

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
BENCH, ALLAHABAD

(This The 22 Day of December, 2011)

Hon'ble Mr. Justice S.C. Sharma, JM  
Hon'ble Mr. Shashi Prakash, A.M.

Original Application No. 768 of 2007  
(U/S 19, Administrative Tribunal Act, 1985)

Chintamani Joshi aged about 62 yeas, S/o Late S.M. Joshi,  
Resident of 41/2C.Y. Chintamani Road Near Priti Nursing  
Home, George Town, Allahabad.

..... Applicant

By Advocate: Shri Swayamber. Lal

Versus

1. Union of India through Defence Secretary, Ministry of Defence, South Block, New Delhi 110011.
2. The Director General E.M.E. (E.M.E. Civ), Army Headquarters, D.H.Q. P.O. New Delhi 110011.
3. Commander, Headquarters, Base Workshop Group E.M.E. Meerut Cantt. (U.P.).
4. Officer Incharge E.M.E. Records, E.M.E. Records Office, Secunderabad - 21.
5. Commandant E.M.D. Army Base Workshop, Allahabad Fort- 211005.

..... Respondents

By Advocate: Shri P.D. Tripathi

*Shri P.D. Tripathi*

## ORDER

(Delivered by Hon'ble Mr. Justice, S.C. Sharma, Member -J)

1. Instant O.A. has been instated for following relief/s:-
  - a. To issue, a writ order or direction in the nature of certiorari to quash the orders dated 7<sup>th</sup> Nov. 2005 passed by Respondent No.4 and communicated by their letter dated 7<sup>th</sup> Apr. 20076 through respondent No.5 letter dated 27<sup>th</sup> Apr. 2007. (Annexure A-1 to Compilation No.1).
  - b. To issue a writ, order or direction in the nature of mandamus commanding the respondents to grant the seniority over the Respondent No.6 from 1.1.1968 and revise the dates of promotion of the applicant as Dtmn Grade III from 1.1.168, senior Dtmn from 1.9.1971 Head Dtmn. From 21.2.1983.
  - c. To, issue further directions to pay the arrears of pay and allowances on account of revision of promotion from 1.1.1968 onwards upto 31.5.2005 and the pensionary benefits be revised from 1.6.2005 and arrears be paid to him along with 18% interest from the dates of due amount to the date of actual payment.
  - d. To issue another writ, order or direction as deem fit and proper in the circumstances of the case.
  - e. To award the cost of application in favour of the Applicant.

2. The facts of the case are summarized as under:-

- (i) It has been alleged by the Applicant the he was appointed as Civil Tracer in EME Department under the Ministry of Defence on 24.5.1963 under the provisions of Recruitment Rules prevailed<sup>were</sup> —

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at that time. Thereafter, he was promoted to Draughtsman Grade IV on 1<sup>st</sup> May 1966. The post of Draughtsman IV was re-designated as Tracer from 24<sup>th</sup> May 1969 on placing the grade of Four Grade Structure. Thereafter, the applicant was promoted to Draughtsman Grade III on 04<sup>th</sup> Nov. 1970. The post of Draughtsman Grade III is a promotional post upto 75% from Draughtsman Grade IV (Tracer being re-designated) and 25% by direct recruitment. The post of Tracer is a post to be filled up by surpluses and deficiencies scheme failing which by direct recruitment. Draughtsman Grade III is to be promoted to Draughtsman Grade II under the Recruitment Rules.

(ii) One Shri Ratan Lal was appointed as Draughtsman (in lieu of combatant) on 14.07.1964 in XI Corps Signal Rest., and after becoming surplus from XI Corps Signal Rest. he was adjusted as Tracer in Air Force Flying College Jodhpur on 15.03.1965. He was again declared surplus from Air Force Flying College Jodhpur and was adjusted as Draughtsman Grade III in 507 Army Base Workshop Kanhinara in EME Department instead of adjusting him as a Tracer on 1.1.1968. Following chart shows the position of the posting and promotion of the Applicant as well as Shri Ratan Lal, which reads:-

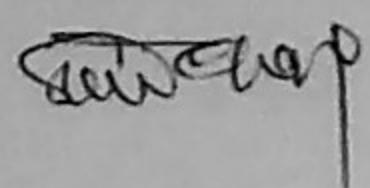
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C.M. Joshi (Applicant)		Rattan Lal (Respondent No.6)	
24.5.1963	Appointed as Tracer	14.7.1964	Appointed as Dfmn. In lieu of Combatant in XI Corps Signal Rest.
1.5.1966	Promoted as Dtmn IV	15.3.1965	Absorbed as Tracer in Air Force Flying College Jodhpur.
24.5.1969	Dtmn IV redesignated as Tracer again under four Grade Structure.	1.11.1968	Absorbed as Draughtsman III in EME Department instead of Tracer in 507A-B. W/s Kautinara under surpluses and adjustment scheme.
4.11.1970	Promoted to Dtmn. II	1.9.1971	Promoted to Senior Dtmn.
1.2.1974	Promoted to Senior Dtmn.	21.2.1983	Promoted to Head Dtmn.
18.2.1986	Promoted to Head Dtmn.	10.10.2001	Promoted to Head Dtmn.
4.10.2001	Promoted to Chief Dtmn.		

(iii) The Seniority Role of Draughtsman was circulated vide letter dated 2/8 Feb, 2000 showing the position as on 1.1.2000 and from this Seniority Role, the applicant came to know that

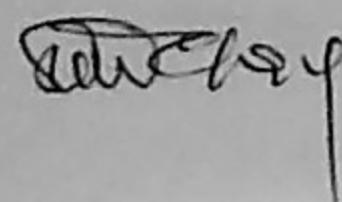
*R. Joshi*

when Rattan Lal was appointed as Tracer on 15.03.1965 then how he has become senior to the applicant. He sought the details of Respondent No.6 from his service documents and on verification of his service document it was found that he was wrongly and illegally adjusted as Draughtsman III in the EME Department on 1.1.1968 when he was declared surplus. The application was moved by the applicant to the Respondent No.4 on 14.9.2000 to correct the Seniority Role by making him senior to the respondent No.6. Arbitrary reply was given to the application of the Applicant. It has been alleged by the Respondents that Applicant was appointed as Tracer on 24.05.1963 and whereas, Respondent No.6 was appointed as Tracer on 14.07.1964 and in this manner the applicant is senior to the Respondent No.6. The application of the Applicant was referred to Respondents for giving suitable reply but the Respondent No.4 did not consider the case of the applicant and express their inability to correct the Seniority Role of the Applicant at this stage in absence of old records. It was stated by the Respondent No.5 that the applicant is senior to the Respondent No.6 and also stated that the post of Draughtsman Grade III is promotional post. Certain factual inquiries were also made in this regard. But nothing was done by the Respondents on the application of the applicant and thereafter an Appeal was filed



to the respondent No.2 for correction of the seniority Role. The respondent No.3 vide letter dated 24.11.2003 stated to the respondent No.5 that decision in this connection had also been communicated to the respondent No.5, but nothing has been done by the Respondents in spite of sending several representations/application in this connection.

3. Respondents have contested the case and filed Counter Reply and denied from the allegations made in the O.A.. It has, further, been alleged by the Respondents that the O.A. is highly belated and it has been filed after lapse of more than 1 - ½ years of the period of limitation as prescribed in Section 21 of the Administrative Tribunals Act, 1985. In the Counter Reply numbers of judgments have been cited in support of contention of the Respondents. It has also been alleged that Hon'ble Supreme Court has held that in delay and laches on the part of the applicant to approach this Tribunal by itself is a ground to refuse the relief irrespective of the matter of the claim of the applicant. It has further been alleged that the applicant (retired) was appointed as Tracer on 24<sup>th</sup> May, 1993 as per the Recruitment Rules. Thereafter, promoted as Draughtsman Grade IV on 1<sup>st</sup> May 1966 (re-designated as Tracer on 24.05.1969) again promoted to



Draughtsman Grade III on 04.11.1970 and further promoted as Senior Draughtsman on 01.02.1974 thereafter promoted to Head Draughtsman on 18.02.2008 and Chief Draughtsman on 04.10.2001. The applicant retired after superannuation on 31.05.2005. That the applicant has compared his seniority with the respondent No.6, Shri Rattan Lal, who was appointed as Civil Draughtsman in lieu of Combatant on 14.07.1964 in the pay scale of Draughtsman III Rs.150 - 240/- as per the Recruitment Rules issued by the Army Headquarters. Under the scheme of adjustment of surplus and deficiencies Civilian personnel serving in the Defence Installations wherein declared surplus, are eligible for alternative appointments during their notice period against available deficiencies in the same or equivalent grade in the same or another Defence installation. If vacancies in the same or equivalent grade are not available, they are adjusted in lower posts in the same or another Defence Installation. Respondent No.6 was already appointed in the Pay Scale of Draughtsman Grade III Rs.150 - 240/- and transferred to other establishment only to adjust surplus/deficiencies, on availability of vacancy of Draughtsman Grade III Rs.150 - 240/- w.e.f. 01.01.1968. He was posted to 507 Army Base Workshop at Kankinara as per the above Policy. On arrival of 507 Army Base Workshop, seniority of

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respondent No.6 was fixed in Grade III in the Corps of EME w.e.f. 1.1.1968 and further promoted in the Corps of EME on the basis of seniority cum merit, whereas the applicant was still in Grade IV/Tracer as on 1.1.1968 and the applicant illegally claiming seniority above the respondent No.6 which is unjustified and not tenable. No injustice has been done with the applicant. The issue of seniority has been raised after 40 years and also claimed the effective pay and allowances from the year 1964. There is no Law and Rule to provide this relief and the O.A. is *prima facie* lacks merits and is liable to be dismissed.

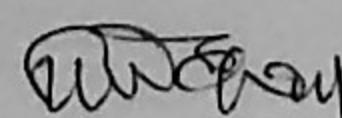
4. On behalf of the Applicant Rejoinder Reply has also been filed which shall be discussed at the relevant place.

5. We have heard Shri Swayamber Lal, Counsel for the applicant and Shri P.D. Tripathi, Counsel for the Respondents and perused the entire facts of the case.

6. At the outset, counsel for the respondents raised preliminary objection regarding maintainability of the O.A. and it has been alleged that in view of Section 21 of the Administrative Tribunals Act, 1985 the O.A. must be filed within a period of one year from

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the date when the case of action occurred and further six months time also be allowed in making representation. But the present O.A. is highly belated. That the applicant has claimed seniority over ~~to~~ Shri Rattan Lal, Respondent No.6, later on deleted and Shri Rattan Lal was appointed, as per averments of the O.A., on 14.07.1964 as Draughtsman in lieu of Combatant in XI Corps Signal Rest. Shri Rattan Lal was also become surplus from XI Corps Signal Rest and was adjusted as Tracer in Air Force Flying College Jodhpur on 15.03.1965 and again he was declared surplus from Air Force Flying College Jodhpur and was adjusted Draughtsman Grade III in 507 Army Base Workshop Kankinara in the EME Department instead of adjusting him as a Tracer on 1.1.1968 and that respondent No.6 Shri Rattan Lal was illegally adjusted as Draughtsman Grade III. Hence, it is an admitted fact that Respondent No.6 Shri Rattan Lal was appointed as Draughtsman in lieu of combatant on 14.07.1964 in XI Corps Signal Rest., whereas, the applicant was appointed as Tracer on 24.05.1963. The applicant has also given the promotional avenue of the Draughtsman. It is own averments of the applicant that he was promoted from Tracer to Draughtsman Grade IV on 1.5.1966, whereas the respondent No.6 Shri Rattan Lal was out rightly appointed as Draughtsman on 14.07.1064 and the



Draughtsman Grade III is to be appointed as Draughtsman Grade II then as Draughtsman Grade- I and the applicant was initially appointed as Tracer, later on he was promoted as Draughtsman IV and the post of Draughtsman IV was re-designated as Tracer on 24.05.1969 on placing the grade on Four Grade Structure. On 4.11.1970, the applicant was promoted as Draughtsman Grade III and thereafter he was also given promotion. According to the applicant, Shri Rattan Lal was absorbed as Tracer in Air Force Flying College Jodhpur on 15.03.1965 and on 1.11.1968 absorbed as Draughtsman III in the Corps of EME. Thereafter, the applicant was also promoted on 1.2.1974 to Senior Draughtsman and Rattan Lal was promoted as Senior Draughtsman on 1.9.1971, thereafter promoted as on 21.2.1983 and thereafter promoted as Chief Draughtsman on 10.10.2001, whereas the applicant was promoted later on to Shri Rattan Lal, hence the cause of action accrue in favour of the applicant in the year 1964 - 65.

7. It has been alleged by the applicant that respondent No.4 circulated a seniority Role of Draughtsman vide letter dated 2/8.2.2000 showing the position as on 1.1.2000. From this Seniority Role, the applicant came to know about the position of

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Rattan Lal that he was appointed as Tracer on 15.3.1965. It has been argued by learned counsel for the applicant that it was not information to the applicant from earlier and in the year 2000 applicant came to know that illegal appointment was given to Rattan Lal as Tracer on 15.3.1965. It is admitted fact that applicant was appointed as Civil Tracer in EME Department under the Ministry of Defence on 24.5.1963. On 1.1.1968, Shri Rattan Lal was absorbed as Draughtsman III in EME Department and in the year 1965 Shri Rattan Lal was absorbed as Tracer in the Air Force. And on being surplus, the he was adjusted in the EME Department as Draughtsman III. It has been argued by learned counsel for the applicant that Shri Rattan Lal was wrongly absorbed as Tracer and thereafter absorbed as Draughtsman III in EME Department on 1.1.1968 and subsequent promotions are also illegal. But the cause of action accrue in favour of the applicant for challenging the order of promotion for appointment of Rattan Lal in the year 1964 - 65 or 1968 but the instant O.A. was filed in the year 2007 and on face of it, it appears that the O.A. is highly belated. Numerous judgments have been cited by learned counsel for the Respondents in support of his arguments, which are as follows:-

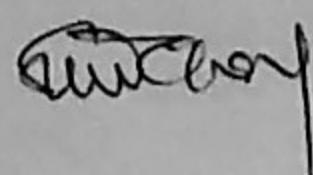
(i) AIR 1980 SC 1984 *Gian Singh v. High Court.*

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- (ii) (1997) 1 SLR 255 (SC) State of Orissa v. Pyarimohon
- (iii) 1989 (4) SCC 582 S.S. Rathore v. State of Madhya Pradesh
- (iv) 1996 SCC (L&S) 1488 State of Karnataka & Others v. S.N. Kotrayya & Ors.
- (v) JT 1992 (3) SC 322 Bhoop Singh v. Union of India & Ors.

In all the Judgments it has been held by Hon'ble Apex Court that the case is liable to be dismissed if it is belated. It has been held by Hon'ble Apex Court that "*successive representations would not suffice to condone inordinate delay*". '*That where the applicant comes to the Tribunal after a long lapse of time, the fact of his making representations thereafter cannot excuse his laches which has allowed other persons to acquire rights and interests which should not be disturbed.*' Moreover, the judgment of the Hon'ble Apex Court reported in JT 2011 SC 254 Union of India & Ors. V. A. Durairaj is relevant, in which the Hon'ble Apex Court held that:-

"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 to 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."

Moreover, Hon'ble Apex Court deprecated the tenancy of <sup>tenancy</sup> entertaining the time barred O.A. and deciding by giving a direction to the Respondents for deciding the representation of the Applicant. It will be material to reproduce the following portion of the Judgment of Hon'ble Apex Court, which reads:-

"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. 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 the legal position and effect."

8. Hence, in view of the Judgment of Hon'ble Apex Court, 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 and the Judgment of the Hon'ble Apex

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is fully applicable in the present O.A.. The cause of action arose in favour of the applicant in the year 1964, but the Applicant in spite of fact that he had justifiable grievance allowed the matter to become stale and approached the Court/Tribunal belatedly. The applicant remain sleeping over his right for more than 40 years, hence he is not entitled to re-agitate the matter further.

9. It is a fact that the applicant was appointed as Draughtsman Grade IV in lieu of combatant on 01.05.1966 in the pay scale of Rs.150 - 240/- as per Recruitment Rules. Under the scheme of adjustment of surplus and deficiencies Civilian personnel serving in the Defence Installations wherein declared surplus, are eligible for alternative appointments during their notice period against available deficiencies. And the Respondent No.6 Shri Rattan Lal was appointed on 14.7.1964 in XI Corps signal Rest.. And after becoming surplus he was adjusted as Tracer in Air Force Flying College Jodhpur on 15.03.1965. He was again declared surplus and adjusted as Draughtsman Grade III in 507 Army Base Workshop Kankinara in the EME Department as per above policy. And on arrival of 507 Army Base Workshop, seniority of the Respondent No.6 was fixed in Grade of Draughtsman III in EME Department on 1.1.1968. The further promotion in the Corps of

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EME was given and on the basis of seniority the applicant was still in the grade of IV/Tracer as on 1.1.1968. The applicant is claiming the seniority over the Respondent No.6 because the Respondent No.6 had already been promoted in the Grade of Draughtsman III w.e.f. 1.1.1968.

**10.** The comparative Chart of Applicant as well as Respondent No.6 has also been given by the Respondents. We have already alleged above about the comparative Chart hence there is no necessity to reproduce the same again.

**11.** Under these circumstances, it is evident that Respondent No.6 was senior to the applicant and the applicant <sup>was</sup> ~~was~~ not challenged the same for the last 40 years. That vide order dated 4.1.2001, the amendment has been made of the Rules, which reads as under:-

	Column No.4	Column No.5
For	14.7.1964 (Tracer)	01.01.1968 (Draughtsman) 01.09.1971 (Senior Draughtsman) 21.02.1983 (Head Draughtsman)
Read	14.07.1964 (Civilian Draughtsman in lieu of combatant)	01.01.1968 (TOS) 01.09.1971 (Senior Draughtsman) 21.02.1983 (Head Draughtsman)

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This fact also shows that Respondent No.6 is senior to the applicant.

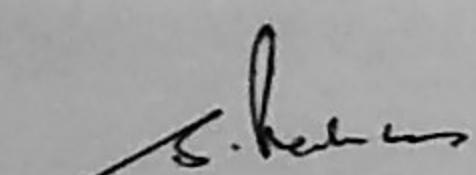
**12.** Learned counsel for the applicant cited the Judgment of Hon'ble Apex Court reported in 1996 (2) 676 Administrative Tribunal Judgments; Joyachan M. Sebastian v. The Director General & Ors. It has been held by Hon'ble Apex Court in the judgment that "*It is now settled legal position that on abolition of the post, the holder of the post has no right to continue on the post. Instead of retrenching him as a surplus, the Government have accommodated him in the available vacancy and, therefore, it must be deemed to be a fresh appointment for the purpose of seniority.*" Learned counsel for the applicant argued that Shri Rattan Lal was declared surplus then fresh establishment should have been given to him instead of adjusting him as Draughtsman Grade III but we have stated above that it was done in the year 1965 and thereafter in the year 1968 and applicant keep mum since then, hence now the applicant is not entitled to re-agitate the matter.

**13.** For the reasons mentioned above, we are of the opinion, that as per the Rule position the applicant kept sleeping for about

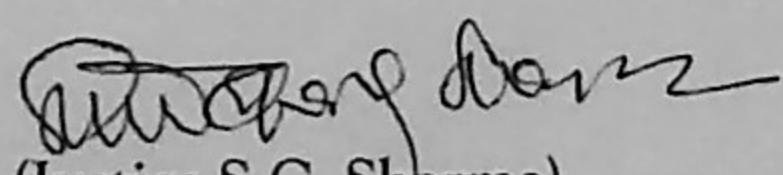
*W.D.W.P.*

40 years from the date when the cause of action accrued in his favour. The matter was not agitated by him at that time and the argument of counsel for the applicant cannot be relied that cause of action arose in his favour to file the O.A. in the year 2000 when Seniority Role of Draughtsman was circulated. But the applicant cannot show ignorance about the adjustment of promotion of Shri Rattan Lal in the year 1965 and afterwards. The respondent No.6 as well as the Applicant are working in the same organization but the applicant allowed the matter to become stale/dead and now applicant cannot re-agitate the matter further. O.A. lacks merit and liable to be dismissed.

14. Accordingly, the O.A. is dismissed with no order as to costs.

  
(Shashi Prakash)  
Member - A

Sushil

  
(Justice S.C. Sharma)  
Member - J