CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 35 of 2011
Cuttack, this the 6th day of July, 2015

Keshab Chandra Mohapatra ..... Applicant

Versus

Union of India & Ors. ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓

(R.C.MISRA)
Member (Admn.)

(A.K.PATNAIK)
Member (Judl.)

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HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

.....

Keshab Chandra Mohapatra,
Aged about 48 years,
Son of Ramanarayan Mohapatra,
At present working as Technical-C, Painter,
In the office of the Chief Workshop Manager,
Carriage Repair Workshop, South Eastern Railway now
East Coast Railway, Mancheswar, Bhubaneswar, Dist-Khurda.

.....Applicant

Advocate(s)... M/s. N.R.Routray, T.K.Choudhury.

VERSUS

Union of India represented through

1. The General Manager,
   South Eastern Railway,
   11, Garden Reach Road,
   Kolkata-700043, (West Bengal).

2. The General Manager,
   South Eastern Railway now East Coast Railway,
   Rail Vihar, Chandrasekharpur,
   Bhubaneswar-23, Dist-Khurda.

3. Workshop Personnel Officer,
   South Eastern Railway now East Coast Railway,
   Mancheswar, Bhubaneswar, Dist-Khurda.

4. Chief Workshop Manager,
   Carriage Repair Workshop,
   South Eastern Railway now East Coast Railway,
   Mancheswar, Bhubaneswar-5, Dist-Khurda.

.....Respondents

5. Nrusingha Rout, S/o Sankar Rout,
   At/PO- Sobharampur, Dist- Balasore,
   Now working as Sheet Metal Worker, Grade-III (Skilled Artisan),
   In the office of the Chief Workshop Manager,
   Carriage Repair Workshop, South Eastern Railway now
   East Coast Railway, Mancheswar, Bhubaneswar, Dist-Khurda.

..... Proforma-Respondents

Advocate(s) .....Mr. M.K.Das

.....

ORDER

A.K.PATNAIK, MEMBER (JUDL.):

The Applicant who is working as Technical- C, Painter, in the office of the Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, Mancheswar Bhubaneswar has filed this OA on 03.01.2011 in which he has prayed for the following reliefs:

> "8(a) pass an order directing the Respondents to regularize the service of the applicant from the initial appointment i.e. from 28.3.1988 instead of 04.06.1997 and further direction may be issued for release of consequential service benefits from the said date since similarly placed persons have got the said benefits."

2. It is worth mentioning that as the other reliefs which he had prayed for in this OA have been deleted vide order dated 15.2.2011, it is not necessary to focus on the same.

3. The Respondents have filed their counter in which they have opposed the prayer of the applicant both on merit as well as on the points of non exhaustion of departmental remedy as also limitation as enumerated in Section 20 and 21 of the A.T. Act, 1985 and, accordingly, they have prayed for dismissal of this OA.

4. No rejoinder has been filed despite adequate opportunity to the Applicant.

5. Heard Mr.N.R.Routray, Learned Counsel for the Applicant and Mr.M.K.Das, Learned panel counsel of the Respondent-Railway and perused the pleadings and materials placed in support thereof.

6. It is the case of the Applicant that on 18.03.1988 he was appointed temporarily as a Skilled Artisan with the stipulation that his absorption in a regular manner will depend upon the successful completion of training subject to availability of vacancy. He had completed the training successful as a result of

which he was allowed to continue in the said post without any interruption. Based on an order of this Tribunal in OA No. 427 of 1989, some of the Skilled Artisans those who were continuing like him, including Respondent No.5, were regularised on 21.02.1992 without seniority and increment etc. It has been stated that his service was regularised on 28.03.1998. His stand is that one Shri Kishore Chandra Behera recruited in the year 1988 as Skilled Artisan filed OA No. 941 of 1998 before Calcutta Bench of this Tribunal which was disposed of on 12.07.2001 with direction to regularize his service as per the terms and conditions laid down in the letter dated 14.3.1988 i.e. after successful completion of training period of six months and availability of regular post in which the applicant was allowed to work till he was transferred to Kharagpur Workshop and to grant him annual increments after completion of each 12 months of service along with payment of arrears thereof so accrued on that account within a specified period. The Respondents were also directed to grant him seniority w.e.f. 28.03.1988. The aforesaid direction of this Tribunal was confirmed by the Hon'ble High Court of Calcutta after which Shri Behera was granted all the benefits. Thereafter, Respondent No.5 filed OA No. 273 of 2007 claiming the similar benefits before this Tribunal and in compliance of the order of this Tribunal dated 26.11.2009 Respondent No.5 was granted the benefits of retrospective regularisation with effect from 29.03.1988 and other consequential benefits. Mr.N.R.Routray, Learned Counsel for the Applicant submitted that as the case of the applicant is similar to the Shri Behera and Respondent No.5 and he being appointed on 18.03.1988 i.e. prior to the joining of Respondent No.5 there was no reason to deprive him the benefits which were granted to above two persons and, thus, the applicant is entitled to the reliefs claimed in the OA.

On the other hand, it is the case of the Respondents which have also been emphasized by Mr.Das, in course of hearing that this OA having been filed after 22 years of the cause of action that too without exhausting the remedy by way of making representation or appeal to the departmental authority at the first instance thereby contravening the provisions of Section 20 and 21 of the A.T.Act, 1985, this OA is liable to be dismissed. In so far as merit of the matter is concerned, Mr. Das led emphasis that as there was no sanction posts available at the time of completion of the training, opportunity was allowed to such Trainee Artisans including the applicant to exercise their option to be absorbed in Gr. D category in diesel shed of other units of Indian Railway but the applicant remained silent. However, the applicant along with Respondent No.5 and others filed OA No. 427 of 1989 which was disposed of on 15.10.1990 with direction to absorb the applicants as Skilled Artisan Gr. III on regular basis within a period of three months. Out of the total applicants 137, 11 persons were regularised due to which CP No. 10/1991 was filed by rest of the applicants but the same was dropped on 09.11.1992 directing the Respondents to explore the possibility of absorption of rest of the candidates. In obedience of the said direction, the service of the applicant was regularised with effect from 04.06.1997 whereas Respondent No.5 was absorbed as Skilled Artisan w.e.f. 01.04.1997. Being aggrieved, Respondent No.5 filed OA No. 273 of 2007 claiming the regularisation w.e.f. 29.3.1988 and in compliance of the order of this Tribunal dated 26.11.2009 Respondent No.5 was granted the benefits of retrospective regularisation with effect from 29.03.1988 and other consequential benefits. The applicant remained silent and woke up from the slumber and filed this OA on 03.01.2011 claiming the benefit of seniority etc with effect from 18.03.1988, without making the persons who will be affected in case

the prayer is allowed as party-respondent. Accordingly, he has prayed for dismissal of this OA.

7. As held by the Hon'ble Apex Court in Special **Leave to Appeal (Civil) No(s) 16575-16576/2011 disposed of no 25.7.2011 (Satish Kumar Gajbhiye, IPS V Union of India and Others)**, we feel that before proceeding on the merit of the matter, this Tribunal is required to examine whether this OA suffers from non exhaustion of remedy and delay and laches as provided in Section 20 and 21 of the A.T. Act, 1985. Section 20(1) of the Act which is couched in negative form lays down that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Sub Section (2) of Section 20 provides for extension of time by six months where the appeal preferred or representation made by the aggrieved employee has not been decided by the Government or other competent authority.

Section 21 is also couched in a negative language. It imposes an embargo against admission of an application if the same is not filed within the time prescribed under clauses (a) and (b). Of course under sub section (3) of Section 21, the Tribunal can admit an application after expiry of the period specified in sub section (2), if it is satisfied that the applicant had sufficient cause for not filing the application within the prescribed period.

8. The applicant along with Respondent No.5 and others filed OA No. 427 of 1989 which was disposed of on 15.10.1990. Thereafter they have filed CP which dropped on 09.11.1992. Thereafter, the service of the applicant was regularised effect from 04.06.1997 and Respondent No.5 was absorbed as Skilled Artisan w.e.f. 01.04.1997 vide order dated 4.6.1997. Immediately, thereafter,

Respondent No.5 filed OA No. 273 of 2007 claiming his regularisation w.e.f. 29.3.1988 and in compliance of the order of this Tribunal dated 26.11.2009 Respondent No.5 was granted the benefits of retrospective regularisation with effect from 29.03.1988 and other consequential benefits. As it appears from the record, the applicant filed representation on 15.7.2009 and thereafter did not take any action till filing this OA on 03.01.2011. In the application filed by the applicant seeking condonation of delay, no plausible explanation far less to state any satisfactory explanation has also been adduced. In this connection, it is profitable to quote the relevant portion of the observation of the Hon'ble Apex Court in the case of **Basawaraj & Anr V The Spl. Land Acquisition Officer**, AIR 2014 SC 746 which runs thus:

> ".....The applicant must satisfy the court that he was prevented by any sufficient cause from prosecuting his case and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose." (PARAGRAPH 9)
>
> The statute of Limitation is founded on public policy its aim being to secure peace in the community to suppress fraud and perjury to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale." PARAGRAPH 12
>
> "...It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that "inconvenience is not" a decisive factor to be considered while interpreting a statute. (PARAGRAPH 13)

> "..... The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature."PARAGRAPH 15.

9. Again in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others Vrs T.T.Murali Babu**, reported in AIR 2014 SC 1141 Their Lordships of the Hon'ble Apex Court have heavily come down on the Courts/Tribunals for entertaining matters without considering the statutory provision of filing application belatedly. The relevant portion of the observations of the Hon'ble Apex Court are quoted herein below:

> "Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered ad the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to sc4rutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects activity and inaction on the part of a litigant- a litigant who has forgotten the basic norms, namely "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four y ears delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart in the present case, such belated approach gains more significance as the

respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility and remained unautorizedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with '**Kumbhakarna**' or for that matter '**Rip Van Winkle**'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold." (paragraph -16).

10. Further in the case of U.P.Jalnigam Vrs Jaswant Singh and Anr. (2006) 11 SCC 464, the Hon'ble Apex Court held as under:

"Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches. "

In view of the statement of law as summarized above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious

financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence."

11. In the case of **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors. [Civil Appeal No. 9849 of 2014 arising out of SLP (C) No. 18639 of 2012]** (2015) 1 SCC 347, the Hon'ble Apex Court has held as under:

"(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra).

On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence. Viewed from this angle, in the present case, we find that the

selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987.

The respondents before us did not challenge these cancelleation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief.

By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above. For all the foregoing reasons, we allow the appeal and set aside the order of the High Court as well as that of the Tribunal. There shall, however, be no order as to costs."

12. Last but not the least, we would like to place reliance on the decision of the Hon'ble Apex Court in the case of **Vijay Kumar Kaul v. Union of India,** (2012) 7 SCC 610 wherein Their Lordship have considered the effect of filing cases claiming seniority after a lapse of time as also non joinder of party. The relevant portion of the decision is quoted herein below:

> "**20.** In the course of hearing, the learned Senior Counsel for the parties fairly stated that the decision rendered by the High Court of Punjab and Haryana has not been challenged before this Court and, therefore, we refrain from commenting about the legal defensibility of the said decision. However, it is clear as noonday that the appellants, neither in their initial rounds before the Tribunal nor before the High Court, ever claimed any appointment with retrospective effect. In fact, the direction of the Tribunal in respect of Appellant 4 in the OA preferred by Appellant 4 was absolutely crystal clear that it would be prospective. The said order was accepted by the said appellant. However, as is manifest, after the decision was rendered by the Punjab and Haryana High Court wisdom dawned or at least they

perceived so, and approached the Principal Bench for grant of similar reliefs.

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22. As far as Appellant 4 is concerned, we really see no justifiable reason on his part to join the other appellants when he had acceded to the first judgment passed in his favour to a limited extent by the Tribunal. This was an ambitious effort but it is to be borne in mind that all ambitions are neither praiseworthy nor have the sanction of law. Be that as it may, they approached the Tribunal sometime only in 2004. The only justification given for the delay was that they had been making representations and when the said benefit was declined by communication dated 31-7-2004, they moved the Tribunal. The learned Senior Counsel for the appellants fairly stated that as the doctrine of parity gets attracted, they may only be conferred the benefit of seniority so that their promotions are not affected.

23. It is necessary to keep in mind that a claim for seniority is to be put forth within a reasonable period of time. In this context, we may refer to the decision of this Court in *P.S. Sadasivaswamy* v. *State of T.N.*[7] wherein a two-Judge Bench has held thus: (SCC p. 154, para 2)

> "2. ... It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters."

24. In *Karnataka Power Corpn. Ltd.* v. *K. Thangappan*[8] this Court had held thus that: (SCC p. 325, para 6)

> "6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the court as pointed out in *Durga Prashad* v. *Controller of Imports and Exports*[9]. Of course, the discretion has to be exercised judicially and reasonably."

25. In *City and Industrial Development Corpn.* v. *Dosu Aardeshir Bhiwandiwala*[10] this Court has opined that: (SCC p. 174, para 26)

> "26. ... One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained

delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that the courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum."

26. From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

27. The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.

28. In the case at hand, as the factual matrix reveals, the appellants knew about the approach by Parveen Kumar and others before the Tribunal and the directions given by the Tribunal but they chose to wait and to reap the benefit only after the verdict. This kind of waiting is totally unwarranted.

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30. In *K.C. Sharma*[3] the factual scenario was absolutely different and thus, distinguishable. In *C. Lalitha*[5] it has been held that: (SCC p. 756, para 32)

"*32.* Justice demands that a person should not be allowed to derive any undue advantage over other employees. The concept of justice is that one should get what is due to him or her in law. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates."

In our considered opinion, the said decision does not buttress the case of the appellants.

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33. Thereafter the Bench proceeded to state as follows: (*Krishan Bhatt case*[6], SCC p. 30, para 23)

"*23.* In fairness and in view of the fact that the decision in *Abdul Rashid Rather* had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the present writ petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed the letters patent appeal by affirming the order of the Single Judge. The letters patent appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order

passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored."

35. In the case at hand it is evident that the appellants had slept over their rights as they perceived waiting for the judgment of the Punjab and Haryana High Court would arrest time and thereafter further consumed time submitting representations and eventually approached the Tribunal after quite a span of time. In the meantime, the beneficiaries of the Punjab and Haryana High Court, as we have been apprised, have been promoted to the higher posts. To put the clock back at this stage and disturb the seniority position would be extremely inequitable and hence, the Tribunal and the High Court have correctly declined to exercise their jurisdiction.

13. On examination of the factual matrix of the instant case with reference to the provisions of the A.T. Act, 1985 and law quoted above, we have no hesitation to hold that this OA is hit by the provisions of Section 20 and 21 of the A.T.Act, 1985 and thus is liable to be dismissed.

14. Accordingly, this OA stands dismissed by leaving the parties to bear their own costs.

(R.C.MISRA)
Member (Admn.)

(A.K.PATNAIK)
Member (Judl.)

RK