

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 308 of 2015

Present : Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr.T.Jacob, Member (A)

Priya Ranjan Naik, aged about 61 years, S/o Sarbeswar Naik, At/PO-Singhpur, PS-binjharpur, district – Jajpur, A retd. Station Manager (NG), Boudpur Railway Station, East Coast Railway, At/PO-Randiahat, District-Bhadrak.

.....Applicant

VERSUS

1. Union of India, represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, Jatni, Dist-Khurds.
3. Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Jatni, District-Khurda.

.....Respondents

For the applicant : Mr.P.K.Chand, counsel

For the respondents: Mr.M.B.K.Rao, counsellor

Heard & reserved on : 19.2.2021 Order on : 27.04.2021

O R D E R

Per Mr. Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

“It is humbly prayed that the Hon’ble Tribunal may be pleased to quash the letters/orders dt. 10.03.2014 (Annexure A/12) and dt. 27.03.2015 (Annexure A/14) and to direct the respondents to pay all consequential retirement benefits to the applicant after granting “Proforma Fixation of Pay” in promotional scale i.e. Rs.6500/- to Rs.10,500/- w.e.f. 01.12.1999. And further be pleased to direct the Respondents to give benefits of promotional post of Station Manager w.e.f. 01.01.2006.

And further be pleased to pass any other order/orders as deem fit and proper in the facts and circumstances of the case;

And for such act of kindness, the applicant shall as in duty bound, ever pray."

2. The facts of the case in a nutshell are that the applicant while working as Dy. Station Superintendent was promoted to the post of Station Superintendent in the scale of Rs.6500-10,500/- and posted at Dhenkanal vide order dated 27.7.1999. The applicant submitted a representation on 10.8.1999

with a request to relieve him to join in his new place of posting. But vide order dated 27.12.1999 his transfer order dated 27.7.1999 was cancelled and he was posted at Cuttack. On 25.12.2000 after joining as SS Cuttack, the applicant made a representation to consider his fixation of pay on promotional post w.e.f. 27.7.1999 i.e. his initial date of promotion but the same was not considered favourably. In the seniority list of Station Superintendents dated 1.10.2004 (Annexure A/6), the date of promotion of the applicant was shown as 27.7.1999. Without considering the applicant's grievance with regard to his pay fixation taking his promotional date as 27.7.1999, the applicant was promoted to the post of Station Manager vide order dated 19.5.2005 (Annexure A/7). Since the respondents were silent on the grievance of the applicant, he approached East Coast Railway Shramik Union and thereafter respondent No.3 expressed his willingness to give proforma promotion to the applicant w.e.f. 27.7.1999. But since it could not be materialized, the applicant made a representation dated 28.10.2013 (Annexure A/10) before respondent No.2 and on 27.2.2014 (Annexure A/11) through email. His grievance was disposed of vide order dated 10.3.2014 (Annexure A/12). The applicant retired from service on 30.11.2014 and again submitted a representation dated 6.2.2015 detailing the facts leading to his entitlement of proforma fixation of pay from 1.12.1999 (Annexure A/13). Respondent No.3 disposed of the said representation vide order dated 27.3.2015 (Annexure A/14). The applicant has filed the present OA challenging the order dated 27.3.2015 stating it to be illegal, arbitrary and perverse and has prayed for quashing of the said order, with consequential relief.

3. The respondents have filed their Counter stating that this OA is time barred since the claim pertaining to 1999 is being agitated in the present OA after 16 years without any plausible explanation for such long delay in approaching this Tribunal. It is further stated that the OA suffers from non-joinder of necessary party since the applicant claims parity with one Trilochan Naik but the said person is not made party in the present OA. The respondents have stated that the administration cannot be faulted for fixing the pay of the

applicant in the promotional grade from the date of his joining the said grade which is in tune with extant rule position. It is also submitted that the fixation benefit on promotion would accrue from the date of joining in the working post and not prior to it. Moreover, the applicant assumed the charge of Station Manager on 26.7.2005 and hence claiming fixation benefit as Station Manager from 1.12.2005 is wholly untenable. Besides the applicant himself gave option for fixation of his pay from 1.4.2006 and hence his pay can't be fixed from 1.12.2005 before implementation of 6th CPC. It is further stated by the respondents that RBE No. 06/2013 is not applicable to the applicant's case for re-fixation of pay as per the recommendation of 6th CPC since the applicant has been promoted prior to 1.1.2006 wherein RBE No. 06/2013 was in force from 1.1.2006 for those who are promoted in the higher post from 1.1.2006 to 31.8.2008. The respondents have therefore prayed for dismissal of the present OA.

4. We have heard both the learned counsels and have gone through the materials on record.

5. The applicant in this OA is praying for grant of all consequential retirement benefits to him after granting proforma fixation of pay in promotional scale w.e.f. 01.12.1999. It is ascertained that the applicant was given promotion vide order dated 27.07.1999 and posted as SS in Dhenkanal and thereafter vide order dated 27.12.1999 he was posted in the said promotion post of SS to Cuttack. The applicant had submitted representation dated 25.04.2000 and 25.12.2000 for proforma fixation of pay on promotion to SS. It is seen that no reply was given to his said representation and the applicant preferred to remain silent till the year 2013 when he filed fresh set of representation claiming the same set of relief.

6. In this regard, it may be stated that law is well settled that rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in individual actions, and Court/Tribunal naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and

allowed illegalities to fester. Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which legal remedies can be enforced. Law helps who are vigilant and not indolent. It is well settled law that repeated representation cannot save limitation. Thus, in the present case it is thought wise to deal with the point of limitation before proceeding to decide on the merit of the matter as per the decision of the Hon'ble Apex Court in the case of **D.C.S.Negi v Union of India & Ors**, Special Leave to Appeal (Civil) No. 7956/2011 wherein it has categorically held by the Hon'ble Apex Court that provisions of Section 20 and 21 of the A.T. Act regarding limitation cannot be overlooked and it is the duty of the Tribunal to consider the point of limitation even if the plea of limitation has not been raised by the Respondents in their reply.

7. Again, the Hon'ble Apex Court in the case of **State of Uttarakhand and Another Vs. Shiv Charan Singh Bhandari and Others**, (2013) 12 SCC 179 had occasion to consider question of delay and laches. The Hon'ble Apex Court has been pleased to hold that representations relating to a stale claim or dead grievance do not give rise to a fresh cause of action. In Paragraph Nos. 19 and 23 following was laid down:-

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

23. In *State of T.N. v. Seshachalam*, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16) “16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

8. If any injustice was caused to the applicant in the year 1999, he should have approached the appropriate court of law instead of allowing the things to reach till his retirement. In view of the above we are not inclined to exercise the discretion to condone the delay, specifically in absence of any specific prayer to such extent.

9. Accordingly this OA is dismissed on the ground of being barred by limitation. No order as to cost.

(T JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)