

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

(THIS THE 21st DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. D. C. Lakha, Member (A)

Original Application No.516 of 2007
(U/S 19, Administrative Tribunal Act, 1985)

Om Prakash Agarwal, Son of Late Roop Kishore Agarwal, resident
of A/351/1 Rajendra Nagar, Post and Tehsil Rajendra Nagar,
District Bareilly.

..... Applicant

By Advocate: Applicant (In person)

Versus

1. The Union of India through its General Manager Karmik,
 North eastern Railway, Gorakhpur.
2. District Controller of Store, Northern Eastern Railway, Izzat
 Nagar, Bareilly.
3. Mukhya Karmik Adhikari (Prashasan) North Eastern
 Railway, Gorakhpur.


..... Respondents

 By Advocate: Shri P. Mathur

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

1. The applicant, who entered in the service of the Railways in 1956 as a Clerk in the Controller Store, North Eastern Railway, Gorakhpur and was out of service on 14.12.1997, has moved this O.A. for fixation of seniority effective from 12.04.1957 and for promotion on the basis of that seniority, in the year 2007. The grievance of the applicant is that he had to move from 'depot side' to 'office side', he accepted the bottom seniority under the then existing Rules and when there was an integration of seniority of both depot side and office side, his original seniority in the depot side was not taken into account and seniority on the office side alone was taken into account whereby, his junior in the depot side was shown senior to the applicant and the same had telescopically affected the applicant's career prospects. Such an integrated seniority took place sometimes in 1982. The applicant has prayed for the following relief/s:-

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- “(i) Issue an order or direction commanding the Respondents to fix the seniority of the applicant w.e.f.12.4.1957 not w.e.f.14.8.1959 which has been determined by the respondents.
 - “(ii) Issue an order or direction commanding the Respondents to consider the applicant's representation which are still pending before the Respondents.

- (iii) *Issue a suitable order or direction in the interest of the applicant, which this Hon'ble court may deem fit and proper in the circumstances of the case.*
- (iv) *Award cost of the application to the applicant."*

2. Respondents have contested the O.A.. They have raised the question of limitation and also stated that as early as on 29.09.1999, the applicant was informed of the exact position relating to his seniority and despite the same he tried to circumvent limitation by allegedly stating that he had filed representations dated 18.11.2002 and 24.04.2003, which were, in fact, not available in the file. In any event, according to the respondents, the seniority position which attained the finality as early as in 1992 cannot be the subject matter of the petition filed at this belated stage.

3. The applicant appeared in person and gave written submission. Parties have also been heard.

4. Arguments were heard and documents perused.

5. It is settled law that in matters of seniority and promotion 'a settled affair cannot be unsettled beyond certain



distance of time'. In this regard the following decision of the Apex Court are relevant:-

(a) *H.S. Vankani v. State of Gujarat*, (2010) 4 SCC 301 -

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in *Union of India v. S.K. Goel*, *T.R. Kapoor v. State of Haryana* and *Bimlesh Tanwar v. State of Haryana*. In view of the settled law the decisions cited by the appellants in *G.P. Doval case*, *Prabhakar case*, *G. Deendayalan* and *R.S. Ajara* are not applicable to the facts of the case.

(b) *Rajinder Pal Singh Lamba v. Suraj Bhan*, (2008) 14 SCC 679 :

14. Respondent 4 was under a fiduciary duty and was required to consider the name of the appellants for promotion to the post of UDC in accordance with the statutory rule as and when the vacancy arose. Unfortunately, there was lapse on the part of Respondent 4 due to which the case of the appellants for promotion could not be considered. At the same time it cannot be scored out that the appellants slept over their rights, which led to a considerable delay i.e. delay of 11-12 years on the part of the appellants to give representation for promotion to the grade of UDC. Delay defeats equity is a well-known principle of jurisprudence. Delay of 11 to 12 years cannot be overlooked when an applicant before the court seeks equity and specially in the case of service matters as in the said case it jeopardises the existing positions of a very large number of members of that service.

6. In the instant case, the applicant had ample opportunity to move the matter before Administrative Authorities

as well as before the Court during the period of his service. Further, he had full information as early as in 1999. If, this O.A. is allowed, it will disturb the seniority and promotion of number of persons at this belated stage. The records should not be available as applicant was out of service in 1997 itself. The Apex court has in the case of Union of India vs M.K. Sarkar (2010) 2 SCC 59 has held as under:-

22. The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of option, cannot contend that he was not served a written notice of the availability of the option after 22 years. In such a case, even if Railway Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed. Further when notice or knowledge of the availability of the option was clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that in the absence of written intimation of the option, he is still entitled to exercise the option.

This case falls under the above category where records would not be available after a lapse of such considerable time.

7. Limitation, thus, stares on the face of the applicant. It is not a matter of wrong fixation of pay or pension which, being personal, would, if remedied, not affect the interest of any other individual. Condonation of delay is admissible only in such cases,

where interest of other are not in jeopardy. In this regard, the decision of the Apex Court in the case of Union of India vs Tarsem Singh (2008) 8 SCC 648 is apt to be referred to here, wherein, the Apex court has held as under:-

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. The applicant is a septuagenarian and is fighting this legal battle. However, the Tribunal has to only apply law and not be carried away by sympathy. Even if the law is inconvenient, the

Tribunal the same only has to be followed, as the Apex Court has stated in the case of *LIC v. Asha Ramchandra Ambekar, (1994) 2 SCC 718*, wherein (in connection with compassionate appointment) -

"... we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in "Merchant of Venice" :

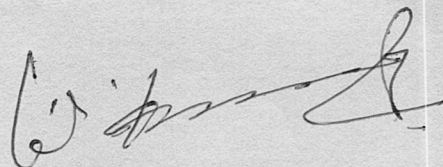
"The quality of mercy is not strain'd;
It droppeth, as the gentle rain from heaven
Upon the place beneath it is twice bless'd;
It blesseth him that gives, and him that takes;"

These words will not apply to all situations. Yeilding to instinct will tend to ignore the cold logic of law. It should be remembered that "law is the embodiment of all Wisdom". Justice according to law is a principle as old as the hills. ***The courts are to administer law as they find it, however, inconvenient it may be.*** (emphasis supplied)

9. In view of the above, we have no option but to **dismiss** the O.A.. No costs.



(D.C. Lakha)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil