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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


O.A Nos. 531 of 2007
Cuttack, this the 17th day of January, 2011,

K.N.V.Subramanyam Applicant
-Versus-
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *Yes*.


(M.R. MOHANTY)
Vice-Chairman(J)


(C. R. MOHAPATRA)
Member (Admn.)

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O.A No. 531 of 2007

Cuttack, this the 17th day of January, 2011

C O R A M

THE HON'BLE MR. M.R.MOHANTY, VICE-CHAIRMAN (J)

A N D

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

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K.N.V.Subramanyam, aged about 52 years, Son of late K.S.Rao, at present working as Technician, Gr.I, Electric Loco Shed, Bondamunda under Sr. Divisional Electrical Engineer/TRS/BNDM, S.E.Railway, Bondamunda, At/Po. Bondamunda, Dist. Sundergarh.

.... Applicant

By legal practitioner: M/s. P.K. Mohapatra, SKNath, Counsel

-Versus-

1. Union of India represented through its General Manager, South Eastern Railway, Garden Reach, Kolkata, West Bengal.
2. Divisional Railway Manager (P), Chakradharpur Division, S.E.Railway, Chakradharpur, At/Po-Chakradharpur, Dist. West Singhbhum, Jharkhand.
3. Senior Divisional Electrical Engineer, TRS/Bondamunda, S.E.Railway, At/Po. Bondamunda, Dist. Sundergarh.
4. Secretary, Railway Board, Rail Bhawan, New Delhi.
5. Chief Personnel Officer, S.E. Railway, Garden Reach, Kolkata, West Bengal.

..... Respondents

By Legal practitioner: Mr.M.K.Das, Counsel.

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O R D E R

MR.C.R.MOHAPATRA, MEMBER (ADMN.)

The Applicant, Technician Gr.I Electric Loco Shed, Bondamunda [under Sr. Divisional Electrical Engineer/TRS/BNDM, S.E.Railway, Bondamunda, At/Po, Bondamunda, Dist. Sundergarh] in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 challenges the order under Annexure-A/7 dated 24.04.2007 of the Chief Personnel Officer (Admn.)/Respondent No.5 whereunder the prayer of the Applicant for restoration of his seniority at par with his colleagues and grant of all consequential service benefits was rejected. The rejection according to the Applicant is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

2. According to the Applicant, he was appointed as Khalasi in Electrical Operation, Rourkela under South Eastern Railway on 19.1.1974. He was empanelled for regular absorption in Gr. 'D' post on 01-06-1978. While he was continuing as such under the Senior Section Engineer Operation, he was asked to exercise his option for his transfer to Elect. Loco Shed, Bondamunda as per letter dated 29.5.1982.

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Thereafter he was placed under suspension on 13.5.1983 for which in the screening test conducted during last week of December, 1983 for transfer to Electric Loco Shed Bondamunda, the Applicant was not called to attend the said screening test. Therefore, the case of the applicant did not receive any consideration while transferring others including juniors of the Applicant to Elect. Loco Shed Bondamunda. The order of suspension of the applicant was revoked on 06.01.1984. Soon thereafter, by submitting representation he requested for his screening so as to be transferred to Elect. Loco Shed Bondamunda but no immediate attention was paid to his request. Finally, the applicant was screened and, thereafter, transferred to Electric Loco shed, Bondamunda on 15.7.1987 which was much after the cut date fixed for such transfer viz; 31.7.1985. For such delay in considering his request for transfer his name was shown below the name of the persons who were junior to him in his parent department, based on the seniority of Khalasi Helper maintained in the ELS/BNDM. The Applicant contends that on 31.7.1985 his juniors were promoted to the post of Tech. Gr.III in the year 1983 and to Gr.II further to Technician Grade I during 1993 whereas he was promoted to

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Khalasi Helper on 10.4.1991, Technician Gr.III on 24.7.1997, Technician Gr.II in November, 2003 and Technician Grade-I in February, 2006. Through various representations he sought removal of his grievance but according to him despite recommendation of the Railway Board under Annexure-A/4, his date of promotion was not antedated by restoration of his seniority with reference to his juniors.

3. Learned Counsel appearing for the Applicant contended that for no fault of his client he has been made to suffer and will be suffering through out his life and this being a clear case of discrimination, the applicant is entitled to the relief claimed in this OA.

4. Respondents' stand in the counter is that the applicant was appointed as a Sub Sand Khalasi in the Electric (Operation) Department at Rourkela on 19-01-1974. His service was terminated on 13.5.1974. Thereafter he was reappointed on 29.08.1974. Thereafter on 15.7.1987 the applicant made request for his transfer from Operation Electrical Department to Electric Loco Shed Department. His request was accepted and accordingly he joined the Electric Loco Shed Department at Bandhamunda on 15.7.1987. Since the transfer was on own

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request in terms of the S.E.Railway Estt. Srl.No.300/63 his seniority was rightly considered from the date of joining at Electric Loco Shed, Bandhamunda in the grade carrying the scale of pay of Rs.196-232/-. Thereafter, he was promoted to Khalasi Helper on 10.4.1991, Technician Gr.III on 1.11.2003, Technician Gr.II and then Technician Gr.I on 2.2.2006 respectively. In compliance of the order of this Tribunal dated 01.12.2006 in OA No. 825 of 2005 his representation claiming restoration of his seniority in Elect. Loco Shed Department at Bandhamunda was duly considered by the competent authority but the same was rejected and rejection of his representation was communicated to the applicant under Annexure-A/4. By stating so, the Respondents have prayed for dismissal of this OA.

5. Respondents' Counsel contended that the applicant had never opted for his transfer before the cut off date/31.7.1985 for his transfer to the Elect. Loco Shed Department at Bandhamunda. Had it been so, there was no reason not to enclose copy of such option along with the OA. Much after the cut off date fixed for exercising option to go on transfer to ELS Department, for the first time through

application dated 07.07.1987 he requested consideration of his case for own request transfer to ELS Department, Bandamunda and on consideration of his application the competent authority transferred him to ELS Department in which department he joined on 15.7.1987 and accordingly, in terms of the extant rules his name was placed at the bottom of the seniority list of the grade in which he was transferred. Respondents' Counsel further explained that in terms of the Rules, the position of the employees on option transfer and own request transfer are different and distinct. In option transfer an employee is entitled to retain his seniority in new unit whereas on own request the transferee will have to be placed in the bottom of the seniority list of the grade to which he is transferred. Learned Counsel for the Respondents denied that any screening test had taken place for option transfer. He has also raised the point of limitation in the sense that if the suspension of the applicant was revoked on 6.1.1984 and the cut off date for option transfer expired on 31.7.1985 why the applicant remained silent for the period from 6.1.1984 to 31.7.1985. Further it was contended by him that the decision to merge both the units was taken on 17.7.2002 and merger was approved on 5.12.2003 and as such merger of both

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the units has no relevance at all for restoration of the seniority of the Applicant. Last contention of the Respondents' Counsel is that if the seniority of the applicant is restored, it would unsettle a settled thing after 25 years and, accordingly he reiterated his prayer for dismissal of this OA.

6. We have given our thoughtful consideration to the rival submission of the parties as also materials placed on record. Applicant's contention that he exercised his option soon after his reinstatement for transfer to Elect. Loco Shed Department at Bandhamunda pursuant to the notification issued by the Railway has been rebutted by the Respondents. But the fact remains that the request of the Applicant to go on transfer was accepted by the authorities at a later date and according to the Respondents such transfer of the applicant was on his own request. According to the Applicant he exercised his option for transfer pursuant to the letter dated 29.5.1982. Thereafter he was placed under suspension w.e.f. 13.5.1983 and the said order of suspension was revoked on 06.01.1984. The cut off date fixed for exercising option was 31.7.1985. Applicant was transferred on 15.7.1987. The Juniors of the applicant were promoted on 31.7.1985 and thereafter. But no plausible explanation has been

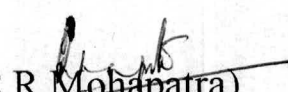
advanced by the Applicant as to why he remained silent over all these years and got up from the slumber at such a distant point of time and filed OA No. 825/2006. The applicant has also not filed any separate application explaining the reason and seeking condonation of delay. It is trite law that no one in a service can sleep over the question of seniority for such a long time as in the instant case and then come to court seeking a relief which will upset the seniority of a number of persons who had been shown as seniors in the respective seniority lists. Therefore on the face of it, a declaratory relief that will have the effect of unsettling a settled thing could not be granted by the courts. This was also the view expressed by the Hon'ble Apex Court in the case of **State of Punjab and another v Balkaran Singh-(2007) 2 SCC (L&S) 645**. Further in the case of **Chairman UP Jal Nigam v Jaswant Singh, (2007) 1 SCC (L&S) 500** it has been held by the Hon'ble Apex Court that those who sit on the fence and wait for a favourable order and thereafter wake up to take up the matter are not entitled to any relief. Entertaining an application filed belatedly and granting relief of promotion came up for consideration before the Hon'ble Apex Court in the case of **Bhakra Beas Management Board v Krishan Kumar Vij and**

another, (2010)2 SCC (L&S) 694. Paragraph 37 of the judgment is relevant which is quoted herein below:

“37. Yet, another question that draws our attention is with regard to delay and laches. In fact Respondent 1’s petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the matter and dealt with it in a rather casual and cursory manner. The appellant had categorically raised the ground of delay of over eight years in approaching the High Court for grant of the said relief. But the High Court has simply brushed it aside and condoned such an inordinate, long and unexplained delay in a casual manner. Since, we have decided the matter on merits, thus it is not proper to make avoidable observations, except to say that the approach of the High Court was neither proper nor legal.”

7. Virtually Applicant seeks alteration of his place in the gradation list published long before. As stated above, no explanation for such delayed approach has been offered either in the OA or by filing separate application seeking condonation of delay nor has he made the persons who will be affected in case the prayer of the applicant is allowed as party Respondents in this OA. Hence on the ground of delay and laches as also non-joinder/misjoinder of party, this Original Application is bound to fail and accordingly this OA stands dismissed. No costs.


(M.R. Mohanty)
Vice-Chairman(J)


(C.R. Mohapatra)
Member(A)