

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD.

Original Application No.1191 of 2003.

Allahabad this the 09th day of October 2003.

Hon'ble Mr.Justice R.R.K. Trivedi, V.C.  
Hon'ble Mr.D.R. Tiwari, Member-A.

1. Raj Kumar  
son of Sri Bhagwat,  
aged about 47 years, Mate,  
Under Section Engineer (P. Way)  
Bulandshahr, Northern Railway  
Moradabad Division.
2. Prabhash Chandra Sinha  
s/o Sri A.N. Sinha,  
aged about 51 years,  
Mate, Under Section Engineer (P Way)  
Shahjahanpur, Northern Railway  
Moradabad, Division.
3. Bhawani Prasad  
s/o Sri Mithai Lal  
aged about 52 years,  
Gangman under Section Engineer (P Way)  
Shahjahanpur Northern Railway Moradabad  
Division.
4. Tula Ram s/o Sri Cheta aged about 52 years,  
Key-man, Under Section Engineer (P Way)  
Hapur District Ghazipur, Northern Railway  
Moradabad Division.
5. Ram Sajwan  
son of Sri Dasrath Singh  
aged about 54 years, Mate,  
Under Section Engineer (P Way)  
Bulandshahr, Northern Railway  
Moradabad Division.
6. Ram Kishore  
s/o Sri Ayodhya Prasad  
aged about 51 years,  
Key-man, Under Section Engineer (P Way)  
Bulandshahr, Northern Railway  
Moradabad Division.
7. Bharat Singh  
s/o Shri Rajeshwar Singh  
aged about 51 years,  
Gangman, Under Section Engineer (P Way)  
Hapur, District Ghaziabad,  
Northern Railway Moradabad Division.

All R/o and C/o Sri Bharat Singh Gangman,  
Under Section Engineer (P Way) Hapur,  
District Ghaziabad and R/o Railway Quarter

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No. T-37-C, Hapur, District Ghaziabad.

.....Applicants.

(By Advocate : Sri J.N. Singh)

Versus

1. Union of India  
through the General Manager,  
Northern Railway, Baroda House,  
New Delhi.
2. Divisional Railway Manager,  
Northern Railway,  
Moradabad.

.....Respondents.

(By Advocate : Sri A.K. Gaur)

O\_R\_D\_E\_R

(Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this O.A., filed under section 19 of Administrative Tribunals Act 1985, the applicants have prayed for a direction to respondents to call them for interview for Permanent Way Mistries on the basis of judgment of this Tribunal dated 30.04.2003 passed in O.A. No.909 of 1987, 454 of 1987 and 126 of 1987. The applicants have also prayed that respondents may be directed to consider the applicants' promotion on the post of Permanent Way Mistries first on the basis of result declared in the written test on 11.03.1983 and not to conduct fresh selection.

2. The preliminary objection has been raised by Sri A.K. Gaur, learned counsel for the respondents that this O.A. is highly time barred. The judgment of this Tribunal dated 30.04.2003 was confined to the applicants who had filed the O.A. and benefit can not be claimed by the



applicants after 21 years. Learned counsel for the respondents has placed reliance on the judgment of Hon'ble Supreme Court in case of State of Karnataka and others Vs. S.K.Kotrayya and others 1996 SCC (L&S) 1488.

Learned counsel for the respondents has also submitted that merely by making repeated unsuccessful representation, not provided by law, limitation cannot be extended. Reliance for this purpose has been placed in the judgment of S.S. Rathor Vs. State of Madhya Pradesh, A.I.R. 1990 SC page 10.

3. We have carefully considered the submissions made by learned counsel for the parties.

4. The facts of the case are that for the promotion to the post of Permanent Way Mistries (in short P.W.M) which is the next higher category 'C' post, seniority-cum-suitability test was to be conducted from amongst willing Mates and Keymen. It was further provided that if the sufficient number of suitable candidates were not available out of Mates and Keymen, the selection was to be done from amongst all willing and eligible Gangmen. The present applicants were Gangmen. As sufficient numbers of candidates for promotion to all posts were not available, Railway Authorities had granted relaxation by Circular dated 17.03.1981 ~~and~~ all literate Gangmen were made available for promotion to P.W.M. for remaining vacancies ~~by~~ circular dated 28.07.1982 ~~was~~ was issued and selection test was held on 19.12.1982

and 02.01.1983, and all 360 willing and eligible (literate) Gangman were allowed to appear in the test.

On 11.03.1983, the result was declared and 93 Gangman including the applicants were declared successful in the written test and were to appear for interview on different dates in April 1983. However, interview could not be held and selection was kept in abeyance. As

Railway Authorities initiated fresh selection, Their action was challenged by filing O.As No.909 of 1987, 454 of 1987 and 126 of 1987. The aforesaid O.As were dismissed on 09.09.1992. The aforesaid order of the Tribunal was challenged before the Supreme Court in Civil Appeal Nos. 4467-4469/1998. Hon'ble Supreme Court disposed of the appeals finally on 21.11.2001 and order of the Tribunal was set aside and the cases were remitted to the Tribunal for fresh consideration in accordance with law. In pursuance of the direction of the Hon'ble Supreme Court, the O.A. was decided finally by order dated 30.04.2003. The paragraphs No.13 and 14 relevant for the case, are being reproduced below:-

"13. The persons placed at Sl. No.1 to 37 of 93 candidates have already retired, the persons at Sl. No.38, 41, 49, 62 & 64 have expired, persons at Sl. No.42, 44, 54, 63, 70, 84, 86 & 91 have left the department and persons at Sl. No.52 & 68 have already been promoted in the year 1999. Thus the claim of 52 candidates out of 93 are left. Out of these 41 candidates, only 30 candidates in all the three connected OAs have filed their case. out of which two applicants, namely Shri Chet Ram and Shri Pashupati in O.A No.126 of 1987 have died and 5 applicants namely Shri Ganga Prasad, Shri Peetam in O.A No.909 of 1987, Shri Hari Dutt, Shri Dharam Nand and Shri Kishan Gopal in O.A. No.126 of 1987 have retired. Thus 23 applicants in all the three OAs are available for claiming their rights against 42 vacancies in question.

14. In the facts and circumstances and our aforesaid observations the OAs i.e. OA No.909 of 1987, OA No. 454 of 1987 and OA No.126 of 1987 are allowed. The respondent No.2 is directed to complete the selection process started in 1982 by calling 23 candidates, who are available out of the list for 93 candidates declared successful in the written test vide the select list annexed as Annexure A4 for interview and those candidates who are selected shall be entitled for all consequential benefits including seniority and promotion. However, since they have not worked on the higher post, they will not be entitled for any arrears of salary".

5. Now the applicants have filed this O.A. on 24.09.2003 for the relief mentioned above. From perusal of paragraphs 13 and 14, it is clear that this Tribunal confined the relief to 23 candidates who had filed O.A. and were available at the time of passing of order. The direction is that they will be called for and those candidates shall be entitled for all consequential benefits including seniority and promotion. This order has been given effect as stated by the learned counsel for the respondents. Now applicants have approached this Tribunal after more than 21 years.

<sup>Want</sup>  
They ~~wanted~~ to unsettle <sup>the issue</sup> which has already been settled by the Tribunal. The O.A. is highly time barred. The cause of action to the applicants had arisen when respondents started fresh selection proceedings, but they kept quiet and were sitting <sup>tight over their rights</sup> ~~to from their own~~. Learned counsel for the ~~representants~~ submitted that representation ~~were~~ made. However, the law is very clear, if the representation is not decided within six months, the applicants ought to have approached this Tribunal but it was not done.

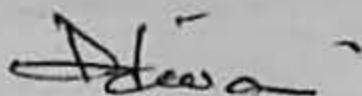
The applicants kept quiet even after judgment of this Tribunal, ~~the O.A.~~ has been filed after about ~~6~~ <sup>6</sup>

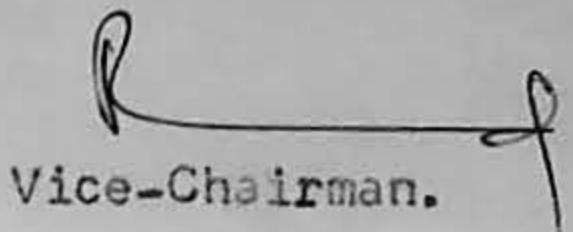
~~waived~~ after ~~order~~ ~~established~~ of the Tribunal.

6. In the circumstances of the case, in our opinion, the applicants are not entitled for the relief claimed.

~~as~~ <sup>or</sup> The judgments ~~cited~~ <sup>or</sup> by the respondent's counsel are squarely applicable in the present case; the O.A. is accordingly dismissed as time barred.

No order as to costs.

  
Member-A.

  
Vice-Chairman.

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