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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 04-6-2001

ORIGINAL APPLICATION NO. 265/1996.

1. Shri Bhanwar Lal S/o Shri Sera Ram, aged about 56 years, Working as Draftsman, Class 'C', Northern Railway, Bikaner, R/o Subhash Pura, Bikaner.
2. Shri Bajrang Lal S/o Shri Jagan Nath, aged about 50 years, Working as Draftsman, class 'C', Northern Railway, Bikaner, R/o T-49-M, Railway Colony, Behind Hal Godam, Bikaner.

APPLICANTS..

VERSUS



1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner.
3. Divisional Personnel Officer, Northern Railway, Bikaner.

RESPONDENTS..

Mr. Y. K. Sharma, counsel for the applicants.

Mr. S. Jodha, Adv. brief holder for

Mr. Ravi Bhansali, counsel for the respondents.

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Hon'ble Mr. Justice, B. S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(per Hon'ble Mr. Justice B. S. Raikote)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, applicants have prayed for the following reliefs :-

" (a) That this Hon'ble Tribunal may kindly be pleased to direct the respondents to promote the applicants from the date on which they have completed five years of service as tracers ".

2. The case of the applicants is that applicant no. 1 was appointed as Khallasi on 14.02.1960 and the applicant no. 2 was also appointed as Khallasi on 01.03.1966. Thereafter, the applicants were promoted as Tracers on 15.12.1982 and 17.04.1984 respectively. It is their further case that as per Railway Board's instructions No. P.C.-3/84/URG/19 dated 25.06.1985, the persons who have completed 5 years as Tracers, are entitled to be promoted / upgraded as Junior Draftsman in the pay scale of Rs. 330-550, and the applicants have completed that 5 years period. Therefore, they are entitled for promotion/upgradation as Junior Draftsman after completion of that 5 years. In Para 4.7, the applicants have given the respective dates about completing their 5 years period, etc. which is reproduced hereunder :-

" 4.7 That applicant No. 1 completed 5 years of service as Tracer on 15.12.1987 and applicant no. 2 completed 5 years of service as Tracer on 17.04.89. However, the applicants were not promoted on these due dates but were promoted on 13.5.1992".

3. From the above statement, it is clear that it is that the applicants their case/no doubt, were promoted with effect from 13.05.1992 as Tracers, but by virtue of their completion of 5 years during the year 1987 and 1989 respectively, they were entitled to be promoted/upgraded for the post of Junior Draftsman in the pay scale of Rs. 330-550. But unfortunately, they were promoted on 13.05.1992 only. Thus, the applicants have prayed that they may be promoted/upgraded to the post of Junior Draftsman during the year

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1987 and 1989 respectively, instead of 13.05.1992.

4. By filing reply statement, the respondents have denied the case of the applicants. They have stated that the applicants were working as Tracers only on adhoc basis against the work charged provision with effect from the date mentioned by them. They stated that are only the applicants were warned that such promotions/on adhoc basis without passing suitability test vide Annexure R-1. They have also stated that the post of Tracer is a non-selection post and to be filled in on the basis of seniority cum suitability. Since, the applicants were working on adhoc basis, they were called for suitability test on 02.05.1992 vide Annexure R-2 dated 13.04.1992, and the applicants being successful in the said suitability test, they were promoted as Tracers in the grade of Rs. 975-1540 on regular basis with effect from 13.05.1992 vide Annexure R-3 dated 13.05.1992. They stated that it is only after 13.05.1992, the applicants were due for further promotion for the post of Junior Draftsman in the grade of Rs. 1200-2040, as per the Railway Board's Instructions dated 25.06.1985 vide Annexure R-4. They have also stated that the applicants have been given the grade of Junior Draftsman of Rs. 1200-2040 with effect from 13.05.1992, and accordingly, the applicants are not entitled for retrospective promotion with effect from 1987 and 1989, as claimed by them on the alleged ground that they have completed 5 years during the years 1987 and 1989. Therefore, there are no merits in the application. The respondents have further clarified that the applicants were regularised

as Tracers vide Annexure R-3 and they have been given the pay scale of Junior Draftsman with effect from 13.05.1992, and the same has been in accordance with the Rules. They have also stated that the applicants could not be promoted as Tracers on regular basis for not passing the suitability test, and immediately after their passing the suitability test, they have been promoted on the said post. The learned counsel appearing for the respondents further contended that this application claiming respective promotions from the year 1987 and 1989, is barred by time. If the applicants were not promoted during the year 1987 and 1989, they should have preferred an application within one year, but they have not done so. He further argued that as per the case of the applicants themselves, their first representation claiming this relief, was made to the respondents only on 28.07.1994 vide Annexure A-1. By that date, the cause of action if any, was barred by time. Thereafter, making one representation in the year 1994 would not extend the cause of action and as such, the present application is liable to be dismissed on the ground of limitation. However, the learned counsel for the applicants reiterated on the basis of the pleadings that the applicants are entitled to the relief, as prayed for.

5. In view of the contentions urged on both the sides, we have to see whether the applicants are entitled to reliefs, as prayed for. The fact that the applicants were promoted as Tracers, on adhoc basis, pending ^{their} passing



the suitability test, is not disputed. It is also not disputed that the applicants passed the suitability test only in the year 1992, and immediately thereafter, they have/ promoted as Tracers on regular basis with effect from 13.05.1992. If that is so, effect from this date, they are entitled to upgradation in the pay scale of Junior Draftsman Rs. 1200-2040. It is also not disputed that they were given the pay scale of Junior Draftsman vide Annexure R-3 dated 13.05.1992. But the contention is that such pay scale should have been given to them the moment they had completed 5 years in the year 1987 and 1989 respectively. But in our considered opinion, there is no substance in this argument. Their promotion as Tracers vide Annexure R-1 is only on adhoc basis pending passing the suitability test, and thereafter, they have passed the suitability test, and accordingly, they have regularly promoted as Tracers vide Annexure R-3 dated 13.05.1992. On the basis of passing such trade test, they have also been granted the pay scale of Junior Draftsman, is also not disputed. If that is so, their claim that they should have given the said pay scale after completing their 5 years in the year 1987 and 1989, is not acceptable. Admittedly, they were appointed as Khullasi and unless they were regularly promoted as Tracers they are not entitled to upgradation on the basis of the Government Circular dated 25.06.1985 (Annexure R-4). In terms of Annexure R-4, they should complete 5 years as Tracers for the purpose of such upgradation. Applicants

were promoted from the post of Khallasi to the Tracers after passing the trade test vide Annexure R-3 dated 13.05.1992. In this view of the matter, their claim that they should have been promoted in the year 1987 and 1989 respectively, cannot be accepted.

6. At any rate, they are not disputing that they got the upgradation as Junior Draftsman with effect from 13.05.1992 vide Annexure R-3. If they were aggrieved by Annexure R-3, they should have challenged the same within one year in terms of Section 21 of the Administrative Tribunals Act, 1985, (the Act, for short). But they have not done so. If they were entitled to promotion in the year 1987 and 1989, as contended by them, they should have preferred an application within one year from the date of such a cause of action arising to them. That also they have not done. If that is so, the cause of action if taken as 1987 and 1989, would be barred by time, since the application is filed only in the year 1996. Even if it is taken that the applicants were aggrieved by the order vide Annexure R-3 dated 13.05.1992 even this cause of action even accruing on 13.05.1992, stands barred by time on the date of filing this application on 29.01.1996. But the counsel appearing for the applicants contended that they have filed one representation on 27.01.1994. But this representation itself is filed beyond one year of limitation, as prescribed under Section 21 of the Act. Hon'ble the Supreme Court in 1997 (3), SUPREME 555 (Mukam Raj Knivsara Vs. U. O. I. & Others) has pointed

out that under Section 21 of the Act, the period of limitation is one year and the application filed beyond one year would be barred by time. The applicants have also not filed an application for condonation of delay. Therefore, in view of the law declared by Hon'ble the Supreme Court, this application is liable to be dismissed on merits as well as on the ground of limitation. Hon'ble the Supreme Court in subsequent judgement in 1999 SCC (L & S) 251 (U.O.I. & Another Vs. S. S. Kothiyal & Others) has further pointed out that repeated representations do not extend a cause of action. In view of the Law declared by the Apex Court and in view of that the applicants have not made out a case for the reliefs as prayed for, we have no option but to pass the order as under :-

" The application is dismissed. But in the circumstances without costs ".

Gopal Singh

(GOPAL SINGH)
Admn. Member

B. S. RAIROTE
(B. S. RAIROTE)
Vice Chairman

