

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (ALLAHABAD BENCH), ALLAHABAD.

O.A.NO.
FR.A.NO.

113 of 1992

OF 199

Date of decision : 23/1/92

.....Krishna Chandra Verma.....Petitioner.

.....Shri. Sanjay Kumar.....Advocate for the Petitioner.

Versus

.....Union of India & Ors......Respondent

.....Sri. Satish Chaturvedi.....Advocate for the Respondent (s).

CORAM:-

The Hon'ble Mr. Justice U.C. Srivastava, V.C.

The Hon'ble Mr. K. Obayya, A.M.

1. Whether Reporters of local papers may be allowed to see the judgment ? ye
2. To be referred to the Reporter or not ? yes
3. Whether their Lordships wish to see the fair copy of the judgment ? w
4. Whether to be circulated to all other Benches ? w

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Signature

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 113 of 1992

Krishna Chandra Verma Applicant
Versus
Union of India and Others Respondents

CORAM:

Hon. Mr. Justice U.C. Srivastava, V.C
Hon. Mr. K. Chayya, Member(A)

(By Hon. Mr. Justice U.C. Srivastava, V.C)

Despite the fact that the applicant succeeded before this Tribunal and his age was corrected that instead of July 1934 it was corrected to July 1935 with the result that he is to retire in July 1993 and the said judgment became final and even then he was not promoted to the post of General Manager, the applicant has approached this Tribunal again complaining against the same thereby nullifying the earlier judgment passed by this Tribunal.

2. This case hinges more on the clause contained in the scheme framed by the Government of India known as Scheme for making appointments to posts of General Manager and equivalent in

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the Indian Railways Clause 7(3) of the same run as follows:

7(3) Only such of the empanelled Officers would normally be appointed to the posts in General Managers and equivalent posts as will be to serve for at least two years on such and higher posts".

Thus ~~the~~ the transfer policy provides for a rule which itself admits of flexibility by using the word 'normally' making room for deviation from it though not generally but only in suitable cases for definite reasons as to why deviation is being made.

3. The applicant qualified for appointment to Indian Railway Service in the Civil Services Examination of the year 1956 and thereafter entered in service. Having discovered a new evidence and ascertaining that in official records including High School Certificate his year and month of birth is recorded as July 1934 and not July 1935, He made representation against the same and on failing to get it corrected he filed an application before this Tribunal (O.A. No. 792 of 1990 decided on 21st December, 1990). The Tribunal held that the entry in records was result of mistakes which are now to be corrected and his date of birth

to be taken as 7.7.1935. The said judgment became final after dismissal of S.L.P on 10.5.91 and Railway Administration also accepted it and issued notification in regard to the same on 25.7.91 correcting the date of birth.

4. Thereafter applicant who was holding office of Principal HOP made representation for his promotion to the post of General Manager pointing that his juniors who were next batch and that those who were junior to him by one year and two years have in the meantime already been promoted to the post of General Manager and gave five such names. Subsequently 3 more officers junior to the applicant by 2 years were posted as General Managers. It is thereafter the applicant has approached this Tribunal again with a prayer for direction to Railway Board to consider and promote the applicant to the post of General Manager without delay and restore his interse seniority viz-aviz his juniors who have been promoted.

4. The respondents in their return have referred to promotion policy including age viz less than 56 years which alone will give two years term as well as to other instructions of Railway Board duly notified providing for Constitution of Selection Committee which shall consider merit of the eligible officers having regard to inter se



seniority in the respective services and prepare a panel of officers considered suitable in all respects. According to the respondents it is not the declaration or even the date of the judgment viz 21.12.90 or even the date of Railway Board's letter dated 27.6.91 for issuing notification of correction of date which was published on 25.7.91 would be the starting point for calculating 2 years of period as General Manager as it fell short of that period till the date of superannuation. Thus according to the respondents the starting point would be whereafter he became eligible. The appointments were made by Railway Board on 22.4.91 and 8.8.91 at and on 22.4.91/^{as} he was not left with two years service taking 7th July 1934 as his date of birth. The matter was subjudice, he according to respondents was considered for next panel viz 1.7.90 to 30.6.91 and was empanelled/^{on} his earlier date of birth.

5. The applicant was considered for the subsequent panel prepared for July 1991 to July 1992 and in that he was found fit and empanelled for the post of Principal Railway Staff College vacancy ~~in xxxxxx~~ ~~of~~ which arose with effect from 1.2.92. He was not selected/^{as General Manager} on the basis of his performance as reflected in his Confidential Report and selected to the post of the Principal.

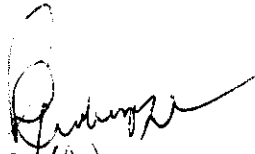
6. The facts as stated above indicate that the action of the respondent in delaying the matter and by misreading and misapplying the previous Promotional Policy took efforts to nullify the judgment passed by this Tribunal even after dismissal of their S.L.P. There was no interim order passed by the Hon'ble Supreme Court as such they were to give effect to judgment and at least considered and promoted the applicant subject to decision of Supreme Court. After dismissal of S.L.P all doors were closed. The applicant's case in any view should have been considered by the selection committee which met in the month of March/April for the post of General Manager but the same was not done despite judgment of this Tribunal and the operation of which was not stayed/the respondents without even approaching this Tribunal not to respect it and stuck to/on the ground that they have filed S.L.P against it presumably knowing that filing of SLP does not stay the operation of any judgment. The respondents have laid great stress on the promotion policy for applying two year rule. It has been observed that earlier the rule uses the word 'normally' making it flexible. It appears that the same was purposely done in order to make room for suitable cases particularly those who are being deprived of the same because of laches, delay or mistake on the part of the Government. In the case of State of Maharashtra Vs. Jagannath Achyut Karandikar A.I.R 1939 S.C 1133


it was held that making employee to suffer adversely for the default or lapse on the part of the Government itself would be unjust, unreasonable and arbitrary. It was further held that relaxation to avoid hardship to a class of employee is justified. In the said case there was lapse on the part of the Government to hold departmental examination every year in compliance with the rules it was observed that seniority of person in the category of 'late passing' should not be affected by this. In the instant case the Government delayed in implementing the judgment. After dismissal of SLP, issued notification of correction after few months making it effective some three days from the date, applicant had two years to go in service which appears to be deliberate Act. Thus the applicant/^{who} was entitled to promotion two months before a date when he had two years to go cannot be made to suffer because of delay, laches or wrong act which may be deliberate or non deliberate on the part of the Government even otherwise in these circumstance it was a case which was outside the pale of the period prescribed in the rule as delayed implementation was not normal after the earlier judgment of this Tribunal and after comparing the merits of respective candidat promote him with effect from the date on which he became first entitled to notionally and actually from the date of revised Selection Committee in

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which he is selected to the post of General Manager and grant him all the consequential benefits. Let the Selection Committee meet within one month from the date of communication of this order. No order as to the costs.


Member (A)


Vice Chairman

Dated: 25.11.1992

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