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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

Original Application No.327 OF 2001
Cuttack, this the 28th day of December, 2005.

P.N. RAO

APPLICANT

Versus

UNION OF INDIA & Ors.

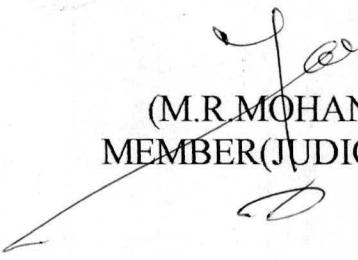
RESPONDENTS

FOR INSTRUCTIONS

- t. Whether it be referred to the reporters or not? No
2. Whether it be circulated to all the Benches of CAT or not? No


(B.N. SOM)

VICE-CHAIRMAN


(M.R. MOHANTY)

MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

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Cuttack, this the 28th day of December, 2005.

CORAM:

THE HON'BLE MR.B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)

P.N.Rao, aged about 59 years,
Son of late P.Ganniah, presently working as
Presenting Officer-Cum- Deputy Chief Commercial Mnager(claims)
Attached to the Railway Claims Tribunal, Bhubaneswar Bench,
Bhubaneswar (notice may be served through Shri R.K.Bose,
Advocate, Orissa High Court, Cuttack).

..... APPLICANT.

For the Applicant : M/s. R.K.Bose, G.Bhol, J.Nayak, Advocates.

VERSUS

1. Railway Board, represented by its Chairman,
Rail Bhawan, New Delhi.
2. Union of India, represented through the
General Manager, South Eastern Railway,
Garden Reach, Calcutta-700 043.
3. Chief Personnel Officer, South Eastern Railway,
Garden Reach, Calcutta-700 043.
4. The Divisional Railway Manager,
South Eastern Railway, Khurda Road
Division, At/Po: Jatni, Dist.Khurda.

..... RESPONDENTS.

For the Respondents: M/s. Ashok Mohasnty, Sr. Advocate
Mr.R.C.Rath, St.Counsel(Rlys.)



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O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Applicant P.N. Rao(WHO IS presently working as Presenting Officer-cum-Deputy Chief Commercial Manager (Claims) attached to the Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar), being aggrieved by the order dated 30.06.2000 (by which his prayer for seniority and other consequential service benefits with effect from 1986, i.e., right from passing the selection of ACS or from the date of vacancies existing, i.e., from 1985, as raised in his representation 16.7.1997), has moved the Tribunal seeking the following relief:

To direct the respondents to promote the applicant to Junior Administrative Grade with effect from 2.4.1997 i.e., when his immediate Senior Sri D.K.Sarkar was promoted to Junior Administrative Grade by modifying seniority of the applicant as Senior Scale Officer from 31.1.1994 to 31.10.1991, i.e., when three of his juniors in Group B category were given senior scale and in Group B of Officer in the Commercial Department of the Railway Administration in question with effect from 26.12.1986 in stead of 26.10.1990 with all consequential benefits and pass such other order or orders in the interest of justice.

The applicant further claims seniority and promotion in three Groups i.e., Assistant Officer, Senior Scale Officer and J.A.Grade

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Officer and other consequential benefits including financial benefits from 26.12.1986/27.1.1987 as has been extended to Sri B.S.H.Rao (Applicant in OA No.1113/95) by virtue of the order dated 16-02-1999 of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

2. The case of the Applicant is that in the year 1985 the posts of Group B Class II Service were filled to the extent of 75% by promotion (on the basis of seniority-cum-suitability) by way of selection. The rest 25% of the posts were filled by a Limited Departmental Competitive Examination. While serving as CGS I/BAM in the feeder category for promotion to the post of ACS Group B, he was promoted as ACS II/ Waltair (on provisional basis) by order dated 26.10.1990 upon passing the Limited Departmental Examination. It is the grievance of the Applicant that although he had appeared for selection through LDCE quota of Group B Commercial Officers and was selected and the panel was approved by the General Manager on 26.12.1986, he was promoted only on 26.10.1990 and thereby, he had lost four years of seniority. Therefore, he has stated that had the promotion order been effected in the year 1986, he would have got the senior scale by the end of the year 1989 and, consequently, to Junior Administrative Grade soon after one Mr.D.K.Sarkar, who was promoted on 4.1.1997. He has, therefore, submitted that according to Railway Board letter No. E(GPO)7 9/2/101

dated 16.6.1985, the date for selection of 75% of the vacancies and 25% LDCE quota should be published simultaneously. It is because of delay and laches on the part of the Respondents, he has been deprived of his promotion; which he would have got either from 1989 and 1990 and, thereby, he has been subjected to victimization.

Agitating this matter the applicant had earlier filed O.A.No.1749 of 1998 before the Hyderabad Bench of this Tribunal to direct the Respondents to promote him as Junior Administrative Grade with effect from 2.4.1997, i.e., when his immediate senior Mr.D.K.Sarkar was promoted to Junior Administrative Grade, by modifying the seniority of the applicant as Senior Scale Officer from 31.1.1994 to 31.10.1991, i.e., when three of his juniors in Group B category were given Senior Scale and in Group B Officers' category, i.e., ACS/ACO in Commercial Department with effect from 26.12.1986 (instead of 26.10.1990) with all consequential benefits. The said O.A. was disposed of by the Hyderabad Bench vide its order dated 30.3.2000 directing the Respondents to dispose of the representation dated 16.7.1997 of the Applicant in accordance with the law, keeping the observations as made therein. The Respondents, in compliance with the said direction of the Hyderabad Bench, vide order dated 30.6.2000 rejected the representation dated 16.7.1997 (on 30-06-2000) with a reasoned order. It is in this background, the Applicant has

moved this Tribunal in the 2nd round of litigation with the prayers as referred to earlier.

3. Respondents have filed their counter opposing the prayer of the Applicant. With regard to delay in publication of the panel, (which is the crux of the matter and the sole grievance of the Applicant), it has been submitted by the Respondents that pursuant of the selection for the post of Group-B ACS/ACO (against 25% LDCE quota vacancies) that was conducted in the year 1984, six candidates (including the Applicant) passed in the written test and they were called to appear in the viva voce test held on 18.12.1986. But the panel of the selected candidates could not be published immediately due to interim order passed by the Kolkata Bench of the Tribunal in O.A.No.203/87. It has been further submitted by the Respondents that the Applicant, along with others, being Respondents in O.A.No.203/87, had also filed O.A.No.217/89 before the Kolkata Bench of the Tribunal praying for publication of the panel. Although there has been no whisper with regard to filing of O.A.No.217/89 (by the Applicant, along with others, before the Kolkata Bench of the Tribunal) and no mention by the Respondents-Department (who have brought this fact to the notice of the Tribunal) with regard to fate of that O.A., it has only been submitted by the Respondents that the interim direction, (by virtue of which, the panel could not be published),

emanating from O.A.No.203/87 was disposed of along with O.A.No.217/89 by order dated 29.11.1989 with certain direction. Neither of the parties have annexed the orders passed by the Kolkata Bench of the Tribunal (in both the O.As) for our reference. Be that as it may, it has been averred by the applicant that the O.A.217/89 was disposed of with direction to Respondents to publish the panel. However, it is the case of the Respondents that after conclusion of the court case and after complying with the direction of the C.A.T., Kolkata Bench (by conducting LDCE) the panel was published on 26.10.1990. It has also been submitted by the Respondents that since the panel was held up due to litigation, it was made clear that the empanelled candidates would rank junior to those empanelled in the corresponding 75% panel published on 9.1.1985. It has also been submitted that promotion to the Junior Administrative grade requires completion of prescribed years of service in Junior Scale/Group A as well as availability of vacancy, the need to fill up the vacancy and suitability of the candidate for such promotion including clearance and/or recommendation of UPSC. With regard to Mr.D.K.Sarkar, it has been submitted that at no point of time Mr.Sarkar was junior to the Applicant and, therefore, it was unreasonable for the Applicant to claim promotion from the date his senior was promoted. It has been further submitted by the Respondents that the Applicant's claim for promotion to the Senior Scale at par with Shri R.B.Ray, A.S.Ramtake

and A.K.Mondal was considered in the light of the Railway Board's letter dated 2.1.1992, but it was because the applicant had not fulfilled the eligibility criteria, i.e., 3 years service in Group B at that point of time. They have stated that the applicant was promoted to JAG (ad hoc) with effect from 29.6.1999 taking into consideration his date of induction to Group A with effect from 28.7.1997 and he has been promoted to that grade on regular basis with effect from 18.02.2002. With these submissions, the Respondents have stated that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard the learned counsel of both the sides and perused the materials placed on record.

5. The whole issue rests upon the delay in publication of the panel of 25% quota meant for LDCE. It is the admitted position that the Kolkata Bench of the Tribunal, in O.A.No.217/89, directed publication of the panel as a result of which the panel was published on 26.10.1990, prior to which the panel in respect of 75% under promotion quota had already been published and promotion effected. But the fact remains as to whether, at this stage, the Tribunal can come to the aid of the Applicant, after a long lapse of time. It was the Applicant, who should have agitated the matter before the competent authorities in the Department, soon after publication of the panel on 26.10.1990, with a view to shift the date of

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publication of panel and/or his promotion in line with the panel published in respect of 75% promotion quota. It appears from the record that at no point of time he did raise this specific plea before the competent authority for safeguarding his seniority nor had he ever knocked at the doors of the appropriate forum in case of any inaction of the respondents-Department. Therefore, by filing this application in the year 2001, the applicant wants to thrive a cause of action that had rose in the year 1985-86 or for that matter in the year 1990, which is barred by law of limitations. We are conscious that in pursuance of the direction of the Hyderabad Bench of the Tribunal in O.A.No.1749/98 the representation dated 16.7.1997 of the Applicant has been disposed of by the Respondents vide their order dated 30.6.2000, against which this O.A. has been filed. We also, at the same time, note that the order dated 30.6.2006, (by virtue of which the Respondents have rejected the claim of the Applicant) is not under challenge in this O.A. Be that as it may, it would not be proper for the Tribunal to unsettle a settled thing after a long lapse of time. Had the Applicant agitated the matter in the right earnest, as indicated above, it would have been a matter to be decided and settled by the Court/Tribunal then and there and therefore, it is completely a case where delay defeats justice. Having regard to what has been discussed above, we are of the opinion that the point to be decided is hopelessly time barred and,

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therefore, merits no consideration. Accordingly, the O.A. is dismissed.

No costs.

B.N.SOM
(B.N.SOM)
VICE-CHAIRMAN

M.R.MOHANTY
(M.R.MOHANTY)
MEMBER(JUDICIAL)