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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 26-6-2001

1. O.A. No. 366/1997.

2. M.A. No. 6/1998.

IN

O.A. No. 366/1997.

Krishna Kumar Talwar S/o Shri Kanhya Lalji Talwar,
Retired Station Master, Northern Railway Prithvi-
rajpur, District Sriganganagar, Address C/o Shri
Satyendra Sedha Standard Dry. Cleaners, K.E.M.
Road, Bikaner (Rajasthan) 334001.

APPLICANT...

VERSUS

1. Union of India through General Manager, Northern Railway, Headquarters, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Divisional Office, Bikaner (Rajasthan) 334001.
3. The Divisional Personnel Officer, Northern Railway, Divisional Office, Bikaner (Rajasthan) 334001.

RESPONDENTS ..

Mr. Bharat Singh, counsel for the applicant.

Mr. S. S. Vyas, counsel for the respondents.

CORAM

Hon'ble Mr. A. K. Misra, Judicial Member.

Hon'ble Mr. A. P. Nagrath, Administrative Member.

ORDER

(per Hon'ble Mr. A. K. Misra)

The applicant had filed this OA with the prayer that the order dated 19.11.1996 (Annexure A-1) issued by respondent no. 3 be quashed and the respondents be directed to give all promotional and

monetary benefits to the applicant from the date Shri O. P. Tyagi junior to the applicant in the same cadre and category was given on the basis of adhoc promotion as Station Superintendent.

The applicant had further prayed for revising the retiral benefits of the applicant with arrears and consequential benefits as per refixation of pension and pensionary benefits.

2. The applicant had also filed an MA praying for condonation of delay in moving the OA. It is stated by the applicant in the MA, that the applicant is continuously getting lesser pension, in view of the respondents' refusal to give the benefit of promotion to the applicant at par with Shri O. P. Tyagi, who was junior to the applicant. The applicant had prayed for condonation of delay.



3. Notice of the OA was given to the respondents, who have filed their reply to which a rejoinder was also filed by the applicant.

4. It was stated by the respondents that Shri O. P. Tyagi was given promotion on adhoc basis, therefore, the applicant cannot claim benefit of stepping up of his pay at par with Shri O. P. Tyagi. It is further contended by the respondents that the claim of the applicant is time barred and deserves to be dismissed.

5. We have heard the learned counsel for the parties and have gone through the case file. From the pleadings of the parties following undisputed facts emerge:

6. The applicant retired on Superannuation w.e.f. 31.10.1991. As per the seniority list Annexure A-2, applicant was senior to Shri O. P. Tyagi. Shri O. P. Tyagi retired w.e.f 30.06.1994 i.e. much after the applicant had retired. While the applicant was in service Shri O. P. Tyagi was given adhoc promotion in the pay scale of Rs. 2000-3200 (RPS) in June 1991. The pay of Shri O. P. Tyagi on adhoc promotion was fixed as per that promotion. It appears that Shri O. P. Tyagi retired while holding the promotional post on adhoc basis. The applicant is aggrieved of not having been given adhoc promotion being senior and of getting lesser pension than Shri O. P. Tyagi whose ^{pension} might have been fixed as per pay drawn by him at the time of retirement.



7. The contention of the applicant is that in giving promotion to Shri O. P. Tyagi, Para 216 of the Indian Railway Establishment Manual (For short REM) Vol. I has been ignored which lays down that adhoc promotion should be avoided in selection as well as non selection post. If due to exigency of service adhoc promotion is to be resorted then it should be resorted sparingly and for short duration of 3 to 4 months. The adhoc promotion should be ordered from amongst the senior most suitable staff. Since, the Railway had not followed the instructions contained in this para in promoting Shri O. P. Tyagi and ignoring the applicant being senior for adhoc promotion, therefore, the applicant is entitled to the benefit of higher pay. On the other hand,

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it was argued by the learned counsel for the respondents that the claim of the applicant for adhoc promotion had arisen in the year 1991 at par with Shri O. P. Tyagi, therefore, raising the same question after almost 6 years is barred by limitation. Moreover, the applicant cannot claim the stepping up of his pay and claim benefit of promotion at par with Shri O. P. Tyagi because, Shri O. P. Tyagi was given adhoc promotion in June 1991. We have considered the rival arguments, In our opinion, the cause of action to the applicant for claiming benefit at par with Shri O. P. Tyagi arose in the year 1991, but the applicant did not challenge the same at that point of time, therefore, the applicant cannot now agitate that question after a lapse of 6 years. The applicant is claiming limitation from the communication of the respondent no. 3 dated 19.11.1996 (Annexure A-1), but this is a communication in response to applicant's letter dated 21.08.1996. It appears that applicant raised his grievance in this matter only in August 1996 as is also evident from applicant's representation dated 21.08.1996 (Annexure A-3). There is nothing on record to show that the applicant raised any grievance in this matter prior to this date, therefore, the applicant cannot claim limitation from the communication dated 19.11.1996 (Annexure A-1). The applicant had raised no dispute when Shri O. P. Tyagi was given adhoc promotion, He also did not raised any dispute in this respect even when he retired from his post and many years thereafter. Therefore, belated representation to the authorities



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could not save the limitation for the applicant and the applicant cannot claim limitation from the last communication from the respondents on such belated representation, therefore, the claim of the applicant deserves to be rejected on the point of limitation. We are conscious of the fact that claim of an individual if bears merit, should not be thrown out simply on the basis of technical point of limitation, but in this case we do not even see any merits as would be evident from our discussion in subsequent para. We do not see any sufficient reason to condone the delay as prayed for by the applicant in the MA. The Miscellaneous Application for condoning the delay deserves to be rejected.



8. The applicant has claimed stepping up of his pay and proforma promotion at par with his junior Shri O. P. Tyagi, but Shri O. P. Tyagi was given adhoc promotion. The adhoc promotion as per Para 216 of REM can continue only for 3 to 4 months. On retirement of the applicant in October 1991, this grievance came to an end because by that time period for adhoc promotion cannot be said to be unreasonably prolonged. It may be mentioned here that in exceptional circumstances adhoc arrangements can further continued till regularly selected candidate is available for replacing the adhoc arrangement. In Railway, promotional posts cannot be kept vacant in the hope of getting duly selected candidates because this is an organisation which provides essential service and therefore, immediate

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arrangements are required to be made for manning the post and therefore, the only alternative is to promote candidates on adhoc basis. This adhocism may be on local temporary arrangement basis or may be suitability of a junior candidate as compared to the senior candidate, but no hard and fast rule is required to be followed in this regard, looking to the emergent need for filling the operational post, therefore, the applicant cannot claim the benefits on the basis of adhoc promotion of Shri O. P. Gupta. It would be useful to reproduce the letter dated 07.08.1990 (Annexure R-1) issued by the Railway Board as under :-

" Copy of Letter No. E(P&A) II/90PP-2

Dated : 7.8.1990



Sub : Stepping up of pay of seniors with seniors with reference to Juniors draw more pay.

Attention is invited to Ministry of Railways letter of even number dt. 11.6.1990, in terms of which it has been decided that the benefit of stepping of pay of seniors with reference to that of Juniors should be allowed only in cases where the promotions are on regular basis. The instructions contained in Board's Letter No. PC. III/75/ROP/1/46 dated 5th October, 1976 have been withdrawn".

9. In view of the above circular, the applicant is not entitled to claim adhoc promotion at par with his junior Shri O. P. Tyagi or claim for stepping up of his pay accordingly. The applicant has not been able to show any administrative lapse, on the part of the respondents, in ignoring the applicant and promoting Shri O. P. Tyagi on adhoc basis.

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10. In our opinion, the OA bears no Merits and deserves to be dismissed.

11. The OA and the MA are hereby rejected, parties are left to bear their own costs.

[Signature]
(A. P. NAGRATH)
Admn. Member

[Signature]
26/6/2001
(A. K. MISRA)
Judh. Member

P / C

R Copy
G. J. [unclear]
4/17/67

Received copy
mdg 6/7

Part II and III destroyed
In my presence on 2-4-07
under the supervision of
section officer [unclear] as per
order dated 2/9/2007

[Signature]
Section Officer (Record)