

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

MA 329 of 96
OA 1280 of 1996

Date: 13.7.2001

Present : Hon'ble Mr.L.R.K.Prasad, Member(A)
Hon'ble Mr.Rafiquddin, Member(J)

Madan Bhowmick son of Late Anukul Bhowmick, Ambulance Driver Grade-III, South Eastern Railway, Santragachi now residing at A/8, Unit 8, Santragachi Railway, P.O. Jagacha, Howrah.

...Applicant

-Vs-

- 1) General Manager, South Eastern Railway, Garden Reach, Calcutta-43
- 2) Divisional Railway Manager, South Eastern Railway, Kharagpur
- 3) Shri B.C. Gharai, Ambulance Driver, Grade-I, South Eastern Railway, Kharagpur
- 4) Shri S.C. Jana, Ambulance Driver Grade-II, South Eastern Railway, Kharagpur

...Respondents

For the applicant : Mr.S.M.Mookherjee
Mr.S.S.Sen
For the respondent : Ms. U.Dutta (Sen)

Heard on : 10-7-2001

ORDER

Mr.L.R.K.Prasad, Member(A) :

This application has been filed with the prayer to grant to the applicant seniority and promotion as Ambulance Driver Grade-II with effect from 10-4-88, the date on which his immediate junior Shri S.C. Jana (respondent No.4) was given promotion as Ambulance Driver. The further prayer of the applicant is that he be granted seniority and promotion as Ambulance Driver Grade-I with effect from 28th June,

1988, the date on which one Shri B.C. Gharai his junior

Ambulance Driver Gr.III with effect from 13-7-71. He was transferred to Santragachi under Medical Officer. He has alleged that even though his juniors namely, S/Shri B.C. Gharai, S.C.Jana, A.K. Sarkar and D.P. Dey have been given promotion as Ambulance Driver Gr.I, II and III from certain specific dates, the claim of the applicant has been ignored. The applicant was regularised as Ambulance Driver Gr.III in the scale of Rs950-1500/- with effect from 11-3-90, the date on which his seniority has been determined. As his juniors were posted at Kharagpur, he could not know about the regularisation of his juniors as Ambulance Driver Grade-I & II. However, he came to know about it when a provisional seniority list as on 28-2-93 (Annexure A1) was published. Thereafter, he made necessary representation which were ignored by the respondent concerned. One of his representation is marked as Annexure-A2 dated 5-3-1996. In support of his claim, the applicant has relied on para 1516(e) of IREM Vol.I and the orders of Hon'ble Supreme Court in Narender Chadha V Union of India reported in AIR 1986 SC 638. In view of the ^{above} position, the applicant has sought relief as mentioned above.

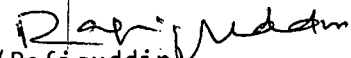
4. While, opposing the above application, the respondents have stated that the instant OA is barred by limitation. The same is also not maintainable on merit. According to the respondent, the applicant being a Railway Servant, should have been aware of the rules and regulations. If he was aggrieved of earlier regularisation of the service of his juniors, he should have been made necessary representation well in time which he did not do. On the otherhand, the applicant has filed MA 329 of 1996 explaining the reasons for delay in filing the instant OA. He has also prayed for condoning the delay. According to him the limitation clause is not attracted as his case is based on Fundamental Rights. It is also a case of discrimination. It is also not his fault that his ^{services were} not regularised earlier. If he was eligible for promotion at various grades he should have been called for various trade test ^{by the respondents} which has not been done. We have considered the limitation angle and find that this case definitely attracts limitation clause under Section 21 of the A.T. Act. We find from the submissions made on behalf of the respondent, that the services of B.C. Gharai, S.C.Jana, A.K. Sarkar

and D.P.Dey were regularised on 25-9-71, 12-12-75, 26-9-72 and 14-6-78 respectively and they were also confirmed on 9-2-73, 1-4-80, 1-3-73 and 2-1-86 respectively in various grades. On the otherhand, the applicant was confirmed as Khalasi with effect from 14-12-93. These have not been refuted by the applicant. It may be stated that the date of seniority in the grade is determined on the basis of date of regularisation of service in a particular grade. As the services of the private respondents were regularised earlier than the applicant, their seniority was determined accordingly from the date of regularisation their services.

5. It is well settled principle of law that there should be least interference with the position which has been settled long back unless it can be established that the same has not been done in accordance with the law or the same was done with malafide intention. In the instant case, we do not find any such thing. Moreover if the position, which has been settled long back, is allowed to be disturbed at a very later stage, it can create administrative difficulties. In the instant case, we find that while the cause of action arose from 1971 onwards, the applicant has filed the instant OA only in 1996 claiming certain reliefs. In such a situation, the instant case is definitely barred by limitation.

6. We further find that the applicant has also retired from service with effect from 31-7-97. It is admitted fact that the services of the private respondents were regularised much earlier than the services of the applicant as is clear from the facts of the case. At this belated stage, the applicant cannot take a plea that he was not aware of rules and regulations and the fact regarding regularisation of the services of the private respondents. He could know about it when a provisional seniority list was published on 28-2-93.

7. In view of the facts and circumstances of the case as stated above, we find that the OA has no merit and the same is accordingly dismissed and no order as to costs. MA is also disposed of accordingly.


(Rafiquddin)
Member(J)


(L.R.K. Prasad)
Member(A)
13.7.01