

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 26TH DAY OF FEBRUARY, 2004

Original Application No.1300 of 2002

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

Yogesh Chandra Yadav, son of
Shri Babban Yadav, R/o Turkmanpur,
district Gorakhpur.

.. Applicant

(By Adv: Shri Bashist Tiwari)

Versus

1. Union of India through the General Manager, N.E.Railway, Gorakhpur.
2. Chief Personnel Officer, N.E.Railway, Gorakhpur.
3. Deputy Controller of Stores (Depot), N.E.Railway, Gorakhpur.
4. Assistant Personnel Officer(Depot) N.E.Railway Press, Gorakhpur.

.. Respondents

(By Adv: Shri D.P.Singh)

O R D E R(Oral)

JUSTICE S.R.SINGH,V.C.

We have heard Shri Bashist Tiwari learned counsel for the applicant and Shri D.P.Singh learned counsel representing for the respondents and perused the pleadings.

The original application on hand has been instituted u/s 19 of A.T.Act 1985 on 8.10.02 for the following relief:

- 1) to issue an order or direction commanding the respondents to give promotional benefit in scale of Rs 1600-2660 w.e.f. 1.3.1993 in pursuance of the Railway Board's letter dated 27.1.1993 with seniority arrears of pay and increments and other allowances

permissible under law, after setting aside the order dated 4.10.01 order dated 8.1.1999 issued by the Asstt. Personnel Officer, Depot N.E.Railway Gorakhpur."

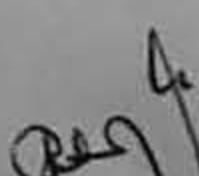
The prayer for promotional benefits as claimed by the applicant cocededly depends on settlement of dispute regarding seniority and i.e. why the relief regarding grant of promotional benefits is conditional on setting aside of the orders dated 4.10.01 and 8.1.1999 by which the applicant's representation regarding his claim for senioriy w.e.f. 1.3.1976 had been rejected.

Shri D.P.Singh, learned counsel for the respondents raised a preliminary objection that the OA is liable to be dismissed as barred by time u/s 21 of the A.T.Act, in that the cause of action arose on 8.1.1999 and then on 19.11.1999 whereby the applicant's claim for determination of the seniority w.e.f. 1.3.1976 had been rejected and the order dated 4.10.01(Annexure A1 to the OA), submits the learned counsel, is not an order giving rise to a fresh cause of action, it being simply an advise to the applicant not to make representattion in respect of the matter which had already been decided vide order dated 8.1.1999 and 19.9.1999. The date "19.9.1999", submits Shri D.P.Singh is a typographical error for the date 19.11.1999 on which date was the order (Annrexure A2) passed by Sahayak Karmik Adhikshak Depot.

Shri Bashist Tiwari, learned counsel for the applicant submits that the dispute regarding seniority gives rise to a continuing cause of action and hence

original application cannot be dismissed on the ground of being barred by time. It has also been submitted by Shri Tiwari that the dispute pertains to fundamental right of the applicant being covered by Article 16 of the Constitution ought not to be rejected on the ground of limitation. Shri Tiwari lastly submits that in any case the delay in filing the original application may be condoned having regard to the facts and circumstances of the case particularly the fact that the respondents authority have failed to take into reckoning the provisions contained in paragraph 312 of the Indian Railway Establishment Manual as explained by the Calcutta Bench of the Central Administrative Tribunal in 'Biswanath Ghosh Vs. Union of India', (1989) 11 Administrative Tribunals Cases 782 holding thereby that the seniority of Railway servants transferred "on their own request" from one railway to another should be allotted below that of the existing confirmed and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating service of the transferred railway servants, is not applicable to a case where transfer has been made not on the request of railway servant himself but on consideration of the request made by his relative.

We have given our thoughtful consideration to the contention given by the counsel that the real cause of action arose on 8.1.1999 and then on 19.11.1999 when the representation filed by the applicant for determination of his seniority w.e.f. 1.3.1976 i.e. the date of his initial appointment as Clerk in Izat Nagar were rejected. The applicant was transferred to railway press Gorakpur where he joined on 3.10.1977 and his



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seniority in Gorakhpur division has therefore been counted w.e.f. 3.10.1977 and thus those appointed under 33.33% departmental quota w.e.f. 17.11.1976 have been placed above, the applicant as per order dated 8.1.1999 reiterated in the order dated 19.11.1999. Repeated representations would not arrest the running of limitation. The last of the impugned orders dated 4.10.01 is in fact not an order determining the rights of the parties but is in the nature of an advice to the applicant that his matter had already been settled vide orders referred to therein and therefore, he should not file repeated representation. The applicant did not approach the Tribunal within the period of limitation prescribed by law and as such original application cannot be admitted in view of the expressed bar u/s 21 of the A.T.Act. There is no application supported with an affidavit seeking condonation of delay u/s 21(3) of the A.T.Act. In Ramesh Chandra Sharma Vs. Udhamp Singh Kamal and Ors, 2000 SCC(L&S) 53, it has been held that a time barred application for which condonation of delay has not been sought u/s 21(3) cannot be admitted and disposed of on merits.

Shri B.Tiwari has placed reliance on the decision of 'A.Sagayanathan & Others Vs.Divisional Personnel Officer, S.B.C Division, Southern Railway, Bangalore', reported in 1992 Supp(2) Supreme Court Cases 172 in support of his contention that in the facts and circumstances of the case the application should not be dismissed as barred by time. In the case relied on by the counsel, the promotion based on seniority was in question. The appellants therein were not promoted while the juniors had already been promoted. The respondents claimed that juniors had been promoted for justifiable reason. The Apex court held that whatever

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might be the reason, which promoted the respondent to promote the juniors in preference to the appellants, the fact is that the appellants had a genuine grievance insofar as they had been superseded by their juniors. The Tribunal's refusal to dispose it on merits solely on the ground of delay was not justified. We are of the view that the facts of the case relied on have no application to the facts of the present case. In the circumstances, therefore, we do not propose to go into the merits of the case for the reason that the application is liable to be dismissed on the ground of limitation for the condonation of which no application has been filed u/s 21(3) of the A.T.Act. The OA therefore fails and is dismissed as barred by time.

[Signature]
MEMBER (A)

[Signature]
VICE CHAIRMAN

Dated: 26th Feb. 2004

Uv/