

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

ALLAHABAD this the 13 day of 4, 2012.

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J  
HON'BLE MS. JAYATI CHANDRA, MEMBER -A**

**ORIGINAL APPLICATION NO. 581 OF 2007**

S.K. Sinha, aged about 51 years son of Shri G.P. Sinha R/o  
Keshukunj, New Madhopur Colony, Suraj Kund, Gorakhpur.  
.....Applicant.

**VER S U S**

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. The General Manager (P), N.E. Railway, Gorakhpur.
3. The Chief Personnel Officer, N.E. Railway, Gorakhpur.
4. The Chief Operations Manager, N.E. Railway, Gorakhpur.

.....Respondents

Advocate for the applicant: Shi R. Verma

Advocate for the Respondents : Sri P.N Rai

Reserved on 2.4.2012.

**ORDER**

**DELIVERED BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J**

By means of present Original Application, the applicant  
impugned the order dated 6.4.1993 by which his  
representation dated 5.2.1993 has been rejected, with a  
further prayer to direct the respondents to treat the period  
from 22.0.1992 to 06.05.1992 as waiting for the orders/duty,  
to pay the applicant full pay and allowances for the said



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period alongwith interest at the rate of 12% per annum and treat that period regular towards qualifying service, still further prayer to direct the respondents to fix his seniority as Senior Clerk with reference to the seniority of Smt. Beena Srivastava, which she was retaining as Senior Clerk in N.E. Railway, Gorakhpur and also to allow the benefit of Special Pay with all consequential benefits.

2. The applicant was working as Senior Clerk in Personnel Branch, DRM Office, Northern Railway, Lucknow. One Smt. Beena Srivastava, who was working as Senior Clerk in N.E. Railway, Gorakhpur in the Chief Operation Manager Office, Gorakhpur and the applicant, on their mutual understanding, submitted a joint representation to respondent No. 2 requesting therein for inter-se transfer. Their mutual transfer was duly approved by the Competent Authority. Accordingly, the applicant was relieved on 21.01.1992 (afternoon) from Divisional Railway Manager, Northern Railway, Lucknow to report to respondent No. 4. On very next date i.e. 22.01.1992, the applicant submitted his joining report in the office of respondent No. 4. He was allowed to join his duty in place of Smt. Beena Srivastava. Later-on Smt. Srivastava requested her transfer against one Shri Krishna Murari Lal of N.E. Railway instead of the applicant. Applicant has been informed to this effect by the letter dated 5.3.1992 (Annexure A-3). By same letter, the

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applicant was retained at Gorakhpur by giving him bottom seniority as per Railway Board Instructions. Against the above action, applicant stated to have made a representation on 12.3.1992 to respondent No. 4 wherein he requested to allow him the salary and all consequential benefits from 22.1.1992 to 6.5.1992, which was supplemented by another representation. Applicant was also given promotion as Head Clerk at Gorakhpur. His representation was rejected by impugned order dated 6.4.1993 (Annexure A-1), hence the Original Application.

3. Pursuance to notice, respondents filed detailed counter affidavit by resisting the claim of the applicant. It is submitted in para 4 of the counter affidavit that though his request for mutual transfer with Smt. Beena Srivastava was accepted by the Competent Authority but subsequently she withdrew/<sup>ed</sup>backout<sup>d</sup> her request and made a request for mutual transfer with another employee of N.E. Railway Lucknow, therefore, the applicant was not extended the benefit of mutual transfer. Averments to this effect have been made in paras 4 and 8, which reads as under:-

*"4. That the contents of para 4.1 of the Original Application, as stated are not admitted. It is further stated that the applicant had formed mutual exchange with Smt. Beena Srivastava, Sr. Clerk of CPO's Office, North East Railway during the year 1991 but Smt. Beena Srivastava withdraw her application for mutual transfer. The applicant reported to this Railway after his consent, it was decided that he may be accepted on this Railway in the category of Sr. Clerk subject to bottom seniority of applicant. The Applicant resumed duty on 07.05.1992. The applicant is claiming that he may be paid pay and allowances during the period 22.1.1992 to 06.05.1992 on this Railway. Since the applicant resumed duty on this railway on 07.05.1992, hence claim for payment with effect from 22.01.1992 to 06.05.1992 is not as per rules. The applicant after joining as Sr. Clerk on this Railway, was*



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*not in the zone of consideration for grant of Rs.70/- special pay, hence he was not granted Rs.70/- special pay.*

*It is stated that claim of the applicant prior reporting on this Railway before 07.05.1992 i.e. 22.01.1992 to 06.05.1992 has been rejected by the then AGM as communicated vide letter dated 06.04.1993 to the applicant.*

*8. That the contents of para 4.5 of the Original Application, as stated are not admitted. It is further stated that Smt. Beena Srivastava, Sr.Clerk, CPO's Office, North East Railway, Gorakhpur had refused for mutual transfer and formed mutual exchange with another staff of Lucknow Division, North East Railway. However, the applicant was allowed to resume duty as Sr. Clerk against Graduate quota with bottom seniority. The applicant had given written consents to absorb him in North East Railway".*

4. The applicant has filed rejoinder, in which he has controverted the averments made in the counter affidavit.

5. We have heard Shri Rakesh Verma, learned counsel for the applicant and Shri P.N Rai, learned counsel for the respondents.

6. Learned counsel for the applicant vehemently argued that inaction of the respondents in not issuing any notice or information to the applicant before cancelling the mutual transfer and allowing Smt. Beena Srivastava to withdraw her request of mutual transfer is illegal, arbitrary and violative of principles of natural justice. Once the Competent Authority accepted the request for mutual transfer then the same cannot be withdrawn except with prior notice to a candidate, whose right is to be affected. He further urged that the action of the respondents in not granting the benefit of period from 21.1.1992 to 06.5.1992 when the applicant was at Gorakhpur is also illegal as the applicant was not at fault. Applicant

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rightly approached the N.E. Railway, Gorakhpur pursuance to transfer order but was not allowed to join the duty, therefore, the period be counted as duty as waiting period.

7. On the other hand, learned counsel for the respondents firstly submitted that the Original Application deserves to be dismissed on the ground of delay and laches as the applicant is seeking quashing of order dated 6.3.1993 by filing the present Original Application in 2007, therefore, the same may be dismissed on the ground of delay and laches. Reliance has been placed by the learned counsel for the respondents in the case of **Union of India & Ors. v. M.K. Sarkar reported in (2010)2 Supreme Court Cases**

**59.** Secondly he submitted that applicant himself accepted that he be given bottom seniority at N.E. Railway, Gorakhpur, therefore, at this stage, the applicant cannot be agitated the matter. He drawn our attention to the letter dated 5.4.1993 (Annexure A-3) to this effect. Lastly he submitted that once the mutual transfer has been withdrawn by a candidate against whom the applicant has been transferred at N.E. Railway, Gorakhpur, therefore, his initial transfer is bad in law.

8. We have considered the rival submission and have gone through record.

9. Undisputedly, the applicant is impugning the order dated 06.4.1993 in the year 2007. No cogent reason has been given for not approaching this Court well in time. In terms of



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Section 21 of Administrative Tribunals Act, 1985, Original Application is to be filed within one year from the date of cause of action, therefore, the objection raised by the respondents are sustainable and original application deserves to be dismissed only on this ground.

10. Section 21 of A.T. 1985 prescribes the limitation for approaching the Tribunal. Section 21 of 1985 Act reads as under: -

**21.Limitation.-** (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(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 becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.



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*(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.*

11. From the perusal of the aforesaid section, it is clear that under the 1985 Act, the O.A is to be filed within one year from the date of cause of action. The same is extended by another six months in terms of 21(i)(b). If the O.A is not filed within limitation then in terms of section 21(3) the applicant has to move Misc. Application for seeking Condonation of delay by explaining each day delay in not filing the Original Application within the limitation and if Tribunal satisfied the cause for not filing Original Application in time then Tribunal can condone the delay.

12. Section 21 of the Administrative Tribunal Act 1985 came up for consideration before the Hon'ble Apex Court in following cases:-

- (i) ***S.S. Rathore v. State of M.P. reported in 1990 SCC (L&S) 50***
- (ii) ***Administrator of Union Territory of Daman and Diu and others Vs. R.D. Valand - 1995 Supp(4) Supreme Court Cases 593***
- (iii) ***Union of India & Ors. v. M.K. Sarkar reported in (2010)2 Supreme Court Cases 59***
- (iv) ***Union of India & Ors. v. A. Durairaj reported in JT 2011 (3) SC 254***

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13. Recently in the case of **Union of India & Ors. v. A. Durairaj** reported in **JT 2011 (3) SC 254**, the Hon'ble Apex Court has held as under:-

*Re: Question(i)*

12. Section 21 of the Administrative Tribunals Act, 1985 prescribes the limitation for approaching the Tribunal in this case the medical examination of the Respondent and the non-promotion as ad hoc ASTE were in the year 1976. The Respondent accepted the diagnosis that he was colour blind and did not make any grievance in regard to his non-promotion. On the other hand, he attempted to get treatment or correction contact lenses from USA (to aid the colour blind to distinguish colours correctly). On account of the non challenge, the issue relating to his non-selection in 1976 attained finality and the same issue could not have been reopened in the year 1999-2000, on the ground that medical tests conducted in 1998 and 2000 showed him to be not colour blind.

13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage of effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same, and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This Court had occasion to examine such situations in *Union of India v. M.K. Sarkar* (JT 2009 (15) SC 70: 2010(2) SCC 58) and held as follows:-

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*"The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. Xxxxx*

*When a belated representation in regard to a 'stale' or 'dead' issue dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviewing the 'dead' issue or time barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extended the limitation. Or erase the delay and laches.*

*A Court or Tribunal before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be legal position and effect."*

*14.1 We are therefore of the view that the High Court ought to have affirmed the order of the Tribunal dismissing the application of the Respondent for retrospective promotion from 1976, on the ground of delay and laches.*

14. Since we are dismissing the Original Application on the ground of delay, therefore, we are not touching the merits of

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the case. Accordingly, the Original Application dismissed on the ground of delay and laches. No order as to costs.

*J. Chandre*

Member (A)

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Member (J)

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