

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 107/92
T.A.NO.

DATE OF DECISION 17.11.1998

Jayantilal Virchand Panchal **Petitioner**

Mr. B.B. Gogia **Advocate for the Petitioner [s]**
Versus

Union of India & Ors. **Respondent**

Mr. N.S. Shevde **Advocate for the Respondent [s]**

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

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

Jayantilal Virchand Panchal,
Add: P.O.: Magarwada,
Taluka: Vadgam,
Dist: Banaskantha.

... Applicant

(Advocate: Mr. B.B. Gogia)

VERSUS

1. Union of India
Owning & Representing
Western Railway,
Through:
General Manager,
Western Railway,
Churchgate,
BOMBAY.
2. Senior Divisional Signal &
Telecom Engineer,
Western Railway,
Rajkot Division,
RAJKOT.
3. Purshottam K.,
Serving as MSM Gr.I
Under Chief Signal Inspector,
Western Railway,
Mehsana

... Respondents

(Advocate: Mr. N.S. Shevde)

ORAL ORDER

O.A./107/92

Dated: 17.11.1998

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

The applicant who is a retired railway employee has filed the present OA seeking the following reliefs:-

- (A) The decision of the respondents dated 26-7-1973 at Annexure A-12, alongwith Annexure A-11 of dated 16-7-1990 may please be declared illegal, unconstitutional and be quashed and the respondents may please be directed to regulate his seniority in the cadre of MSM from the initial date of his appointment in railway service i.e. on 6-7-1961 and be granted further promotions as MSM Gr.II and III on the basis of such seniority and be granted the pay fixation alongwith the consequential benefits of arrears of pay etc.
- (B) Any other better relief/s which the Hon'ble Tribunal deem just and proper in the circumstances of the case may also please be granted.
- (C) Cost of the petition.

2. We have heard Mr. Gogia for the applicant and Mr. Shevde for the railway administration.

3. Mr. Gogia says that the applicant was working in a cadre in the Signals Department and was transferred to MSM cadre in the same Department in public interest in 1971. According to him, as it was a transfer in the interest of public service and not a request transfer and the seniority should be as per his appointment to the particular grade and not from the date on which the transfer

was effected. He further says that the applicant was appointed to the grade in 1961 and as such, his seniority should have been regulated accordingly.

It is seen that one Shri Purshottam who, according to the applicant, is his junior in the MSM Gr. II initially (now MSM Gr.III) cadre was promoted to a higher level on 4.10.71 and the applicant has been representing against such a promotion from 1972 onwards. In this connection, Mr. Gogia draws attention to the various representations as at Annexure A-3, A-4, A-5 and A-6 which were all filed from February, 1972 up to 18th September, 1972. Mr. Gogia further says that the railway administration eventually replied to the various representations only by a letter dated 16.7.90 as at Annexure A-11 which enclosed a copy of the earlier letter dated 26.7.73 as at Annexure A-12.. The letter dated 26.7.73 said that the skilled artisans such as the applicant should be considered against the 25% vacancies as Direct Recruits and as such they have to be given seniority from the date of posting as MSM as if they have been appointed to that cadre only from that date. Mr. Gogia contends that this letter of 1973 was never communicated to the applicant and he came to know for the first time of this decision in 1990 and has filed the present OA. The counsel further states that in terms of the provisions of Rule 311, the seniority has to be counted from the date of appointment to that grade and not from the date of joining the new cadre. As the applicant has since retired, Mr. Gogia says that the pay can be stepped up at par with the junior Shri Purshottam and the same may be calculated for the purpose of retiral benefits.

4. Mr. Shevde for the Railways resists the OA. He says that the seniority has to be counted only from the date of joining the new cadre as MSM Gr.III and this has been correctly done. He does not agree that Rule 311 would be applicable in the present case as the applicant has been taken to be against the Direct Recruitment quota and his appointment as MSM Gr.III after passing a trade test on 27.10.71 would be only from the date of joining the new cadre against the Direct Recruitment quota of 25%.

More importantly, Mr. Shevde says that the application is hopelessly time-barred and what the applicant seeks to do now is to re-open seniority from 1972 onwards. He draws attention to para 5 of the reply statement of the respondents and in particular to the fact that the supposed junior Shri Purshottam was promoted on 04.10.71. Even though the applicant had submitted representations in 1972 etc. he had not followed up the matter later. He was also promoted as MSM Gr.II by an order dated 26.3.80 but he had expressed his unwillingness on 27.3.80 and as such he was not considered for promotion for one year. Again in 1981 when he was promoted, he had refused such promotion and was again debarred. As such, no injustice has been caused to him and the applicant has no case at all and that the present OA is devoid of merit.

5. We have considered the submissions of both sides. As has been brought out by Mr. Shevde the junior Shri Purshottam was promoted on 04.10.71. According to the Railways, the applicant cleared the trade test only later and the results of such trade test was announced on 27.10.71 which is subsequent to the

promotion of Purshottam and the applicant should be regarded as a Direct Recruit against the direct recruitment quota and rank below Purshottam who got ^{his grade} against the promotion quota. Quite apart from the question as to whether Rule 311 should apply or not, it is clear that the applicant was aware of the promotion of Purshottam from October, 1971 and had been representing from 1972 onwards as is seen from Annexure A-3 to A-6. He seems to have been informed on 23.7.93 that the decision of the headquarter office was awaited. There is a further letter dated 5.10.89 which draws attention to the letter dated 3.5.73 which says that the headquarter office had advised that the seniority is required to be fixed after passing the trade test for MSM. Mr. Gogia submits that this letter of 1973 was not known to the applicant. However, no explanation is forthcoming as to why the applicant kept quiet when he did not get a favourable response to the various representations starting from February, 1972 and ending on September, 1972. We also find force in the submissions of Mr. Shevde that he had accepted the position as subsequently when he was offered promotion to the level of MSM Gr. II in 1981, he expressed his unwillingness and has been debarred from promotion as per the rules. In the present OA, the applicant states in para 4(6) as follows:-

“The petitioner since he has now retired, claims the monetary benefits of the various promotions which are due to him at par with respondent no.3 and are withheld from him.”

In other words, he wants only financial benefits now by re-fixing his seniority from 1971 onwards when he had retired prior to filing this OA.

6. It is well-settled that questions pertaining to seniority cannot be re-opened after lapse of considerable time. In any case, the applicant has no explanation whatsoever to offer regarding his total inaction when he found that his grievance regarding his seniority and promotion which was agitated in his various letters in 1972 did not meet with any favourable response and as to why he kept quiet so long. It is clear that repeated representations do not save limitation. In the circumstances, we hold that the applicant is guilty of delay and laches and the OA is hopelessly time-barred.

9. The OA is accordingly dismissed with no order as to costs.

P. Kannan
(P.C. KANNAN)
MEMBER(J)

V. Krishnan
(V. RAMAKRISHNAN)
VICE CHAIRMAN

HKI

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Rajkot Division,
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3. Purshottam K.,
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(B) Any other better relief/s which the Hon'ble Tribunal deem just and proper in the circumstances of the case may also please be granted.

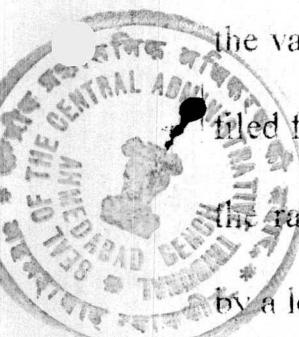
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4. Mr. Shevde for the Railways resists the OA. He says that the seniority has to be counted only from the date of joining the new cadre as MSM Gr.III and this has been correctly done. He does not agree that Rule 311 would be applicable in the present case as the applicant has been taken to be against the Direct Recruitment quota and his appointment as MSM Gr.III after passing a trade test on 27.10.71 would be only from the date of joining the new cadre against the Direct Recruitment quota of 25%.

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9. The OA is accordingly dismissed with no order as to costs.

sd/

(P.C. KANNAN)
MEMBER(J)

sd/

(V. RAMAKRISHNAN)
VICE CHAIRMAN

HKI

संसद करनेवाला

Prepared by: BKSCL
दिल्ली दाख 30/11/98

Compared by:

सहि प्रिति 30/11/98
True Copy

(BKSCL)

भास्त्रभाग अधिकारी (सा.)

Section Officer (J),

फैसलीय प्रशासनिक अधिकारक

Central Administrative Tribunal

अद्यधाराइ न्यायपीठ,

Hyderabad Bench.