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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 28th day of November 2008.

Original Application No. 394 of 2005

Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mr. Shailendra Pandey, Member (A)

Salimuddin, S/o Tajuddin, Pointsman 'B' Banspahar Railway
Station, WCR PO Manikpur Distt: Banda.

. . . Applicant

By Adv: Sri S.N. Khare

V E R S U S

1. Union of India through the General Manager, WCR,
Jabalpur.
2. Divisional Railway Manager (Personnel), WCR,
Jabalpur.

. . . Respondents

By Adv: Sri P. Mathur

O R D E R
By Hon'ble Mr. Shailendra Pandey, Member-A

Through this OA the applicant has challenged the action of the respondents in refusing to grant him seniority in the Traffic Department from the date of his original appointment in the Traffic Cadre and grant him promotion only on the basis of seniority granted from the date of his repatriation from the TRD Cadre where he had been transferred on his own request. In the process he has challenged six orders viz:-

- a. Order No.ET/11/S/Manikpur/S dated 28.6.01-9.1.02
- b. Order No.SOO-84/01/(Trf. Deptt.) vide letter
No.JBP/556/T/Pman B/GM dt. 13-12-01
- c. Order No.SOO-Tfc/59/2001 vide letter
No.JBP/P/558/TCM-LM-PMA dt. 5-9-01

- d. Order No.SOO-Tfc/13/1998 vide letter No. JBP/P/558/T/PM/GM/CL-IV/15 dt. 13.2.98
- e. Order No.Yatayat/16/1997 vide letter No.JBP/KA/558/Yata/SP/GM dt. 24.2.97
- f. Order No.OO/yatayat/96/1998 vide letter No.JBP/KA/558/Yata/SP/Gman/Dt. 18.12.98

and, in addition, he has called in question the final order No. ET/2/SUK/Bansa dated 08.12.2004 (referred to by the applicant as the impugned order) issued by the respondents asking him not to waste the time of the department by making any further representations in the matter.

2. The brief facts of the case are that the applicant, (directly recruited as Station Porter on 12.12.1991), had applied, in response to the notification dated 15.04.1996 calling for filling up 30 vacancies of Khalasi in Group 'D' in TRD organization on Jabalpur (JBP) Division from serving Class - IV willing employees of other departments, submitted his application for transfer to the said organization. The above notification clearly laid down the conditions for transfer as under: -

- "a. They will be subjected to a screening test for suitability for new cadre.
- b. They will be posted in Gr. Rs. 750-940 (RPS) as Khalasi at their own request on bottom seniority at any station in the division.
- c. On their coming over to new cadre, they will not be liable for re-transfer to their parent unit/deptt.
- d. They will be subjected to conversion training job training. If they do not qualify in the conversion training and pickup the work to the satisfaction to their supervisors, they will be returned back to their parent unit/deptt.

3. After being successful in the screening held to adjudge suitability for the post of Khalasi in TRD Organization the applicant was transferred to the TRD

Department (Cadre) and posted to TRO/SYA Station vide order No. 18/1996 dated 13.06.1996 (Annexure A-12). After working in TRD Department for some time the applicant again preferred an application dated 09.11.1996 for his transfer on personal ground to the Traffic Department. This request of the applicant was acceded to and he was again posted to the Traffic Department vide Office Order No. 12/97 dated 07.04.1997 (Annexure CA-4 to CA) which reads as under:-

"Shri Salimuddin Khan, TRD Khalasi/grade Rs. 750-940 (RPS) working under TFO/SYA is transferred as Station Porter grade Rs. 750-940 at his own request by downgrading the post of Station Porter 'A'.

This has the approval of Competent Authority."

4. The applicant has claimed that on return to the Traffic Department he should be given the benefit of his original seniority (from the initial date of appointment) on the following grounds: -

i. That he had not himself individually requested for transfer to the TRD department (as Khalasi) but had volunteered his services alongwith other colleagues in response to notification dated 15.04.1996.

ii. That the TRD Department in Jabalpur was a temporary department to which he was transferred and that it had been decided vide order dated 02.07.1999 to close down the TRD cadre in JBP Division and vide the same order applications had been called from Staff willing to go back to the parent department and that, therefore, his

transfer to the TRD Department was like a deputation and in the exigencies of service.

iii. That although he had gone to the TRD Department on bottom seniority, he had not agreed for bottom seniority on his repatriation to the Traffic cadre and that, therefore, excluding his name from the promotion order dated 24.02.1997 in which persons junior to him had been promoted was unjust.

iv. That the action of the respondents is also violative of the provisions of FR 9, which stipulate that a volunteer working on an Ex-cadre and tenure post does not lose his lien and seniority, already granted, only because of such working.

5. The respondents have contested all these grounds and have pointed out that the cadre of the applicant was changed on his own request and as per extant instructions on the subject such transfer is only made on bottom seniority. Similarly, the second change of cadre from TRD Department to Traffic Department was again on his own request (due to health and family circumstances) and he would, thus, return to the Traffic Department again on bottom seniority. It has also been mentioned that the applicant had been getting all due facilities as admissible under the rules in the TRD Department. It has also been submitted that the Railway being a model

employer had shown compassion and had acceded to the applicant's request for change of his cadre twice and that the representation of the applicant claiming original seniority in the Traffic Department on his subsequent return to the Department had been considered and replied to by the respondents in 2001 itself vide order No. ET/11/S/Manikpur/5 dated 28.6.01/01.09.2002 giving a categorical reply to the averments made in various representations preferred by the applicant. The respondents have also pointed out that the OA is hopelessly time barred, and needs to be dismissed on this ground alone.

6. We have heard learned counsel for the parties and have gone through the pleadings on record. It is seen from the notification dated 15.04.1996 that it clearly provided (Clause (3) of the Order No. JBP/P/TRD/Notification dated 15.4.1996) that on coming over to the new cadre, they will not be liable for re-transfer to their parent unit/department, with the proviso (Clause (4) *ibid*) that only in the event of their not qualifying in the conversion training they would return back to their parent department, which is not the case of the applicant. Further the Office Order dated 13.06.1996, reads as under: -

"As a result of screening done for change of cadre, the following gangmen are found suitable for the post of Khalasi in Gr. Rs. 750-940 (RPS) for absorption in TRD organization on JBP Divn. own request on bottom seniority and also not eligible for any facility permissible on transfer account."


(emphasis supplied)

Thus it is evident that the persons who were successful in the screening were absorbed in the TRD Department on

bottom seniority and on absorption severed their links with the former department from which they came. The contention of the applicant that his lien continued to be maintained on his transfer to the TRD Department is thus not tenable. Further his claim that this should be treated as on deputation is also not sustainable.

7. As regards the applicant's contention that he had not agreed for bottom seniority on his repatriation to the Traffic Department, we find from a perusal of Office Order No. 12/97 dated 07.04.1997 that this is not correct and that the applicant was transferred back to the Traffic Department on his own request by down grading the post as Station Porter. The respondents have also produced a copy of the application dated 9.11.1996 of the applicant (Annexure-CA-3), from which it is seen that the applicant had applied for his transfer to the Traffic Department on personal grounds that also stated that he accept all necessary conditions of transfer. Further it was decided to close down the TRD Cadre in JBP Division vide order dated 02.07.1999, issued much after his application dated 09.11.1996 for transfer back on personal grounds. In view of this we see no illegality in the respondents action treating him as having joined the Traffic Department afresh on bottom seniority.

8. Without prejudice to the above we also note that the representations of the applicant were duly considered and the decision was duly communicated by the respondents in very categorical terms giving reply to the averments made



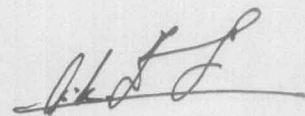
in the various representations on 28.06.2001/09.01.2002 (Annexure-A-2). The claim of the applicant is, therefore, barred under Section 21 of the Administrative Tribunal's Act, 1985. It has been held in a catena of judgments that repeated representations on the same issue cannot extend the period of limitation. Further, it is not desirable nor practicable to unsettle settled seniority at this late stage.

9. In view of the above the OA is time barred and also devoid of merit. Accordingly, the same is dismissed.

10. There shall be no order as to costs.



(Shailendra Pandey)
Member (A)



(Justice A.K. Yog)
Member (J)

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