

(Open Court) 8

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 30th day of November, 2000.

C O R A M :- Hon'ble Mr. V.K. Majotra, Member- A.  
Hon'ble Mr. S.K.I. Naqvi, Member- J.

Original Application No. 1410 of 1993

Keemati Lal (retired Shunter, Northern Railway)  
Aged about 65 years, s/o Late Mokam Chand C/o Chawla  
Medical Store, Main Chauraha, Northern Railway, Hartala  
Colony, Moradabad.

..... Applicant.

Counsel for the applicant :- Sri R.A. Pandey  
Sri O.P. Sharma

V E R S U S

1. Divisional Railway Manager, Northern Railway  
Moradabad Division, Moradabad.

2. Divisional Personal Officer, (N. Rly.) C/o D.R.M  
Moradabad at D.R.M. Office, Moradabad.

3. The Union Of India through Secretary Ministry of  
Railways, Government of India, New Delhi.

..... Respondents.

Counsel for the respondents:- Sri A.K. Gaur

O R D E R (oral)

(By Hon'ble Mr. V.K. Majotra, A.M.)

The applicant was working as Shunter in the Railways in 1985. On medical examination he was declared malingerer and accordingly as per para 512 (2) (ii) ~~of~~ of Indian Railway Madical Manual he was declared medicaly unfit for all classes. The applicant was discharged on 03.12.85. Normally he would have retired from services on 31.10.86. He filed O.A/ T.A No. 280/87 against order of discharge from Railway service. The same was decided by the Tribunal on 21.04.88. The following orders were passed on 21.04.88 :-

"In the result, the order declaring the petitioner as unfit for all classes on the basis that he was a Malingenor is quashed. The petitioner should have been considered for alternative employment. He should now be deemed to have continued on such employment till his superannuation. He will be entitled to the wages for the post. The respondents will determine the post against which he would have been utilized and pay him for the period in question on that post "

Consequently the Railways treated the applicant to have retired w.e.f 31.10.86. He was paid wages including bonus for the post of Shunter from the date of discharge to the date of retirment. The grievance of the applicant is that where as various juniors of the applicant such as Baldev Ra Sharma, Praveen Singh, Ram Nath Verma and M.Y.A Khan were accorded promotion from time to time, the applicant did not recieve any promotion like his juniors and is entitled to payment of differantial of pay and allowncests which normally he would have recieved ~~if~~ he been considered and accorded promotions which were ~~pay~~ <sup>due to</sup> him like his juniors. According to the applicant those juniors were promoted as Driver Gr. 'C' and as matter of fact ~~the~~ some

of them were retired as Driver Gr. 'B'. As the applicant was discharged from the service on account of his medical unfitness he was not able to give his option, he was asked for in 1977 for Diesel cadre from steam cadre.

Had he not been discharged he would have given his option for shifting to Diesel cadre and availed himself of various promotions like his juniors. The applicant made various representations to the respondents for promotions and consequential benefits which he not avail. The applicant has sought promotions between 01.01.70 and 31.10.86 and consequential benefits.

2. The respondents in their counter reply have mentioned that the respondents have given all benefits to the applicant in terms of order in O.A 280/87. They have contended that the present O.A is highly time barred. The applicant could not give his option for change over to the Diesel cadre which was possible even after his retirement which he did not .

3. We have heard learned counsel of both sides and seen material on record.

4. Learned counsel of the applicant stated that when option for cadre change was called for, the applicant had been discharged from the service on medical ground. There was no opportunity to him to give his option and for consideration of the applicant's case for due promotions.

5. Learned counsel of the respondents drew our attention to order II (Rule 3) of C.P.C stating that the applicant can not seek reliefs in the present O.A which could have been sought by him in his earlier O.A. The applicant retired on 31.10.86. His earlier O.A was

11

decided in 1988. The review application relating to the previous O.A was dismissed. The present O.A is hit by law of limitation as well. It was open to the applicant to have given his option to change his cadre in terms of letter dt. 18.02.87. He had been making various representations from time to time even after his removal. He should have given such option also which he did not.

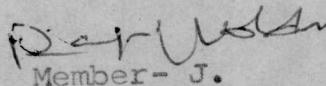
6. We are in agreement with the learned counsel of the respondents that the applicant as per provisions of order II, Rule 3 could have not included the reliefs in the present O.A which had <sup>not</sup> been sought in the earlier O.A in 1987. He cannot be allowed at this late stage to seek the present reliefs which he had omitted to seek in the earlier O.A. In order dt. 21.04.88 in O.A No. 280/87 it was decided that the applicant should have been considered for alternative employment. It was ordered that he should be deemed to continue on such post till his superannuation. It is not applicant's case that he has not received the benefits as per the order in O.A 280/87. He has received all arrears as envisaged in the order in O.A 280/87.

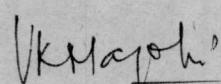
7. The present O.A also suffers from delay and laches. The applicant has also not given a satisfactory explanation for causing such inordinate delay in making claims as in the present O.A.

8. Having regards to the reasons and discussions made above we do not find any merit in the O.A which is dismissed accordingly.

9. There will be no order as to costs.

10

  
Member- J.

  
Member- A.