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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 11/4 day of April 1996.

Original Application No. 890 of 1987.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

M.L. Sinha, S/o Shri G.P. Sinha,
working as Telcom. Inspector, Drai,
R/o Railway Quarter No. F-15-B,
Railway Colony, Drai (Dist. Jalaun).

..... Applicant.

C/A Sri R.K. Nigam

Versus

1. G.M. Central Railway, Bombay V.T.
2. Divisional Railway Manager, Central Railway, Jhansi.

..... Respondents.

C/R Sri A.V. Srivastava

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed under Section 19 of the Administrative Tribunal Act 1985, praying for reliefs of payment of the full wages for the period from 9.5.1974 to 22.4.1975 with interest thereof, and also issue ^{of} directions to ~~the~~ respondents to promote him retrospectively from 1975 or any other date as deemed fit by the Tribunal with consequential benefits.

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2. The applicant while working as Assistant Telecommunication Inspector Jhansi Division Central Railway was dismissed from service from 9.5.74 exercising powers under rule 14 (2) of Railway Servants' Disciplinary and Appeal Rules of 1968 at the time of General Strike of Railways in 1974. However, subsequently his case was reviewed and he was reinstated in service on 22.4.1975. For the dismissal period, he was treated under suspension and he was paid 50 % of the wages for the period from 10.5.1974 to 21.4.1975. The applicant has pleaded that he is entitled for full wages for this period after having been reinstated in service. The applicant has further averred that in the selections held in 1975, 1981 and 1982 he was deliberately not selected for promotion to the grade of Rs. 700-900. The applicant was also not given advantage of promotion under upgradation/cadre restructuring during 1979 & 1984, where the promotion to higher grade was to be given automatically as per the seniority. In the seniority list at Annexure A-2 ^{of} the grade Rs. 550-750, the applicant's name ^{is} at s.no. 22 and he was due for promotion.

Thus the applicant has been treated differently thereby violating the Articles 14 and 16 of Constitution of India. The applicant also alleges that he is being harassed, victimised by not promoting on account of his participation in 1974 General strike and union activities.

3. The applicant filed O.A. 126/1986 but the same was dismissed in limine with a direction that the applicant should come to the Tribunal after exhausting the departmental remedies. Thereafter the applicant made a representation dated 24.7.86. However he did not get any reply. This application has been filed on 24.9.87 subsequent to the same.

4. The respondents in the counter at the outset have opposed the application that it is highly time barred for both the reliefs prayed for. Payment of 50 % wages for the dismissal period ~~as~~ treating as suspension, was accepted by the applicant in 1975 without making any representation at any time. Therefore this claim is time barred. As regards promotion, it is submitted that after reinstatement in 1975, the applicant was promoted to the next grade of Rs. 550-750 and therefore his plea of victimisation on account of participation in the strike is not tenable. Selections ^{here} held during the years 1975, 1979, 1981 & 1982 for promotion to the grade Rs. 700-900. The applicant was considered for these selections as per seniority. He appeared in the examination but failed to qualify. There was cadre restructuring from 1.1.1984 only and not in 1979 as averred by the applicant, when the promotion was to be ^{considered} ~~done~~ by the modified procedure by considering ^{only} ~~of~~ the confidential reports. The Departmental Promotion Committee (DPC) considered the applicant, but did not find him suitable for promotion. Each of the selections held in 1975, 1979, 1981, 1982 and cadre restructuring in 1984 form the separate cause of action. The applicant failed to challenge the same at the relevant time before the appropriate forum and therefore this claim has been excessively time barred. He is legally estopped from challenging the same before the Tribunal on the ground of limitation & jurisdiction. Further, it is also submitted that the facts of the case set up by the applicant in the instant application are similar to those set up in O.A. No. 126 of 1986 earlier dismissed by the Hon'ble Tribunal. In view of this, the present application also attracts the principle of resjudicata.

Thus the application is not only devoid of merits but also ^{is} not sustainable in law.

5. Heard the learned counsel for the parties. We have also carefully gone through the material placed on the record.

6. Before going into the issues of limitation, jurisdiction and merits of the reliefs prayed for, we observe that application covers plural reliefs which are unrelated to each other. The respondents have not taken up this point. One relief concerns the payment of full wages for the dismissal period after being reinstated, while the other relief is with regard to promotion. These reliefs do not flow out of the same cause of action. The applicant might have claimed both the reliefs in the same application perhaps upon the presumption that he has been denied these reliefs on account of participation in strike and union activities. Such a presumption will not be tenable considering the back ground of the two reliefs. We are of this opinion that the reliefs prayed are plural and covered ^{by} ~~with~~ the one application and the same is not permitted, under rule 10 of the Central Administrative Act Rules of Procedure 1987. Therefore the application is not maintainable on this ground alone ^{and} the application is liable to stand dismissed ^{on this account}.

7. Next we take up the ground of limitation averred by the respondents. The wages are being claimed for the period 10.5.1974 to 21.4.1975. The promotion is also prayed for from 1975. The application has been filed on 24.9.87. The applicant has averred that the application is not barred by limitation as ⁱⁿ pursuance of the judgement dated 20.3.86 in O.A. 126 of 1986 he made a representation on 24.7.86 and thereafter also reminded vide letter dated 24.9.86 but did not get any response. In fact from the perusal of the representation dated 24.9.86, it is seen that this is not a reminder but the the main representation in pursuance of the directions in O.A. 126 of 1986. In

this representation no mention has been made about the payment of full wages for the period from 10.5.1974 to 21.4.1975. On going through the judgement dated 20.3.86, we observe, that reference is only with regard to relief of promotion to the grade of Rs. 700-900 ^{and} not of payment of the wages. It can be ^{therefore} concluded that this O.A. did not cover the relief. Therefore the applicant cannot seek the cover of this O.A. to avoid limitation provision for this relief. Keeping in view the provisions of Section 21 of the Administrative Tribunal Act 1985, we agree with the submission of the respondents that this relief is time barred.

As regards the relief of promotion to the Grade Rs. 700-900, as stated earlier, this was agitated through the O.A. 126 of 1986. However the perusal of the judgement in this O.A., it transpires that non promotion from 1.1.84 against cadre restructuring was only challenged. In the present O.A., the promotion has been claimed from 1975. After being over looked for promotion in 1975, there were subsequent selections in 1979, 1981, 1982 before cadre restructuring in 1984. Leaving aside the promotion from 1.1.84, challenged through O.A. filed in 1986, the claim for promotion from 1975, agitated in the present O.A. is stale and highly time barred., and will attract the provisions of limitation. The present O.A. has been filed subsequent to earlier O.A. 126 of 1986 due to non consideration of his representation. In view of this the relief prayed for in the O.A. 126 of 1986, for promotion to the grade of Rs. 700-900 from 1.1.1984 could be at the best considered without being barred by limitation.

8. The respondents have also opposed the application on the principle of rejudicata. On careful reading of the judgement dated 20.3.86 in O.A. 126/1986, it is clear that O.A. was disposed of without going into the

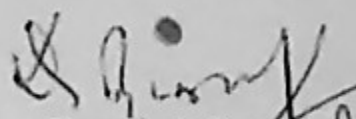
merits with the directions that the applicant may exhaust the departmental remedies and may move an application as and when he may find the same necessary. In view of this position, we are unable to accept this contention of respondents.

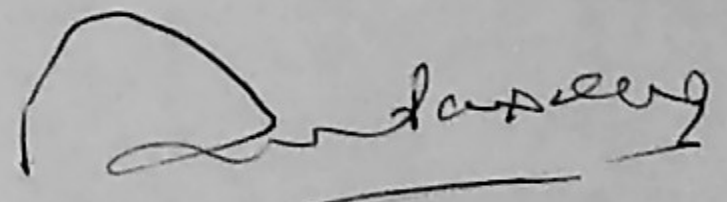
9. The application for reliefs for wages for the period 12.5.1974 to 21.4.1975 and the promotion from 1975 onwards is also not maintainable before the Tribunal for adjudication as the cause of action is ^{more} ~~since~~ than three years earlier from the date of setting up of Central Administrative Tribunal as per the provisions of Section 21 (2) a of the Act.

10. Having determined that the claim for the payment of full wages for the period 10.5.1974 to 21.4.1975 and the promotion from 1975 in the grade Rs. 700-900 are time barred, we go into the merits of the relief of promotion from 1.1.84 against cadre restructuring. The averments made by the applicant in support of his relief for promotion are sketchy, vague and general in nature. He has not made out a case as to how he considered himself ^{self} fit for promotion. His main thrust of the arguments is that he has not been promoted on account of victimisation for participation in general strike in 1974 and being active trade union leader. In view of the facts that his case was reviewed and he was reinstated back in service in 1975 and also given next promotion to the grade of Rs. 550-750, these contentions are not tenable. Further he has not brought any material on record to support his allegation of being victimised. The persons responsible for victimisation, harassment and deliberately overlooking him for promotion have been not named specifically and impleaded in the application. Hence we find it hard to accept these contentions of the applicant for his non promotion.

The promotion against cadre restructuring in 1984 was to be done based on the evaluation of the confidential reports by the Departmental promotion Committee (DPC). The DPC did not find him fit for promotion obviously based on the adverse reports. The applicant has not averred any thing on this aspect whether his reports were good and nothing adverse was conveyed to him. In reply to para 9 of the counter, the applicant has also not reacted to non consideration for promotion by DPC. In his representation dated 24.9.86 at annexure A-5 submitted in pursuance of the judgement dated 20.3.86, ^{however} there is mention about receiving intimation of adverse reports for the years 1982 & 1983. It is not clear whether he made representation against the same and what was the result of the same. In view of these vague and sketchy averments, we are unable to appreciate any merit in the relief prayed for promotion from 1.1.84 onwards.

11. In the result of discussions above, the application has no merit for the relief of promotion from 1.1.84. For the other reliefs the application is time barred by limitation and is also not maintainable. The application is accordingly dismissed with no order as to costs.


Member A


Member - J

Arvind.