

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(16)

O.A. NO. 311 of 1989

~~Text No.~~

DATE OF DECISION 2nd September 1997

R. N. Gandhi

Petitioner

Mr. M. S. Trivedi

Advocate for the Petitioner (s)

Versus

Union of India & another

Respondent

Mr. N. S. Shevde

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr.

V. Ramakrishnan, Vice Chairman

The Hon'ble Mr.

T. N. Bhat,

Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

R. N. Gandhi
1477, Nanivasan Sheri
Saraspur, Ahmedabad-18

Applicant
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Advocate: Mr. M.S.Trivedi

Versus

1. The Union of India (notice to be served through the General Manager (Est.), Western Railway, Churchgate Bombay).
2. The Chief Commercial Superintendent (Est.) Head Quarter Office Western Railway, Churchgate Bombay.

Respondents

Advocate: Mr. N.S.Shevde-

JUDGEMENT

IN

O.A./311 of 1989

Dated 2nd September'97

Per Hon'ble Mr. V.Ramakrishnan, Vice Chairman:

The applicant who retired as Chief Reservation Inspector in Western Railway w.e.f. 31.5.89 prays for upgradation of his seniority in the relevant cadre taking into account his officiating placement in the Inquiry-cum-Reservation Clerk's cadre from 31.7.1964.

2. The applicant joined Railway service as Assistant Coaching Clerk on 17.12.1954. He was promoted as Inquiry-cum-Reservation Clerk from 31.7.1974 on passing viva-voce test. He opted for the E.C. Branch in pursuance to the letter dated 26.3.65 which referred to the Railway Board's letter dated 29.2.64 and was stated to be absorbed as an Inquiry Clerk in July'64.

As the earlier post held by him as Assistant Coaching Clerk was taken to be ex-cadre post for the ECRC cadre the Railways took the view that he had to undergo a fresh selection process for change over to a new cadre. The Railways conducted a written selection test in 1966-67. He had appeared in such test and came out successful. He claims that he appeared for the written test under protest contending that as he had already cleared viva voce test earlier, there was no need for him to appear in the written test. The Railways decided that his regular appointment can take effect only when he passed the written test in August 1967. In early part of 1976, a seniority list was circulated by the Railway administration wherein his name figured at Sr. No. 51 in the cadre of Inquiry-cum-Reservation Clerk whereas one Smt. Athalye joined the ECRC Branch later than him and should be shown as his junior and that his seniority should be fixed above that of Smt. Athalye. It is seen from Annexure R-3 to the statement filed by the respondents which is a letter dated 13th September 1976 that he had represented on 30.7.76 and was also granted an interview by the General Manager on 1.9.76. He was told that he had been given seniority in ECRC cadre as per the procedure laid down by the Railway Board which required a selection to be held. As regards his comparison with Smt. Athalye he was informed that in her case her seniority was fixed according to an individual decision given by the Railway Board. It is also seen from Annexure R-2 letter dated 7.7.1973 that

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the Railway Board had informed the General Manager, Western Railway, that in view of the special circumstances in the case of Smt. Athale she might be permanently absorbed on the Reservation side.

Subsequently the official was promoted to the level of Chief Reservation Supervisor in the pay scale of Rs.550.750 w.e.f. 1.1.84. At this time Smt. Athale had been appointed to the next higher level of Chief Inquiry Reservation Supervisor in the scale of Rs.700-900 also from 1.1.84. The same is noticed from the integrated seniority list of reservation staff circulated vide Western Railway Headquarters office letter dated 8.10.85 as at Annexure R-6.

The applicant submitted a representation on 12th July, 1988 where he claimed that his seniority in the various levels in the hierarchy of ECRC should be determined from the date of his joining in 1964 as Inquiry Clerk and not from August 1967 after his passing the written test. He cited in this connection the case of Smt. Athale whom he says was given seniority from the date of joining the ECRC Branch. The applicant says that he has not received any reply to this representation. However, in their written statement, the respondents had contended that he was sent a reply on 23.2.90. He has filed the present O.A. seeking the relief for fixing his seniority from the date of his officiating placement in ECRC Branch i.e. from 31st July 1964.

3. We have heard Mr. M.S.Trivedi for the applicant and Mr. Shevde learned Standing Counsel for the Railway Administration.

4. Mr. Trivedi contends that the applicant has a right to get his seniority upgraded taking into account the date of his joining the ECRC Branch in July 1964. He says that the applicant had appeared in the subsequent written test under protest. He disputes the stand that persons holding ex-cadre posts earlier can be treated differently from those holding the cadre post. He refers in this connection to the judgement of the Bangalore Bench of the CAT in R. Karunanidhi vs. Divisional Railway Manager, 1997(1) SLJ (CAT) 112 wherein the Tribunal held that for taking a fifth chance in the test on own cost, an ex-cadre employee cannot be treated differently from a cadre employee, as no rule was shown to justify such different treatment. He also refers to the decision of the Gujarat High Court in SCA 929 of 1978, which emphasises that there can be no distinction in the matter of employment. He brings out that in the case of Jaishanker C. Pandya and Others vs. Union of India and others this Tribunal in TA/503 of 86 decided on 6.4.89 had deprecated adoption of ~~extra~~ adhocism by the Railways. He also refers to the decision of the Full Bench of the CAT in the case of K. George Verghese and others vs. Union of India and others) Full Bench CAT Vol. III- page 450. (It is, however, not clear as to how this case helps the applicant). He submits that the preference treatment given to Smt. Athale is discriminatory and affects the principle of equality. He contends that it/ was obligatory on the part of the

Railway Administration to have spelt out the special circumstances which justified differential treatment to Mrs. Athale. This has not been done. According to him, in the case of Smt. Athale seniority was counted from the date of her joining the E.C. Branch and the same benefit should be extended to the applicant. He relies on the decision of the Supreme Court in Principal King George Medical College vx.

Dr. Vishan Kumar Agarwal and another- AIR/1984/SC/221 (in para 16) that no public authority can pick and choose for receiving the benefit of relaxation of ~~xx~~ rules. He also refers to Mohd. Shujat Ali versus Union of India- AIR/1974/SC/1631 where the Supreme Court held that in matters relating to employment, there can be no discrimination unless it is based on reasonable classification. He also relies on the decision of the Supreme Court in case of ~~RA~~ Ramana Dayaram Shetty vs. International Airport Authority of India and Others- AIR/1979/SC/628- where also the Apex Court emphasised the need for following the doctrine of equality by public authorities. In view of this, ~~thexRkibunakxstekx~~ Shri Trivedi states that the Railway administration cannot deny to the applicant the benefit which had been given to Mrs. Athale as such an action would be discriminatory. The counsel refers to the aspect of delay. According to him, the claim is not defeated on account of limitation. The applicant was informed in 1976 about rejection of his claim for seniority. The Union had taken up the matter

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in 1980 and subsequently when the seniority list was published which was circulated on 8.10.85, he had represented on 12th July 1988. The applicant claims that he had not got any reply to this representation, and he approached this Tribunal in 1989. Mr. Trivedi submits that even according to the respondents while they deny having received the representation of 12th July 1988 they admit that they have sent a reply only on 23.2.90 i.e. after filing of the present O.A. He contends that O.A. had been admitted by an order dated 1.2.90 and the respondents had not resisted the same on the ground ~~thekk~~ of limitation. It is Mr. Trivedi's contention that the applicant has since retired and while regulating his entitlements, the benefit of financial arrears on account of upgradation of the seniority may be restricted to some period prior to the date of filing of this application.

5. Mr. Shevde the learned standing Counsel forcefully opposes the O.A. He says that the O.A. is badly delayed as it seeks to reopen settled matters. This has been highlighted by the respondents in their reply statement particularly in para 2 thereof. He also argues that the applicant's case was dealt with according to the prescribed procedure and in terms of provisions contained in Railway Board circular of 29.2.1964. As per this letter, he had to undergo a written test for regular appointment in the new cadre. He also does not agree that the applicant has been discriminated against. He says that when the applicant had alleged preferential treatment to Smt. Athale, it is incumbent on him to have

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brought out the facts in her case which he had not done and he has not been able to substantiate that his case stands on all fours with that of Smt. Athale. He cannot therefore take the plea that he should get the same treatment as her. Discrimination can arise only among equals and the applicant has not established that Smt. Athale's case is identical. For these reasons and more particularly for the delay in filing the O.A. Mr. Shevde states that the O.A. deserves to be dismissed.

6. We have carefully considered the statements of both the sides.

It is clear from the records that the applicant joined the E.C.R.C. Branch in July 1964. He had taken the written test in 1967. As regards Smt. Athale's case, we find from the copy of the letter dated 7.7.1973 Annexure R-2 on the subject of regularisation of promotion of Smt. S.S. Athale Clerk working as Enquiry-cum-Reservation Clerk that in view of the special circumstances, the Railway Board had agreed that she might be permanently absorbed on the reservation side. It is also seen that the seniority list of the E.C.R.C. was circulated in early 1976. In the list forwarded by letter dated 4.3.1976, the applicant's name was shown at Sr. No. 51 whereas that of Smt. Athale at Sr. No. 34. The applicant seems to have represented against this by his letter dated 30.7.76. He was also granted an interview by the General Manager on 1.9.76. On 13.9.76, he was told that his seniority had been

correctly fixed and that in the case of Smt. Athale, seniority has been assigned according to the individual decision given by the Railway Board in her case. The applicant submits that one more representation in 1979 was forwarded to the Railway Board by the local office for sympathetic consideration. Obviously, it met with no favourable response. On 8.10.1985 a new seniority list of Non-gazetted staff in the cadre of Inquiry-cum-Reservation Clerk cadre- staff was circulated. This is a much later development as by this time the applicant had been promoted as Chief Reservation in the scale of Rs.550-750 Supervisor/whereas in the Smt. Athale had gone further ahead ^{as} Chief Enquiry Reservation Supervisor in the scale of Rs.700-900. It has been contended by the Railway Administration that periodical seniority list was published from time to time of Non-gazetted staff and this has not been disputed. The applicant says that he had filed a representation on 12th July 1988. This is denied by the respondents in their reply statement in which they say that they had sent a reply to him on 23.2.90 presumably after the O.A. was filed. It is thus clear that there are wide gaps after September 1976 when the applicant was told that his seniority as Reservation Clerk could not be upgraded. He seems to have submitted a representation in 1979 but when nothing transpired, he had not taken further steps. He says he submitted a representation in 1988. Even if he had done so, there is nothing to indicate as to what he had been doing in the meantime. It is settled law that repeated representations are of

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no avail when the administration had already taken a stand on the earlier representation.

7. In the light of the above background, we are of the view that what the applicant seeks to do is to unsettle a case which had remained settled for a number of years. He cannot be permitted to do so. The Hon'ble Supreme Court had ^{clearly enunciated} ~~already enumerated~~ that seniority matters cannot be reopened after a lapse of a number of years. We may in this connection refer to the observations of the Apex Court in the case of P. Sadashiv Swamy vs. State of A Tamil Nadu AIR 1974 SC 2271. We may reproduce the Headnote which reads as follows:-

"(A) Where a Government servant slept over the promotions of his juniors over his head for fourteen years and then approached the High Court with writ petition challenging the relaxation of relevant rules in favour of his juniors, the writ petition is liable to be dismissed in limine. Such an aggrieved person should approach the Court at least within six months or at the most a year of promotion of his juniors.

It is not that there is any period of limitation for the courts to exercise their powers under Art. 226, nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Art. 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters. Decision in W.P. and Appeal (Mad.), Affirmed (Para 2)".

In Maloom Lawrence Cecil D'souza vs. Union of India & Ors (Suppl. SCR 1975 page 409) Supreme Court had observed that:-

"The matter can also be looked at from another angle. The seniority of the petitioner qua respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 Rules. The said seniority was reiterated in seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our

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/fixation of his seniority qua respondents 4 to 26 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those

opinion, cannot be allowed to challenge the seniority list after a lapse of so many years. The fact that a seniority list was issued in 1971 in pursuance of the decision of this Court in Karnik's case (supra) would not clothe the petitioner with a fresh right to challenge the respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years. It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress.

Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public service ~~maxx~~ is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time".

In the case of K.R. Mudgal and others, vs.

R.P. Singh and Others, AIR 1986 SC 2086, the Supreme Court had referred to its earlier decision. We may extract part of the head note:-

" Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Govt. servants there would also be administrative complications and difficulties. A Govt. servant who is appointed to any post ordinarily should at least after a period of 3 ~~or~~ 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity".

In the case of G.C.Gupta and others vs. N.K. Pandey and Others, AIR 1988 SC 654 the Supreme Court reiterated ^{its} view. We may refer to the Head Note which reads as follows:-

" (C) Constitution of India, Arts. 226, 311- Laches-Seniority-Determination- Challenge as to- Inordinate delay and laches- Parties would be disentitled to relief under Art. 226".

The same view was taken by the Apex Court in the case of Govt. of Andhra Pradesh vs. M.A. Kareem- 1991(2) SLJ/14 Supreme Court- Their Lordships specifically directed that the courts and Tribunals should be slow in disturbing the settled affairs in service after such a long period (para 9).

8. In the light of these observations of the Supreme Court, it is clear that when there is a long delay in approaching the Tribunal ^{for} seeking the higher seniority, the court cannot grant such relief. From the facts as brought out earlier, the applicant had been clearly remiss in this regard. The fact that the O.A. was admitted and the plea of the limitation was not raised at that time by the respondents cannot justify for going against the law laid down by the Supreme Court. In the present O.A. he has challenged the stand of the respondents to his representation which he claims to have sent in July 1988 but this representation in any case pertains to the seniority list which is not the first seniority list. ~~seeking xxxxxxxxx~~ The name of Smt. Athale has continued to be shown above the applicant from 1976 onwards. Mr. Shevde states that the applicant has not demonstrated that his case

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stands on the same footing as that of Smt. Athale. We are, however, of the view that it is not necessary to go into the merits of this case and the O.A. deserves to be dismissed on the ground of laches and delay in approaching the Tribunal in the context of the law laid down by Hon'ble Supreme Court in seniority matters.

9. In the light of the foregoing discussion, we dismiss the present O.A. with no orders as to costs.


(T.N. Bhat)
Member (J)


V. Ramakrishnan
12/1/971
(V. Ramakrishnan)
Vice Chairman