

7

4

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.82 OF 1999
Cuttack this the 8th day of August/2000

Chittaranjan Das

...

Applicant(s)

- VERSUS -

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 77
2. Whether it be circulated to all the Benches of the H/-
Central Administrative Tribunal or not ?

Somnath S.M.
(SOMNATH S.M.)
VICE-CHAIRMAN

(G. NARASIMHAM)
(G. NARASIMHAM)
MEMBER (JUDICIAL)

8-8-2000

8

S

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.82 OF 1999
Cuttack this the 8th day of August/2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)
...

Chittaranjan Das
aged about 56 years
S/o. Late Sasadhar Das
At present Asst. Operating
Manager, S.E.Railway
Khurda Road, At/PO:Jatni
Dist : Khurda

...

Applicant

By the Advocates

Mr. D.R. Patnaik

-VERSUS-

1. Union of India represented by it's
General Manager,
S.E.Railway, Garden Reach
Calcutta-43
2. Chief Personnel Officer,
S.E.Railway, Garden Reach
Calcutta-43
3. Chief Operation Manager
S.E.Railway, Garden Reach
Calcutta-43
4. D.R.M., Adra
S.E.Railway,
Calcutta-43
5. Divisional Personnel Officer
Adra, S.E.Railway, Calcutta-43

...

Respondents

By the Advocates

Ms. C.Kasturi
Mr. A.K.Sethy

...

2
O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Application filed on 1.3.1999, applicant, presently serving as Assistant Operating Manager under S.E.Railway, entered the railway service as A.S.M. in the scale of Rs.330-560/- on 17.6.1964. As per the system that was in vogue at the time of entry he opted for promotion as Station Master. He was promoted as Station Master in the scale of Rs.425-640/- with effect from 18.3.1983. The posts of Station Master/A.S.M. were restructured with effect from 1.8.1982 vide Railway Board's letter dated 29.7.1983 providing two alternatives, i.e. alternative (i) and alternative (ii) which is also called a separate cadre.

2. Prior to restructuring the cadre comprised of A.S.M. at the bottom and Station Superintendent at the top. Initially appointment of A.S.M. was in the scale of Rs.350-540/-. The promotional ladder bifurcated into (i) A.S.M. to A.S.M. and (ii) A.S.M. to S.M., both in the scale of Rs.425-640/- (non-selection) and Rs.455-750/- (Selection), before becoming one common source for promotion to Deputy Station Superintendent/S.M. Rs.550-750/- (non-selection) Rs.700-900/- Station Superintendent (Selection) and Rs.840-1010/- Station Superintendent (non-selection). For moving up in the promotional ladder each A.S.M. was required to opt if he would stick to proceed in the zone of A.S.M. to A.S.M. or A.S.M. to S.M.

3. One of the principles visualised in Group C was that if all the posts in an existing grade were enblocked^{placed} in a higher grade the existing regular incumbents thereof were to be allowed the higher grade without subjecting them to any selection. For ASM/SM, two alternatives were provided to be adopted by the respective zones depending on whether the existing cadres were

separate or combined. In alternative (i) it is provided that combined cadre S.M.s in the scale of Rs.425-640/- and Rs.455-700/- were redesignated as Deputy Station Superintendent and Station Superintendents in the scale of Rs.540-650/- and Rs.700-900/-, respectively. Pursuant to this restructuring the Chief Personnel Officer of S.E.Railway issued letters to D.R.M.s, S.E.Railways instructing that alternative (i) should be followed to dispense the existing system of calling for options from A.S.M.s for the post of S.Ms, A.S.M.s in the higher grade and that seniority of staff in each grade should be determined on the basis of non-fortuitious service rendered in each grade. As this direction of the Chief Personnel Officer worked to the prejudice of numerous A.S.Ms, who opted the promotional channel of Station Masters, approached the higher Courts and the Central Administrative Tribunals, but without any success. Ultimately some of them moved the Apex Court in Civil Appeal No.2054/90. The Apex Court disposed of that appeal in judgment dated 30.4.1994 (Annexure-4) directing the railway authorities to confer promotional benefits to the appellants and others, who are similarly placed or numbering 204 S.Ms., who had exercised option before 1983 in the same manner as would have been if the option had not been abolished in accordance with the earlier procedure provided they fulfilled the other requirements. There was also direction that while doing so, those who had been promoted shall not be disturbed and if as a result of this exercise posts in higher grade fell short, the respondents or the reviewing authority should create adequate number of additional posts to overcome this discrepancy. There was direction to complete this exercise within six months. ~~And~~ ~~and~~ this was not done. Contempt Petitions 130 and 195 of 1991

were filed which were disposed of by common order dated 14.5.1993 (Annexure-5) with same directions and with clarification that the alternative(ii) should be applied for the purpose of determining their placement and promotions.

4. The case of the applicant is that Calcutta Bench of C.A.T. in C.P.113/93 arising out of T.A.370/87 (Annexure-7) filed by 40 Station Masters, viz. Rabindra Narayan Chaudhury & Ors. directed the railway authorities in order dated 18.5.1994 to grant the benefits of restructuring as per alternative-ii. It is his further case that on 26.3.1993 he represented to the Chief Personnel Officer, S.E.Railway(Annexure.6)for extending the benefits of the judgment of the Apex Court. This was followed to the General Manager, by several representations, but without any response. It reveals from Annexure-14 that his representation dated 5.10.1998 addressed to the General Manager in order to derive the benefit of the judgment of the Apex Court and C.A.T., Calcutta Bench he along with Gopal Chandra Bhuyan and other submitted a joint representation on 26.9.1994. As there was no response O.A.1259/94 was filed before the C.A.T., Calcutta Bench which was disposed of with direction to railway administration to dispose of the representation dated 26.9.1994 within a period of three months from the date of communication of that order. Pursuant to this direction of the Tribunal, he also made individual representation on 21.1.1995 to the General Manager through D.P.O./Adra which was received by D.P.O/ADA on 27.1.1995. However there is no response.

5. Though at the initial stage he opted for promotion to the post of S.M. and was promoted as S.M. with effect from 18.3.1983 this benefit was not granted to the applicant. Two of his juniors, Mr.Bandopadhyay and J.M.Patra were promoted as Station Masters

in the same order. Though seniority of the applicant was maintained, these two have been promoted as S.S.R. in the scale of Rs.700-900/- with the benefits of proforma fixation of pay w.e.f. 1.8.1982 and arrears paid from 1.8.1983. Thus, according to applicant he has been aggrieved. Hence this application for direction to Railway Administration to confer the benefits of the judgment of the Apex Court and C.A.T., Calcutta Bench on him along with consequential financial benefits.

6. Though duly noticed the respondents (Railway Administration) have not filed their counter in spite of repeated adjournments. Hence we heard learned counsel for the parties on record and also perused the records.

7. Since counter has not been filed, we can presume that the facts mentioned in the application are not disputed. The question for consideration is whether the applicant can get the benefit of the judgment of the Apex Court. Judgment dated 30.4.1990 of the Apex Court would reveal that the Apex Court was given to understand that the total number of employees like the appellants before that Court would not more than 204 and in order dated 26.7.1989 it was made clear that if relief is granted to these 204 employees by implementing the scheme in the same manner as indicated in their earlier order of 1987, all of them would be satisfied and that litigation should come to an end. So with this understanding the Apex Court directed the railway authorities to grant promotional benefits to those 204 SMs. Even in their order passed in the Contempt Petition this has been made clear. In other words, the Apex Court closed litigation of this nature as early as on 14.5.1993 while disposing of the Contempt Petitions by reiterating the directions made on 30.4.1990 with some

clarifications.

8. It is true that C.A.T., Calcutta Bench, basing on the Supreme Court judgment disposed of C.P.113/93 (Annexure-8) arising out of T.A.370/97 filed by the employees like that of the applicant in their favour. But the concerned Original Application was filed much prior to the judgment of the Apex Court. In O.A.1259/94 filed by Gopal Ch.Bhuyan and others including the applicant, the Calcutta Bench vide order dated 11.1.1995 (Annexure-10) only directed the authorities to dispose of the joint representation dated 26.9.1994 within three months and further directed that the applicants may also make separate applications. If indeed the applicant was aggrieved that his separate representation was not disposed of as per the judgment of the C.A.T., Calcutta Bench, nothing prevented him from approaching that Bench with a petition for contempt or in a Misc.Application for implementation of that direction in time. Without doing so the applicant had represented time and again. It comes to this that the Apex Court in a way closed litigation arising out of ~~the matter~~^{the matter} in their observations in judgment dated 30.4.1990 followed by observations and clarification in the Contempt Petition in the year 1993. If indeed the applicant is of the view that this litigation had not come to an end he could have preferred an Original Application claiming the benefits of the Apex Court judgment within the period prescribed under Section 21 of the Administrative Tribunals Act, 1985, at least from the date of disposal of the Contempt Petition by the Apex Court. This has not been done. He seems to have preferred O.A.1259/94 before the C.A.T., Calcutta Bench along with Gopal Ch.Bhuyan and others which was disposed of by that Bench on 11.1.1995 giving direction to the Railway Administration to

14

dispose of the joint representation dated 26.9.1994 within a period of three months and also with a direction to the applicants to submit separate representations within a period of 15 days thereof. It was further observed that if the applicants still felt aggrieved by the order passed by the railway authorities, they were given liberty to approach that Tribunal according to law. It is the case of the applicant that he also made a separate representation vide Annexure-11 dated 24.1.1995 and the railway authorities in letter dated 24.4.1995 (Annexure-12) intimated that the optees would be communicated with a speaking order within two months. Yet in the absence of any further response he had not chosen to approach the Calcutta Bench within time. On the other hand as per his averment he went on representing to the authorities and ultimately filed this application on 1.3.1999 - by which time the cause of action, if any, was hopelessly barred by limitation under the provisions of Section 21 of the A.T. Act, because law is well settled that even repeated representations will not save limitation.

9. There is thus no dispute that this application has been filed at a belated stage, i.e. several years after the period of limitation prescribed under Section 21 of the A.T. Act ~~expired~~ and that too without any application for condonation of delay. Without admitting this Original Application we directed the respondents to file counter with a view to dispose of the matter finally at the admission stage. It is true, under Section 21 of the A.T. Act there is discretion for condonation of delay, but that delay can only be condoned only if the Tribunal is satisfied that the applicant was prevented from sufficient cause in not being able to prefer the application within the limitation period. Such satisfaction can be derived only from an application containing the relevant

15

15

facts explaining the delay along with affidavit as required under Rule-8(4) of the C.A.T.(Procedure) Rules, 1987. No such explanation for delay has been filed. In Ramesh Ch.Sharma v. Udhan Singh Kamat reported in AIR 1999 SC 3837, the Apex Court held that the Tribunal was not right in deciding the Original Application on merits when such application was barred by time and not supported by an application for condonation of delay by overlooking the statutory provisions under Section 21 of the A.T.Act. In other words it was held that the Tribunal could not have admitted such time barred application and disposed of on merits without condoning delay.

10. Thus this application is hopelessly time-barred and on this ground also it can be rejected. Accordingly the O.A. is dismissed, but no order as to costs.

Somnath Sen
(SOMNATH SEN)
VICE-CHAIRMAN

8.8.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//