

Reserved on 18.01.2013

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 442 of 2008

Allahabad this the 6th day of Feb., 2013

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./H.O.D.
Hon'ble Ms. Jayati Chandra, Member-A**

Durga Charan, aged about 57 years, son of Late Heera Lal, Resident of D.H.-1(4)
Veerangana Nagar, Medical College, Jhansi - 284128.

Applicant

By Advocate: Mr. T.S. Pandey

Vs.

1. Union of India through General Manager, North Central Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Chief Mechanical Engineer, North Central Railway, Allahabad.
4. Senior Divisional Personnel Officer, North Central Railway, Jhansi.

Respondents

By Advocate: Mr. A.K. Sinha

ORDER

Delivered by Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./H.O.D.

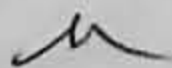
The applicant has filed this O.A. for the following relief(s): -

(a) *Issue a writ, order or direction in the nature of certiorari quashing the order dated 08.02.2008 (Annexure A-1) with the further order and direction in the nature of mandamus commanding the respondents to issue the promotion order of the applicant w.e.f. 01.03.1993 on the post of Senior Section Engineer in the pay scale of 7450-11,500/- alternatively step up of the applicant's pay at par with his juniors w.e.f. 22.01.1998 with all consequential benefits of arrears etc. within a stipulated period of time whatever is fixed by this Hon'ble Tribunal.*

(b) *Issue such other suitable order or directions as might be found just and proper in the fact and circumstances of the case.*

(c) *Award the costs of this Original Application in favour of the applicant, throughout."*

2. The facts of the case, in brief, are as follows: -



That the applicant is a Diploma holder in Engineering. He was initially appointed in the railway department on the post of TXR (DH) on 04.09.1973. He was promoted on the next higher grade to the post of HTXR on 20.07.1982. He was further promoted on the post of Carriage Foreman on 10.04.1989. His next promotion, according to channel of promotion, was due on 06.05.1994 under restructuring scheme dated 01.01.1993 issued by the Railway Board on the post of Senior Section Engineer in the pay scale of ₹7450-11,500/-. Seniority list was issued on 08.04.1996 in which the name of applicant was mentioned at serial No. 9 and of his juniors at serial No. 10, 11, 12 and 13 respectively. On 13.06.1996, applicant submitted a representation for considering his up gradation/promotion w.e.f. 01.03.1993. The respondents instead of deciding his representation, recorded an adverse remark in his service record for the year ending 31.03.1996 vide order dated 02.05.1997, which was communicated to him on 03.05.1997. The applicant made a representation before the Senior Divisional Mechanical Engineer against the aforesaid adverse remark on 03.05.1997 itself. His representation was not decided rather the respondent No. 2 issued promotion order dated 22.01.1998 on the post of Senior Section Engineer (for short SSE) in the pay scale of ₹7450-11,500/- from the pay scale of ₹6500-10,500/- by promoting juniors to the applicant. The representation made by the applicant on 03.05.1997 for expunging the adverse remarks in his A.C.R. was illegally rejected on 20.04.1998. The applicant preferred an appeal before the competent Appellate Authority on 04.12.2007 but the same was rejected mentioning therein that no such appeal lies to the authorities against the order dated 20.04.1998. The applicant was promoted on the post of SSE in the pay scale of ₹7450-11,500/- on 11.12.2001 but this promotion was not with retrospective effect from 22.01.1998 when the applicant's juniors were promoted. The applicant also submitted a representation before the



superior authorities for stepping up of his pay and promotion as well on the post of SSE in the pay scale of ₹7450-11,500/- on 10.01.2002, with the reminder on 26.02.2002. Further representation in this connection was submitted on 24.04.2002 and last representation, in this regard, was submitted on 07.10.2002. Ultimately, the applicant submitted his representation on 04.12.2007, which was rejected by the impugned order dated 08.02.2008. Hence, the present O.A. was filed before this Tribunal.

3. The respondents have filed a Written Statement supported with an Affidavit denying the allegations made in the O.A. mainly relating to high handedness of the respondents, alleging that the O.A. moved by the applicant is highly barred by time. The applicant was awarded adverse remarks in his service record for the year ending 31.03.1996 against which he submitted a representation which was also rejected. Since he was undergoing punishment at that time relating to deduction of his pay from ₹8100/- to ₹6500/- for a period of three years vide Senior D.M.E. letter No. JHS/M/183/CNW/DAR/3 dated 27.11.1998. Though his name was also included in the proposal put up for promotion of CWS/SSE grade ₹7450-11,500/- but he could not be promoted on account of the charges pending against him under SF-5. Through office letter No. CON/M 59/ACR dated 25.11.1998 the applicant was advised that no further appeal in this regard is maintainable. Despite the above order, purposely the applicant moved another representation on 04.12.2007 and the same was rejected as per the provisions contained in para-8.3 of Master Circular, as it was time barred. It is further submitted by the respondents through supplementary Counter Affidavit that due to major penalty charge sheet (SF-5) dated 17.07.1997 pending against the applicant he could not be promoted as SSE on 22.01.1998. It is further alleged that another charge sheet (SF-5) was also pending against the applicant in the year 1998 through which a



major punishment was given to the applicant by reduction of his pay from ₹8100/- to ₹6500/- for a period of three years. Accordingly, it is alleged that the Original Application of applicant deserves to be dismissed.

4. The applicant has placed reliance on various documents filed on record by way of annexure-1 to annexure-15 including the copy of impugned order dated 08.02.2008 passed on the representation of applicant, copy of seniority list published by the respondents, promotion orders of juniors of the applicant as well as of the applicant, copy of various representations made by the applicant from time to time to the respondents regarding his promotion and stepping up of his pay, and the copy of guidelines issued by the Ministry of Railways for awarding punishment etc.

5. On the other hand, the respondents have placed reliance on annexure CA-1 to annexure CA-4 filed in support of their contention including the Photostat copy of standard form of charge sheet filed against the applicant, Photostat copy of reply given by the Chief Legal Assistant, Jhansi, copy of extract of Master circular RBE No. 89/2005 issued by the Railway Board and a copy of the Order delivered by a Single Bench of this Tribunal in O.A. No. 992 of 2008.

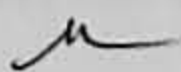
6. The Counter Affidavit, Rejoinder Affidavit, Supplementary Counter Affidavit and Supplementary Rejoinder Affidavit have already been exchanged between the parties.

7. We have heard the learned counsel for the parties and perused the documents on record.

8. It is mainly contended by learned counsel for the applicant that the respondents have committed manifest error of law apparent on the face of record in passing the impugned order dated 08.02.2008 by not



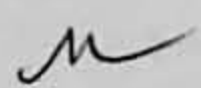
considering the points and prayer made by the applicant in his representation dated 04.12.2007. The aforesaid impugned order is non-speaking order passed without assigning any reason. The respondents have committed gross violation of Article 16 (1) of the Constitution of India. It is also submitted that the applicant should have been promoted at least from the date his juniors were promoted i.e. 22.01.1998. The alleged adverse remarks should have been expunged by the authorities in view of the representation made by the applicant and his prayer for stepping up of his pay should have been allowed. On the other hand, learned counsel for the respondents has vehemently rebutted the above contention of applicant's counsel alleging that the O.A., filed by the applicant, is highly time barred. He has got no cause of action from the date he seeks limitation for filing this O.A. There is no application, filed by the applicant, for condonation of delay in filing the O.A. Accordingly, the O.A. should be dismissed on the ground of limitation alone. To substantiate his contention, he has drawn attention of this Tribunal on the fact that the representation made by the applicant for expunging the adverse remark, made against him, was rejected on 20.04.1998 itself. The applicant had no legal right to agitate the same fact by his application dated 04.12.2007. It has been moved solely with a view to gain limitation for filing the present O.A. At the most he could have filed the O.A. against the said order dated 20.04.1998 within one year i.e. up to 19.04.1999. Thus, the present O.A. is barred by limitation by nine years. Further, it has been contended that the request of applicant for stepping up of his pay from 22.01.1998 was also rejected in 1998 itself. In that way, the prayer for stepping up of his pay is also barred by limitation. He cannot get limitation for cause of action from 08.02.2008 as simply moving of representation does not give time to the applicant to file the present O.A. The period of limitation cannot be stretched on the basis of order



passed on 08.02.2008. In reply to this contention, learned counsel for the applicant has simply argued that in the Written Statement, filed by the respondents earlier, the point of limitation has not been raised. This argument has got no force in view of Supplementary Counter Affidavit filed by the respondents in which specifically the factum of limitation has been raised by showing details of the representations given by the applicant. In order to appreciate the contention of parties' Counsel on the point of limitation, a perusal of Section 21 of the Administrative Tribunals Act, 1985 is relevant. It 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.*
- (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 sub-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."*

A bare perusal of the aforesaid provisions shows that if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period, delay in filing the O.A. may be condoned. But, in the present case there is no application at all for condonation of delay. Relying upon the aforesaid provisions, learned counsel for the respondents has argued that in absence of any application for condonation of delay, the delay of nine years in filing the



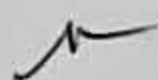
present O.A. cannot be condoned and the O.A. should be dismissed on this score. Learned counsel for the respondents has placed reliance on the observations made by Hon'ble Apex Court in the case of '*Ramesh Chand Sharma vs. Udham Singh Kamal and others* 2000 Supreme Court Cases (L&S) 53' in which the Hon'ble Apex Court has observed as under: -

"On a perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to first respondent to make proper application under Section 21 (3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the OA filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21 (1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled (see Secy. To Govt. of India v. Shivram Mahadu Gaikwad 1995 SCC (L&S) 1148).

In the light of above observation of the Hon'ble Apex Court and considering the facts and circumstances of the present O.A., we are of the view that the O.A. presented by the applicant after nine years in absence of any application for condonation of delay, is highly barred by time and the same deserves to be dismissed on this ground alone.

9. As regards the contentions of applicant that his representations were not decided by the respondents and ultimately his representation dated 04.12.2007 was rejected by the respondents, he has cause of action to file the present O.A., the respondents' Counsel has rebutted this contention alleging that only filing of representation after representation does not give fresh cause of action to the applicant. He has placed reliance on '*C. Jacob vs. Director of Geology and Mining and another* (2008) 10 Supreme Court Cases 115' in which the Hon'ble Apex Court has observed as follows: -

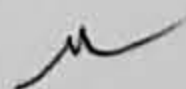
"Every representation to the Government for relief, may not be replied on merits. Representation relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representation unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot create a fresh cause of action or revive a stale or dead claim."



In view of the above observations of the Hon'ble Apex Court when we consider the present case, we find that the representation made by the applicant in the year 1998 itself was rejected by the superior authorities confirming the adverse remarks given to him. The applicant has again moved representation dated 04.12.2007 which was legally not tenable in the eye of law and only because he has filed representation dated 04.12.2007 and it has been rejected by the respondents on 08.02.2008, he does not get a fresh cause of action to file this O.A.

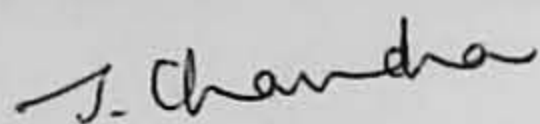
10. Lastly learned counsel for the applicant has argued that since the juniors to the applicant were promoted on 22.01.1998 on the post of SSE in the pay scale of Rs.7450-11,500/- from the pay scale of Rs.6500-10,500/-, the applicant deserves stepping up of his pay from 22.01.1998 if not from 1993. This contention has also suitably been replied by the Respondents' Counsel relying upon the provisions contained in Railway Board's circular No. R.B.E. No. 89/2005 relating to 'Promotion of persons undergoing a penalty' through which the position of such persons has been clarified. The relevant paragraph makes the position clear, which reads as under: -

2. Ministry of Railways have since considered the question of pay fixation and date of commencement of eligibility service in such cases, in the light of clarification issued by the Department of Personnel & Training, and have decided that since the promotion is to take effect only from a date subsequent to the expiry of the currency of the penalty, the employee would be entitled to pay fixation in the promotional grade with effect from the date of actual promotion only. Even if a person junior to him in the panel is promoted earlier, it will have no bearing on the pay to be allowed on promotion to the employee on whom a penalty was imposed and there shall be no stepping up of his pay with reference to his junior. Similarly, as the employee undergoing penalty is not to be promoted during the currency of the penalty, the eligibility service in the promotional grade for further promotion shall also commence only from the date of actual promotion and in no case it may be related even notionally to the date of promotion of the junior in the panel. However, his late promotion will not have any affect on his seniority which would be fixed according to his position in the panel on the basis of which he is promoted on the expiry of the period of currency of the penalty."

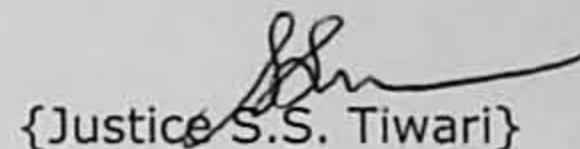


In the light of specific provisions made in the aforesaid para of the Railway Board's circular, we are of the view that the applicant has got no case on this score also. It is pertinent to mention here that he was awarded punishment in the year 1998 and in the year 2001 he was promoted to the post of SSE i.e. after expiry of the period of punishment.

11. In view of the aforesaid facts, circumstances and discussions, we are of the opinion that the applicant has got no case. Accordingly, the O.A. is hereby dismissed. No order as to costs.



[Ms. Jayati Chandra]
Member - A



{Justice S.S. Tiwari}
Member - J

/M.M/