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OA nos. 342, 348, 349 & 352/2002

ORDER DATED 22nd NOVEMBER, 2007

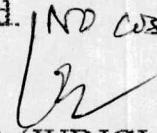
Coram:

DR. K.B.S. RAJAN, MEMBER(J)

The order of the Bench consisting of Dr. K.B.S. Rajan, Member(J) and Shri Tarsem Lal, Member(A) was pronounced in open Court by the Bench consisting of Dr. K.B.S. Rajan, Member(J) in terms of Rule 106(a) of CAT Rules of Practice.


These
~~This~~ O.A.s are allowed.....

Vide order in separate sheets attached to the record. NO COST.


MEMBER (JUDICIAL)

Final order
dt. 22.11.07.

Copy issued to
all four concerned
Counsel.


28/07.

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK**

O.A. Nos. 342, 348, 349 & 350 of 2002

Thursday, this the 22nd day of November, 2007

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER**

1. Sri R.K. Nayak,
S/o. Late Raghunath Nayak,
Working for gain as Khalasi
under CAO (P) CSP , at present residing
at Railway Qr. No. F-Type 21 F, Project
Complex, Chandrasekharpur P.O.,
Chandrasekharpur : 23
District Khurda : 751 023 (OA 348/02).
 2. Sri B.K. Swain,
S/o. Sri H.K. Swain,
Working for gain as Khalasi
under CAO (P) CSP , at present staying
at Railway Qr. No. F-Type 4 G, Project
Complex, Chandrasekharpur P.O.,
Chandrasekharpur : 23
District Khurda : 751 023 (OA 349/02).
 3. Sri R.C. Sahoo,
S/o. Sri Lochan Sahoo,
Working for gain as Khalasi
under CAO (P) CSP , at present residing
at Railway Qr. No. E-Type 4 S, Project
Complex, Chandrasekharpur P.O.,
Chandrasekharpur : 23
District Khurda : 751 023 (OA 350/02).
- ... Applicants.

(By Advocates Mr. Aparesh Bhoi & S. Mishra)

v e r s u s

1. Union of India through General Manager,
S.E. Railway, Garden Reach, Kolkatta : 43
2. Member Staff, Railway Board,
Rail Bhawan, New Delhi.



3. Chief Administrative Officer (Project),
Bhubaneswar, S.E. Railway,
P.O. Chandrasekharpur : 23
District Khurda : 751 023
 4. Chief Personnel Officer (Construction),
S.E. Railway, Garden Reach, Kolkata : 43
 5. Dy. Chief Personnel Officer (Construction),
S.E. Railway, P.O. Chandrasekharpur – 23,
Distt. Khurda : 751 023
 6. Sri M.J. Rao, Jr. Clerk under Dy.
Chief Engineer (Design), P.O. Chandrasekharpur – 23,
Distt. Khurda : 751 023
 7. Sri Haradhan Hensh, Jr. Clerk under Dy.
Chief Engineer (Design), P.O. Chandrasekharpur – 23,
Distt. Khurda : 751 023
 8. Sri Nityanada Gochait, Jr. Clerk under Dy.
Chief Engineer (Con), Keonjhar, P.O. Keonjhar,
District Keonjhar : 758 001
- ... Respondents.

(By Advocates Mr. SK Ojha, A.K. Mohapatra & R.C. Rath)

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

This matter has been remanded by the Hon'ble Cuttack High Court, for dealing with the aspect of limitation, and to decide the matter afresh. For, while passing the earlier order dated 8th July, 2004, the aspect of limitation was not considered.

2. As such, if the OA is within limitation, then the earlier order in spirit and words would hold good and if not the OA has to be maintained.
3. Contention of the respondents in their counter, as also extracted in the Hon'ble High Court's order is as under:-

"5. That the Original Application is hopelessly barred by the law of limitation and as per Section 21 of the Administrative Tribunals Act,




1985 – because the applicants have filed this OA in 2002 against a cause of action which arose from the date of issuance of office Orders, on 8-8-1995, 30-04-1996 and 24-03-1997, which is much after the stipulated one year period. Hence, this O.A. is liable to be dismissed in limine with costs to the respondents. The applicants have annexed their representations dated 19-2-1999, 5-5-2000, 1-8-2000, 4-10-2001 and 18-03-2002 which shows that they had never approached the respondents in this regard prior to 19-02-1999. Hence this Original application is barred by limitation.”

4. True, in para 4.14, the applicants have averred that the applicants made several representations to the authorities to promote them on ad hoc basis as their juniors (R No. 6 to 8), the latest being 18-03-2002. As usual, none of the representations has been replied. Copies of representations are placed at Annexure A-13 series And A-13 series contains representations, as stated in para 5 of the counter, extracted in the Hon'ble High Court's judgment and also extracted as above. The respondents have taken for granted as if there has been no representation anterior to the afore said dates. In fact, the earliest amongst the annexed representation is dated 19-2-1999 and the same contains the following:-

“We have applied individually several times. Our juniors have already been promoted as Jr. Clerk since 1995, but we are failing to get justice in due course and being forced by frustration, dismay, to approach your honour for your personal intervention in the matter of redressal of our grievances.”

5. In their communication dated 05-05-2000, the applicants have stated, “We have applied individually several times since last 3 years and our joint application was on 19-02-1999”. This was repeated in their next joint representation dated 31-08-2000. Again in their communication dated 04-10-2001, the applicants have stated, “Sir, we have been representing since last 5 years for considering grant of single ad hoc promotion to us but our requests have gone unheard.”

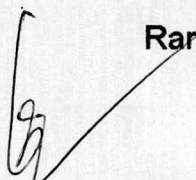


6. In reply to para 4.14, the official respondents have, vide para 15 of the counter, stated, "They have only represented in this regard right from 1999 by which time the ad hoc promotions ordered to 6th, 7th and 8th respondents have become 3 years old"

7. There is no denial to the averment of the applicants "As usual, none of the representations has been replied." In their rejoinder to the aforesaid para 15 of the counter, the applicants have stated, "That the averments in para 15 of the counter are denied. The Annexure RJ/1 (series) will indicate that the applicants have been approaching against these ad hoc promotions in their individual capacities since 27-03-1997."

8. The RJ/1 (series) contains as many as 9 letters submitted by the applicants during the period from 27-03-1997 to 30-4-1998. These were individual representations and finding no response, collective representations were submitted since 1999. Thus, the applicants have been making representations from the beginning.

9. The question then arises for consideration is whether the applicants could file the Original application at any time of their convenience, when as per the provisions of section 20 of the A.T. Act, if there is no response to any representation, after 6 months of the same the applicants could move the Tribunal. Here the decision of the Apex Court in the case of **S.S. Rathore v. State of M.P., (1989) 4 SCC 582**, renders great help in analyzing the legal position. In the said case, the Constitution Bench through Hon'ble Justice Ranganath Misra (as his Lordship then was) held as under:-



20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court's jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation.

10. From the above decision, it is clear that in ascertaining limitation in a given case, it is to be seen whether there is any statutory remedy available to the applicant. If available, then para 20 above applies. If there is no statutory provision for appeal or representation, then para 20 does not apply. In such a case what is to be seen is one year from the date of issue of final order passed. Final order in such case would be the rejection order of representation. If an individual first makes a representation to the appropriate authority (who is the deciding authority) and if that authority rejects the representation, the tick-tock (time limit) commences from the date of such rejection and within one year OA

should be filed. If after receipt of such rejection order, an individual prefers further representation and gets a rejection again and if he files the OA the limitation would commence from the date of earliest rejection. For, his first representation is 'unsuccessful' by virtue of rejection and the second one becomes 'repeated unsuccessful representation'. As such, repeated unsuccessful representations cannot elongate the period of limitation. Here again, it is possible that the authorities 'reconsiders' and then rejects the second representation, and in that event, the applicant could be said to be within time for the authorities have applied their mind again they could either vary their decision or could come to a conclusion, which incidentally coincided with their earlier decision. In the instant case, the authorities had simply not cared to respond to the applicant's representations right from 1997 till 2002. As such the case of the applicants does not come within the category of 'repeated unsuccessful representations'.

11. Again, in so far as limitation is concerned, it has been held that the courts should not be swayed away by technicalities. In the case of **N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123** the Apex Court has held as under:-

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no

presumption that delay in approaching the court is always deliberate. This Court has held that the words sufficient cause under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari and State of W.B. v. Administrator, Howrah Municipality.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.


12. Keeping in view the law laid down by the Apex Court in S.S.Rathore (supra) and N. Balakrishnan (supra), and also taking into account the fact that the applicants had been repeatedly making their representation and that none has been replied, it should be held that the OA is within limitation.

13. Once the limitation part is considered and the same goes in favour of the applicant, in so far as the merit is concerned, in fact we are fully in agreement with the decision of this Tribunal vide order dated 8th July, 2004. On merit, the contention of the respondents is that there is no link between the applicants and the private respondents, as these were not engaged in the same unit. However, applicants' contention is that if there be only one seniority, posting to different units is immaterial. Here, the combined seniority list is at Annexure RJ-5 in which the names of applicants, as also at least one respondent (Respondent No. 2) figure in. The contention of the applicants that seniority list is combined for all the staff working under the Chief Engineer, Construction II, Bhubaneswar, Dy. Chief Engineer (Construction)/Design, Secretariat of C.A.O. (Construction) and as such, the respondents are admittedly junior has full force. Again, the



contention of the respondents is that the promotion granted to the private respondents is ad hoc. Here again, the contention of the applicants that as per the provisions of Rule 216-A and Railway Board Estt. SI. Nos 295/99 and 211/2000 ad hoc promotion is fund inescapable in the exigency of service, should be ordered only from amongst the senior most eligible staff strictly in accordance with the existing guidelines and that such promotion should be allowed only with the prior personal approval of the Chief Personnel Officer, is thoroughly relevant and correct. Thus, these OAs (348/02 349/02 & 350/02) succeed on merit and also on limitation. The respondent-Railways are directed to review the promotion granted to private respondents 6 to 8 and consider the case of the applicants and afford due ad hoc promotion on the basis of seniority subject to rejection of unfit. The promotion granted to the private respondents should be treated as provisional. In case the applicants are found suitable and if they were to be promoted as per seniority, their promotion shall date back from the date the juniors were promoted but on notional basis. If there are sufficient vacancies, respondents may not revert the private respondents and if vacancies are likely to be available in the near future, then also the private respondents be not reverted but be kept under supernumerary post till vacancy to accommodate them arises. It is only when reversion is absolutely inevitable that the respondents should consider the case of reversion of the private respondents, and that too after affording them an opportunity.

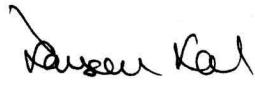
14. The drill of holding Review DPC and further action on the basis of the recommendation of the DPC should be completed within a period of four months from the date of communication of this order.

 15. Applicant's name in O.A. No. 342/2002 (S.K. Das Mohapatra) is

treated to have been deleted as per the order in M.A. No. 452/07 dated 26.09.07.

15. No costs.

(Dated, the 22nd November, 2007)



(TARSEM LAL)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER