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Registration O.A.No. 358 of 1987

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Applicant

Vs.

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Respondent.

Hon.D.S.Misra,AM  
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma, JM)

In this petition u/s.19 of the Administrative Tribunals Act XIII of 1985. (hereinafter referred to as the Act) received by post on 21.4.1987, the applicant has prayed that the order dated 13.1.1987, copy annexure 1, passed by the General Manager (P) N.E.Railway Gorakhpur be quashed and it be declared ~~that~~ <sup>as</sup> the applicant was wrongly denied the opportunity of appearing in the selection held on 27.4.1975 for the post of Law Assistant and for a further declaration that he is entitled to be treated as selected in the said selection held on 27.4.1975 and he is entitled to proforma promotion as adhoc Law Asstt. since Aug. 1974 and consequential benefits as such from 30.12.82.

2. It is alleged that according to the rules and instructions of the Railway Board, 66.67% posts of Law Assistants are filled by promotion of serving employees and the applicant who was working as Confidential Stenographer was selected by the ACCS for his appointment as Law Assistant on adhoc basis but two other persons, namely, D.S.Khare and Mahendra Pratap were promoted as adhoc Law Assistants in Aug., 1974 and the applicant was not afforded an opportunity of even representing as to why he was not appointed.



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Thereafter, a selection test was held for the appointment of Law Assistants on 27.4.1975 but the applicant was not spared and on account of official fault, he was deprived of ~~from~~ appearing in the selection and his name could not appear in the panel prepared on the basis of the selection held on 27.4.1975, <sup>on 12.1.76</sup> ~~and on~~ ~~12.1.1976~~. The applicant thereafter appeared and passed the selection test held on 30.12.1982 for the post of Law Assistant and he made representations for giving him the proforma fixation as Law Assistant from 12.1.76 when the earlier panel was prepared and due to administrative fault, the applicant was not allowed to appear in the same but the General Manager rejected his representation on 13.1.1987. Aggrieved by this order, the applicant who is now working as Law Assistant in the N.E.Railway Gorakhpur, has made this petition.

3. As the petition apparently appears to be time barred, a notice was sent to the respondents <sup>to show cause</sup> as to why the petition be not admitted. The respondent filed its reply disputing the claim of the applicant on merits as well as on the ground of limitation. The applicant filed a rejoinder and supplementary rejoinder stating that his claim is within time. On the date of final hearing, the applicant also moved an application to condone the delay with the allegation that he was making representations under the bonafide belief and if there is any delay in making this petition, the same be condoned.



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4. It is apparent from the case of the applicant that he claims proforma promotion as adhoc Law Assistant from Aug. 1974 and <sup>as</sup> regular Law Assistant from 12.1.1976 and consequential monetary benefits from 30.12.1982. His petition having been received on 21.4.1987, was thus received more than 4 years after even from 30.12.1982. In the reply, when it was brought to our notice by the respondent that the matter of the non-appointment of the applicant as adhoc Law Assistant in Aug. 1974 was agitated by the applicant at that time and his claim was not found to be valid and he was replied accordingly, in his application for condonation of delay, the applicant admitted that he had made a representation on 12.10.1977 for holding a supplementary test for him but the same was rejected on 12.12.1987. His allegation, however, is that this did not give him a cause of action to bring a legal action against the respondents. He further admitted in this application that he had made ~~2~~ representations on 2.6.1983 and 9.1.1984 for proforma fixation but the same were rejected by the ACPO and the CPO on 28.6.1983 and 21.12.1984. He preferred to ignore these orders on the ground that the ACPO and CPO are not the competent authorities according to the schedule of powers to take final action in the matter of his promotion and as such, these orders too did not furnish any cause of action to him. The final order dated 13.1.1987 was passed by the competent authority in the light of his representation dated 29.11.1984, 1.3.1985 and 24.9.1986 and as such, his petition is well within time and prior to that the applicant could not have any justification to move the Court or the Tribunal.



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5. We have very carefully considered the contentions raised before us by the parties regarding the question of limitation with which we are concerned at present. The applicant has himself admitted that against the official fault of not sparing him, he had made a representation on 12.10.1977 but the same was rejected on 12.12.1977. Annexure 1 to the reply is the copy of the reply dated 12.12.1977 of the General Manager (P) clearly stating that supplementary selection could not be held for the applicant under the rules or the circumstances of his case. In our opinion, this finally settled the matter so far as the non-empanelment of the applicant in 1976 is concerned. For the reasons best known to the applicant, he preferred to conceal this material document as well as the fact of his making the representation on 12.10.77 about his non-empanelment in 1976. The applicant has not furnished any document to show that he was selected by the ACCS for appointment as adhoc Law Assistant in 1974. We also do not find any material to justify the claim of the applicant for proforma promotion as adhoc Law Asstt. from Aug. 1974. Regarding the proforma fixation of his pay from 12.1.1976, the applicant had made a representation copy annexure 6. It does not bear any date but it was made sometime after 1982 and it bears the order dated 29.11.1984 of the General Manager directing the CPO to rectify the administrative fault, if any, by proforma fixation in earlier panel. It, however, appears from his own annexures 8 and 9 that the applicant had made two other representations on 2.6.1983 and 28.6.1983 as admitted in his application for condonation of delay. His representation dated 2.6.1983 was rejected on 28.6.1983 and his representation dated 9.1.84 for the reconsideration of the order dated 28.6.1983 was rejected by the General Manager (P) on 21.2.1984. The contention of the applicant

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that the order dated 26.8.1983 was passed by the ACPO and the order dated 21.2.1984 was passed by the CPO and they were not passed by the competent authority-the General Manager does not appear to be correct as even the final order, copy annexure 1, dated 13.1.1987 filed by him was passed by the General Manager(P). We are of the view that at least the order dated 21.2.1984, copy annexure 9, was passed by General Manager (P) and the limitation should start running atleast from this date and not from 13.1.87. It is well established that successive representations do not give fresh cause of action and if the orders passed on fresh representations do not disclose any new ground, it cannot be taken to give a fresh cause of action for presenting a petition u/s.19 of the Act. The impugned order dated 13.1.1987 simply shows that the claim of the applicant has been examined by the General Manager and it is not tenable.

6. In view of the above considerations, we are of the view that the cause of action for proforma fixation arose to the applicant on 28.6.1983 when his representation dated 2.6.1983 was rejected. As the rules do not permit to make successive representations to higher authorities like statutory appeal, the applicant should have preferred this claim in the Court in 1983 itself and in any case, the order dated 13.1.1987 did not give him a fresh cause of action so as to treat his petition within time from that date. It is well settled that old disputes regarding seniority cannot be revived after such delay. We, therefore do not find any good ground to entertain this petition after such a long delay.

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7. The petition is accordingly dismissed on the ground of limitation and it cannot be admitted.

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MEMBER(A)

Dated: 7th June 1988  
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MEMBER(J)