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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 31<sup>st</sup> DAY OF January 1995

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. S. DAS GUPTA, MEMBER(A)

Original Application No. 695 of 1993

1. Smt. Kiran Srivastava, wife of Sri Dinesh Kumar Srivastava, 580-B, Jatepur, Railway Colony, N.E. Railway Gorakhpur.
2. Shri Madan Charan Srivastava son of late Shri Kali Charan Srivastava, 379 Chote Kazipur Gorakhpur.

..... Applicants

BY ADVOCATE SHRI I.P. SRIVASTAVA

Versus

1. Union of India through Chairman, Railway Board, Rail Bhawan, New Delhi
2. The General Manager, N.E. Railway Gorakhpur.

..... Respondents

O R D E R(Reserved)

JUSTICE B.C. SAKSENA, V.C.

Through this O.A the applicants have prayed for the following reliefs.

- (a) to direct the respondents to give proforma fixation of pay and seniority w.e.f. 1.10.80.
  - (b) to direct the respondents to correct the seniority list(Annexure 1 and 2)
2. The facts lie in a very short compass. The Railway Board, it appears by an order dated 18.6.1981 considered the question of restructuring of the cadre of ministerial staff of departments other than personnel and laid down certain criterias.
  3. The applicant no.1 was appointed as senior clerk

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in the grade 330-560 in the office of the General Manager N.E. Railway Gorakhpur by letter dated 31.3.84 while the applicant no.2 was posted as Senior Clerk in the office of the Chief Mechanical Engineer, N.E. Railway Gorakhpur by order dated 26.3.84. The orders for their appointment have been annexed as Annexure 6&7. The order of appointment shows that their pay was fixed at Rs.630/- w.e.f. 31.3.84 and 26.3.84 respectively.

2. The applicants alleged that they were graduate junior clerks. They appeared before the Railway service Commission and were declared successful in the competition for filling up of vacancies of senior clerks from among the existing graduate junior clerks against 10% of the vacancies of Senior Clerks in the grade Rs.330-560 arising on 1.10.1980 consequent on implementation of the aforesaid orders dated 18.6.81.

3. The applicants case<sup>is</sup>, that as per the order of the Railway Ministry dated 18.6.81, the applicants were entitled to fixation of proforma pay and seniority w.e.f. 1.10.1980 but instead their pay was fixed at the minimum of the pay scale of Rs.330-560 from the date of their joining. They have been denied proforma pay and seniority w.e.f. 1.10.1980. It has further been indicated in the O.A that the applicants grievances were taken up by the General Secretary N.E. Railway Employees Union through a letter dated 17.7.84 addressed to the General Manager, N.E. Railway Gorakhpur. It is alleged the Union took up the matter several times with the General Manager but did not <sup>evoke</sup> ~~give~~ any response.

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4. The applicants have also raised the grievance that they have wrongly been assigned seniority in the seniority list of Senior Clerks as on 1.4.85 and as on 1.4.88. Copies of the two seniority lists are Annexures 1 and 2 to the O.A.

5. When the petition was taken up for order as regards admission it was put to the learned counsels for the applicants by us to satisfy us why the petition does not deserve <sup>to be</sup> dismissed on the ground of inordinate delay, laches and <sup>Bel</sup> acquiescence. The other infirmity pointed out was that there is <sup>is</sup> a claim for higher seniority position than assigned to the applicants in the tentative seniority lists aforementioned but neither any objection against the tentative seniority lists stated to have been filed by the applicants. Secondly, the persons who have been assigned higher seniority position and are likely to be effected by the relief claimed for having not been impleaded as respondents.

6. The learned counsel in reply to the first query submitted, as stated in the O.A., that the grievance of the applicant was taken up by the <sup>Union</sup> ~~junior~~ through a representation dated 17.7.1980. There was no response to the same. It has not been indicated in the petition that the applicants had filed any representation to the authorities at any point of time.

7. It has been indicated in the O.A. in paragraph 6 that there are no relevant service rule providing for any appeal of representation against the denial of proforma fixation of the pay and seniority. The applicants grievance was taken up by the General Secretary, N.E. Railway Employees Union even if it be accepted, that there was no statutory remedy of a representation still it was opened to the

applicant to have indicated their grievances to the relevant authorities by filing their individual representation that however, has not been done.

8. The Central Administrative Tribunal was constituted under Administrative Tribunals Act 1985 w.e.f. 1.11.1985. The applicants also admittedly did not institute any judicial proceedings in a court of law for seeking redressal of the grievances made in the O.A. Section 21 of the A.T. Act in Sub section(1)(a) provides that where a final order as mentioned in clause (a) of sub-section(2) of Section 20 has been made in connection with the grievance, the Tribunal shall not admit an application unless it was made within one year from the date on which such final order has been made. In the present O.A no final order has been shown to have been passed i.e. why the provision of sub-section(1)(a) will not apply.

9. Clause (b) of Sub-section (a) provides that where an appeal or representation as mentioned in clause (b) of sub-section(2) of Section 20 has been made and a period of six months has expired thereafter without such final order having not been made, the Tribunal shall not admit an application within one year from the date of expiry of such period of six months. Under the provision if the representation made by the General Secretary of the Union be taken into consideration and since no final order had been passed, the applicants should have filed the O.A. within one and half years i.e. to say in the beginning of the year 1986 when the Tribunal started functioning. We may note sub-section (2) of Section 21 which is a non obstante provision since it provides for other periods of limitation notwithstanding anything contained in sub-section(1).

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10. Clause (a) of sub-section (2) provides:
- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal became exercisable under this Act in respect of the matter to which such order relates;

Under the said provision ~~at~~ against the order for fixation of their pay at the minimum of the scale without providing for proforma fixation and which orders were passed in the year 1984 at best, it was open to the applicants to have filed their O.As by the end of October 1988.

11. This O.A was filed on 29.4.93. Sub-section (3) of Section 21 in effect provides for condonation of delay if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within one year of the period specified in clause (a), (b) of sub-section (1) or within six months of the period specified in sub-section (2). Thus the question of condonation of delay would be exercisable only within the parameters laid down in sub-section (3) of Section 21. We are, therefore of the considered view that the O.A is highly belated and cannot be admitted under the provisions of Section 21 aforesaid.

12. The learned counsel for the applicant has also invited our attention to certain decisions rendered by this Tribunal in the following cases.

1. O.A. No. 132/86 Surendra Kumar Sandhya and Ors Vs. Union of India and Ors decided on 29.10.86
2. O.A. 257/89 Parmeshwar Dayal Arya and Ors Vs. Union of India and Ors decided on 3.7.92.

In both the O.As on the basis of the Railway Board's letter proforma fixation w.e.f. 1.10.1980 and for seniority be adjusted accordingly were directed. After the said decision each of the applicants made representations on 3.12.92 and 24.12.92 inviting attention of the authorities to the aforesaid decisions rendered by the Tribunal. On these facts, the applicants appear to be claiming that they are entitled to the same benefit ~~which~~<sup>being</sup> extended to them otherwise it would be violation<sup>of</sup> the provisions of Art. 14 & 16 of the Constitution of India. As far as this aspect is concerned, no doubt there are certain decisions which ~~are~~ accepted the proposition that the benefit of certain decisions to be extended to persons similarly circumstanced is an extension of the principle enshrined in Art. 14 and 16 of the Constitution of India but much water has flown down the ganges since then.

13. In two recent decisions of the Hon'ble Supreme Court in 'Bhoop Singh Vs. Union of India (1992) 21 ATC as also in Ratan Chandra Samant and Ors Vs. Union of India and Ors reported in 1994 SCC(L&S) pg 182, this concept has been considered and it has been held that Art. 14 ~~or~~ the principle of non-discrimination is an equitable principle and therefore any relief claimed on that basis must itself be founded on equity and not be alien to that concept. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person has lost his remedy by lapse of time loses his rights well- IN Bhoop Singh's case it was held:

" It is expected of a Govt. servant who has a legitimate claim to approach the court for the relief he seeks within the reasonable

period assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set up after it has been functioning on certain basis for years. "

14. The assumption underlying the ~~decision~~<sup>tendency</sup> to invoke Art. 14 & 16 to their aid and to plead that the same benefit of a decision be extended is based on the erroneous assumption, as has been highlighted in some recent decisions, which <sup>we</sup> will be referring to shortly, that a decision of a court/Tribunal affords a cause of action.

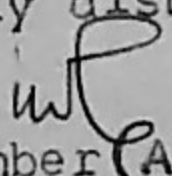
15. A Full Bench of the Ernakulam Bench of the Tribunal in a decision reported in (1994) 28 ATC pg 177 has taken the view that decisions in similar cases cannot give rise to a fresh cause of action and the period of limitation must be counted under the provisions of Section 21 of the A.T. Act, from the date the claim relates to;. The Full Bench laid down this proposition as emanating from the decision in 'Bhoop Singh's case (Supra).

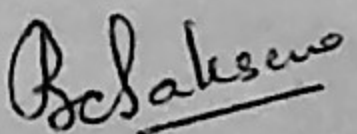
16. The celebrated decision of the Apex court in S.S Rathore Vs. State of M.P. reported in 1989(2) ATR SC 335 was relied upon by the P.B. in a decision reported in 1992 (2) ATR pg 21 and it was observed that the law and limitation cannot be brushed aside without adequate and sufficient grounds for condoning the delay. A seniority list issued in 1986 was questioned through an O.A filed in the year 1991. The O.A. was dismissed on the grounds of being barred by limitation. There is no derth of other decisions which have laid down a similar proposition.

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17. The other aspect which also <sup>has</sup> ~~is~~ persuaded as not to entertain the O.A is that the applicants have sought relief for a direction to the respondents to assign them a higher place in the seniority lists. The said seniority lists are as on 1.4.85 and 1.4.88. They are tentative seniority lists. There is no whisper in the O.A that the applicants at any time made objections against the assignment of seniority position to them in the said lists. Secondly, ~~is~~ the ~~at~~ ~~the~~ ~~officials~~ ~~above~~ whom the applicants claimed to be assigned seniority have not been impleaded as respondents. The claim for higher seniority position will again be depended on the quashing of the order passed in 1984 fixing the applicants pay at the initial stage of the time scale viz at Rs.330 in the scale of Rs.330-560.

18. In the light of the discussion and observations made hereinabove, the O.A merits to be ~~dismissed~~ <sup>and</sup> summarily ~~dismissed~~ <sup>and</sup> is accordingly dismissed.

  
Member (A).

  
Vice Chairman

Dated: ..... 1995