

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 14th day of March, 2002.

Original Application No. 347 of 2002.

(In Diary No. 6644/2002)

Hon'ble Maj. Gen. K.K. Srivastava, Member- A.

Hon'ble Mr. A.K. Bhatnagar, Member- J.

Yogeshwar Sharma S/o Sri Ram Prasad Sharma,
Working as Fitter Gr. III in train lighting,
Section of Electrical department on Jhansi Division,
Central Railway. R/o House No. 704, Indira Nagar,
Isaitola, Jhansi.

.....Applicant

Counsel for the applicant :- Sri H.P. Pandey
Sri A.D. Prakash

V E R S U S

1. Union of India through the General Manager,
Central Railway, G.M's Office, Mumbai V.T.
2. The Divisional Railway, Manager, Central Railway,
DRM's Office, Jhansi.
3. The Senior Divisional Electrical Engineer, (G)
Central Railway, G.M's Office, Jhansi.

.....Respondents

Counsel for the respondents :- Sri K.P. Singh

O R D E R (Oral)

(By Hon'ble Maj. Gen. K.K. Srivastava, A.M.)

In this O.A filed under section 19 of the
Administrative Tribunals Act, 1985, the applicant has
sought for the following reliefs :-

1. to direct the respondent No. 2 to decide the representation dt. 24.01.1994 in accordance with law.
2. to direct the respondents to grant seniority to the applicant alongwith those promoted in 1998 when the applicant ignored though eligible.
3. to direct the respondents to grant consequential relief on the basis of seniority assigned under letter dt. 07.06.1993 including promotion to Fitter Gr.II.
4. to direct the respondents to fix applicant's promotion to Fitter Gr.II with retrospective effect alongwith employees empanelled under their notification dt. 08.07.1998.
5. to issue any other orders, direction as deemed fit under the facts and circumstances of the case.

2. The facts, in short, giving rise to this O.A are that the applicant was initially engaged as Khalasi under the Divisional Electrical Engineer, Jhansi on 19.01.1971 as Group 'D' employee. As per the applicant, in the year 1980, the respondents called for selection for making promotion panel to Fitter Gr. III but before the selection was finalised, the respondents cancelled the selection and made promotion on the basis of seniority. The applicant was deprived of the opportunity of promotion since no selection was made which was required as per rules. Again in 1984, the respondents made promotions to Group 'C' from Group 'D' on the basis of seniority against the provisions of selection. During the 1986, one Sri Umesh Kumar Pathak who was appointed on 28.11.1980 was transferred to Jhansi Division as a Khalasi and was wrongly promoted to Fitter Gr.III though he was junior to the applicant

by 14 years treating him as open market candidate. Other junior Sri Ramanand was also promoted and the applicant was denied promotion. During 1988, the respondents called for selection for formation of panel to the post of Fitter Gr.III vide their notification dt. 08.07.1988. According to the notification, 13 posts of Fitter Gr.III were to be filled out of which 8 posts had to be filled up from general candidates and the remaining by the reserved candidates. A panel of 10 candidates was made and only 4 persons were taken from the general community and 6 were from SC and ST i.e. in excess of reserved quota. The applicant represented against this but the respondents did not consider and the candidates, who were brought on panel, were promoted in December, 1990 and July, 1991. The applicant submitted his representation on 16.01.1992 followed by another representation dt. 13.02.1992 against his non-~~impanelment~~. However, the respondents corrected their mistake after conducting the applicant's trade test which he passed as communicated vide letter dt. 14.07.1992 (annexure A-7). The promotion order of the applicant to the post of Fitter Gr.III issued on 17.08.1992. The applicant was given promotion as Fitter Gr.III in consequence of 1988 panel. Against the applicant's representation for promotion to the post of Fitter Gr.II, the respondents cancelled their letter dt. 07.06.1993 vide their order dt. 18.01.1994 (annexure A- 10) and thus the applicant was denied the benefit of promotion to Fitter Gr. II whereas his junior Sri Narendra Singh Cahuhan had already been promoted as Fitter Gr.II in June, 1992. Aggrieved by this, the applicant has submitted representation on 24.01.1994 challenging the order dt. 18.01.1994 which has not been decided so far. Hence this O.A has been filed.

In re Smt H P Pandey
The learned counsel for the applicant submitted that the respondents have failed to decide the representation of the applicant dt. 24.01.1994, the injustice has been caused to the applicant because his juniors shown in the seniority list at 51 to 69 have already been promoted to the post of Fitter Gr. II ignoring the applicant's seniority. The impugned order dated 18.01.1994, cancelling the promotion order dated 07.06.1993 has been issued by the respondents without giving any notice or opportunity which is violative of principles of natural justice.

3. The learned counsel for the applicant has invited our attention to rule 228 of I.R.E.M Vol. I which deals with the erroneous promotion because of the administrative lapses. The learned counsel argued that since the applicant had been denied promotion because of the administrative lapses on the part of the respondents , it is a recurring loss to him and the application cannot be treated as time barred. since there is no limitation provided for such cases under the rules. In this connection, the learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in M.R. Gupta Vs. U.O.I and Ors. AIR 1996 (SC) 669 and 1995 (4) SCC 144 in which the Hon'ble Supreme Court held that in case where the appropriate fixation of pay was contrary to law, a fresh cause of action would arise every month when he was paid/salary . The learned counsel argued that in the instant case, though the applicant's juniors have been promoted and drawing higher pay which has been denied to the applicant, and, therefore, his case is fully covered by the judgment of Hon'ble Supreme Court cited above.

4. Sri K.P. Singh, the learned counsel for the respondents raised preliminary objection on the ground

of limitation and submitted that the case is not maintainable as it is highly time barred. The order dt. 07.06.1993 (annexure A- 9) was issued informing the applicant that the applicant was not entitled for promotion as Fitter Gr.II. The respondents also issued another letter on 18.01.1994 through which it has been informed to the respondent No.2 that the case of the applicant for promotion will be considered when it is due to him according to the seniority. The applicant represented also against this order on 24.01.1994 in which he has specifically mentioned that his juniors were promoted in 1992 and he was entitled for promotion as Fitter Gr.II because of his seniority. The learned counsel for the respondents submitted that cause of action arose in June, 1992 and the O.A has been filed in the year 2001. Therefore, it is highly time barred and is liable to be dismissed.

5. We have considered the submissions of the learned counsel for the parties and perused the records.

6. We have carefully gone through the representation of the applicant dt. 24.01.1994 in which the applicant has claimed promotion from 07.06.1993 with all consequential benefits. The proper course for the applicant was to approach this Tribunal within a year after lapse of six months when he filed his representation on 24.01.1994. The applicant filed his O.A on 24.12.2001 i.e. much beyond the period of limitation prescribed under section 21 of the Administrative Tribunals Act, 1985. The applicant has not even filed any application under section 5 of the limitation Act, seeking condonation of delay in filing the O.A. We, therefore, find that the case filed by the applicant is liable to be dismissed without considering its merit being barred by limitation. Accordingly it is dismissed.

7. There shall be no order as to costs.