon'ble Mr. S. C. Chaube, Member-A. The order was challenged before the Hon'ble High Court in Writ Petition No.



67937 of 2005 and the Writ Petition was decided vide order dated 25th October, 2005 ^a ~~an~~ direction was given to the Respondents/applicant to move a Review Petition before the Tribunal regarding point of limitation and a consequence of the direction of Hon'ble High Court the Review Petition has been filed. We have heard Mr. A. K. Sinha, Advocate for the Respondents/applicant and Mr. S. S. Sharma, Advocate for the OP/applicant and perused the entire material available on record. As per the direction of Hon'ble High Court this review Petition is filed in which factum of limitation is to be considered. We ^{are} ~~are~~ confined only regarding recording of finding regarding limitation. It was represented before Hon'ble High Court in the Writ Petition that in paragraph 71 of the paper book in the Counter Respondents/applicant raised the plea of limitation. But the Tribunal while deciding the O.A. on 24th January, 2005 did not record any finding on the point of limitation. It was also agitated before Hon'ble High Court that the O.A. is barred by limitation, laches and also according to the provisions of section 2 of the Central Administrative Tribunal 1985.

2. While hearing learned counsel for the parties, learned counsel for the applicant Mr. Sinha stated that in para 7 of the

S. S. Sharma

Rejoinder Affidavit it has been specifically alleged in response to para 1 of the Counter Reply that *"as per the instructions of the Railway Board 50% post of the TCM grade-III in the pay scale of ₹3050-4590/- is filled on the basis of inviting options from Helper Khalashi grade ₹2650-4000/- and Trolley man of Telecommunication seniority unit and preparing inter-se-seniority according to the length of service in the grade Remaining 50% post is filled in through direct recruitment quota. According to seniority the applicant in the O.A. was promoted as Khalashi in grade ₹210-290/2650-4000/- w.e.f. 01.01.1984 and thus he was not due promotion as TCM grade-III in the years 1982, 1984, 1993 and also in the year 1998."* According to the applicant cause of action arose in the year 1984 and O.A. ought to have been filed within stipulated period from the year 1984 and it has also been alleged in para 7 that *"thus he was not due for promotion as TCM grade-III in the years 1982, 1984, 1993 and also in the year 1998."* Learned counsel for the applicant also attracted our attention towards para 25 of the Rejoinder *"That in reply to the contents of paragraphs 26 and 27 of the counter reply it is stated that the applicant in the O.A. has rightly been promoted to the post of TCM grade-III ₹3050-4590/- on 20th July, 2005 after passing the trade test on the basis of his seniority position in the inter-se-seniority list of eligible staff who opted for promotion as TCM Gr.-*



III. It is further incorrect to state in the paragraph under reply that the O.A. was filed in 2001 within time. It is stated that the cause of action arose to the applicant in O.A. as early as on 01.03.1993 itself when he has alleged to have been denied his promotion as TCM-III. Thus the O.A. is highly time barred and is liable to be dismissed on the ground of limitation." On the basis of the averments made in above paragraphs learned counsel for the applicant argued that the cause of action arose to the applicant in O.A. as early on 01st March, 1993 it is when he ~~was~~^{is} alleged to have been deprived his promotion as TCM-III and in this manner O.A. is highly belated and barred by limitation. Mr. Sinha at this stage stated that in the year 2005 promotion had already been given to the applicant.

3. Learned counsel for the OP/applicant stated that the cause of action is a bundle of ~~evidences~~^{events} and it can not be ~~inferred~~^{inferred} from single ~~evidence~~^{event} and every circumstances are to be considered while deciding the point of limitation. And in this connection learned counsel for the OP/applicant attracted our attention towards para no. 22 of the Counter Reply that "so far as limitation is concerned, it is well proved from the aforesaid facts that the Opposite Party was treated arbitrarily throughout since 1982. He was deprived of his due promotion as TCM Grade-III

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against restructuring of cadre in the year 1984 and again in the year 1993 and the upgraded posts of restructuring of cadre as no Trade Test was conducted for the post of TCM Grade-III in Telecommunication Department since 1982. The post upgraded against restructuring of cadre in Telecommunication Department in the year 1984 and 1993 were filled up in 1998 and even at that time also the Opposite Party and other eligible employees of Telecommunication Department were ignored intentionally and deliberately and employees of Signal Department having separate cadre, seniority and avenue of promotion were promoted vide order dated 27-05-1999 (Annexure-A-6 page 68 of the O.A.) against the upgraded post in restructuring of cadre in Telecommunication Department in the year 1984 and 1993. The Opposite Party and other employees of Telecommunication Department made representation against the grave injustice to them vide letter dated 17-07-1998, 17-02-1999 and 17-05-1999 (Annexure-A-5 page 61 to 67 of the O.A.), but neither any action was taken nor any reply was given. Therefore, the cause of action in this matter was actually arose in the year 1998-1999 when the post of TCM in 1984 and 1993 were filled up in Telecommunication Department and the Opposite Party was deprived of at that time also. Therefore, the Opposite Party was entitled for promotion as TCM Grade-III w.e.f. 01.03.1993 against restructuring of cadre as per Railway Board

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orders." On the basis of this averment made in the above paragraph learned counsel for the OP/applicant argued that applicant of O.A. w.e.f. 01st January, 1993 in view of the fact on record that staff of other department i.e. Signal Department even junior to the Opposite Party were promoted against the post of TCM Grade-III lying vacant since 1993 in Telecommunication Department in the year 1998-1999. Learned counsel for the O.P./applicant emphasized that till 1998 no promotions were made. It may be a fact that the applicant was due for promotion in the year 1993. But as no promotions were made till 1998 hence the cause of action arose when the applicant was not considered for promotion in the year 1998. And the O.A. was filed in the year 1998². It is settled position of law that point of limitation is to be considered on the basis of the averments made in the O.A. and it does not mean that we are ^{Commenting 2} ~~giving any finding~~ on the merits of the case. And in this context the averments made in the Rejoinder are also material and learned counsel for the O.P./applicant rightly attracted our attention to para 7 of the Rejoinder and regarding the contents of para nos. 12 and 13. It will be relevant to reproduce para 12 and 13 of the Rejoinder which are as under:-

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"12. That the contents of para 7, 8 and 9 of the counter reply are incorrect and denied and in reply those of paragraphs 7 and 11 above are reiterated.

13. That the averments made in paragraph 10 of the counter reply are totally false and baseless and hence are vehemently denied. It is stated that no employees of signal department was promoted against vacant post of TCM in Telecommunication Department during the years from 1982 to 1998."

4. It has been specifically admitted by the applicant/respondent in para 13 of the Rejoinder that no employee of signal department was promoted against vacant post of TCM in Telecommunication Department during the years from 1982 to 1998. It shows that the applicant is not disputing that no promotion was made till 1998. Although, it is a contention of the applicant/O.P. that he was due for promotion since 1993 but as no promotion was made till 1998 hence it cannot be said that the cause of action for filing the O.A. arose in the year 1993. We have already stated above that the cause of action can not be inferred from single circumstances or event it is a bundle of events and circumstances and when no promotions were made till 1998 hence it can not be said that the cause of action arose to the applicant/O.P. for filing the O.A. in the year 1993 and hence

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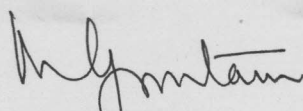
the O.A. is highly belated. Learned counsel for the applicant/O.P. at this stage argued that no promotion was made in the circle in which the applicant was working whereas, in circle promotions were made, that no observation made in the body of this judgment regarding merits of the case. We are conscious of the fact that we are sitting for deciding this application of review ^{the point of limitation} on ~~merits~~. We have initially stated that we have ^{to} ~~have~~ confined and we have to limit our reasoning up to the point of limitation and cannot travel beyond that. Under these circumstances if any facts has been mentioned in the body of this judgment then it is relevant only for disposal of the point of limitation and otherwise ^{not} ~~relevant~~ for the merits of the case. We think and suppose that learned counsel for the applicant/O.P. may be also aware of the fact that we have to restrict our order to the point of limitation. And if there is any reference which touches the merits of the case then it is relevant only for the disposal of the point of limitation and not otherwise.

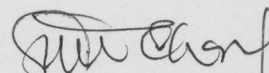
5. We are of the considered opinion that although this plea was raised by the applicant/respondents regarding limitation and alleged that the O.A. is barred by limitation. But it may be possible that this plea has been made in a casual manner

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because according to the contention that no promotions were made up to the year 1998, hence it is not expected from the applicant that he will file the O.A. in the year 1993 or, thereafter, within 1 (one) year. Although cause of action will deemed to be finally arose in favour of the applicant for filing the O.A. only in the year 1998 when he was not considered for promotion. Under these circumstances we are of the opinion that he O.A. was perfectly within time and it was wrongly alleged that the O.A. is barred by limitation. Review Petition moved as per the direction of Hon'ble High Court on the point of limitation is liable to be dismissed.

6. Review Petition is dismissed, accordingly.


Member-A


Member-J

/Dev/