

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

Date of order : 04-6-2001

O.A. No. 299/1998

Kewal Krishan Kohli S/o Shri Ramji Dass, aged about 65 years,
Retired Ticket Travelling Examiner, Northern Railway, Ambala,
Resident of 2-b/3, Jawahar Nagar, Sri Ganganagar.

APPLICANT.

VERSUS

1. The General Manager, Northern Railway, H.Q. Office, Baroda House
New Delhi.
2. The Chief Personnel Officer, Northern Railway, H.Q. Office,
Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Bikaner
Division, Bikaner.
4. The Senior Divisional Personnel Officer, Northern Railway,
Bikaner.
5. The Divisional Railway Manager, Northern Railway, Ambala
Division, Ambala Cantt.

RESPONDENTS.

Mr. S. N. Trivedi, counsel for the applicant.

Mr. R. K. Soni, counsel for the respondents.

CORAM:

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

Hon'ble Mr. Gopal Singh, Administrative Member



: O R D E R :

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

This application is filed by Shri K.K. Kohli, for a direction to assign correct seniority and then promote him in the grade of Rs. 425-640 over and above his juniors, and fix his pay accordingly with all consequential benefits, including interest at the rate of 12% per annum.

2. It is the case of the applicant that he was first appointed as Ticket Collector (T.C, for short) on 17.05.1954 in Delhi Division of Northern Railway and thereafter, he was promoted to Ticket Collector Grade-II (T.C-II, for short) in the pay scale of Rs. 150-240 on 21.03.1964. Thereafter, he was transfer from Delhi Division to Bikaner Division on 07.03.1970, but he could not join his duties in Bikaner Division till 18.09.1973. Thereafter, departmental proceedings were initiated against the applicant for being unauthorised absent between 07.03.1970 to 18.09.1973, and he was removed from service with effect from 23.10.1975. But on an appeal filed by the applicant, the Appellate Authority modified the punishment of removal from service to that of WIT for 2 years and the applicant was reinstated, treating the intervening period as leave due, and accordingly, he was posted at Sirsa Station of Bikaner Division, where he joined on 05.01.1978. Thereafter, on 21.08.1981, the applicant was transferred to Allahabad Division and then, from Allahabad Division, he was transferred to Firozpur Division and from Firozpur Division, he was transferred to Ambala Division of Northern Railway, where he retired on superannuation with effect from 31.03.1992. It is the further case of the applicant that due to these frequent transfers from one division to



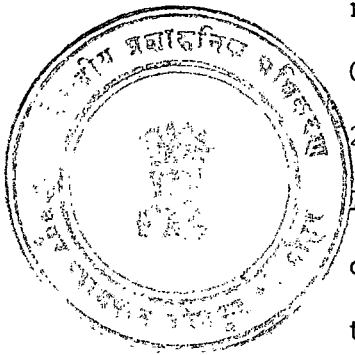
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another, the applicant could not get his promotion in the next grade, since he remained out of regular line of promotion in each division. However, the applicant ~~was~~ carried his original seniority wherever he was transferred on administrative grounds. Due to this frequent transfers, the applicant's promotion in the grade of Rs. 330-560, which was later equated to Rs. 1200-2040, has been erroneously recorded as 05.01.1978 instead of 21.03.1964. He submitted that this date as 05.01.1978 is the date of resumption of duty at Sirsa, after he was reinstated by the order of the Appellate Authority. But this date 05.01.1978 is taken as the date of promotion of the applicant from the grade of T.C to the grade of T.C-II in the pay scale of Rs. 150-240. In fact, the applicant was promoted from T.C to T.C-II on 21.03.1964. Due to this mistake, the applicant was not given the benefit of restructuring of the cadre of the Ticket Checking Staff, which took place on 01.01.1979 and on 01.01.1984, whereas his juniors were promoted to the next higher grades. Noting his date of promotion from T.C. to T.C-II as 05.01.1978 was an administrative error, and when he was serving at Ambala Division, on his representation, the said date has been corrected as 21.03.1964 vide Annexure A-3 dated 07.08.1990. But meanwhile, the applicant retired from service on 31.03.1992. It is his case that, if he were to be promoted on the basis of the restructuring of the Ticket Checking Staff as on 01.01.1979 and also with effect from 01.01.1984 in other divisions, the applicant could have been promoted over and above his juniors, who were promoted at that time. To vindicate his case, the applicant required combined seniority list, and ultimately he could lay hand on the combined seniority list of T.T.E/T.E. as on 01.07.1982, and in the said seniority list, his date of promotion to the post of T.C-II is taken as 05.01.1978, instead of 21.03.1964. Therefore, his seniority has been overlooked for promotion on the basis of restructuring of the cadre of the Ticket Checking Staff in the Bikaner Division in 1979



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and in 1984. The applicant met the concerned officers from time to time for his promotion. But when none of them helped him, he ultimately filed a representation vide Annexure A-1 dated 20.02.1998 for considering his case. He stated that in the Bikaner Division, the persons who were junior to him and who were promoted in the year 1979, were below him in the combined seniority list as on 01.07.1982. In that combined seniority list of 01.07.1982, he was at Sl. No. 49, and his juniors, by name Dhan Singh, Prabhoo Dhan and Ram Lubaya were at Sl. Nos. 113, 68 and 53 respectively. Applicant stated in his application that the said seniority list would be brought to the notice of this Tribunal at the time of hearing. He submitted that the restructuring of the cadre was done on 01.01.1979 and according to the seniority, he being senior, he should have been promoted to the next cadre on the basis of restructuring. It is his case that he was not considered for promotion on the basis of restructuring, by taking the date of his promotion in T.C-II as 05.01.1978, as against the correct date of promotion dated 21.03.1964. This mistake came to his knowledge during the year 1996, when his son Shri Sanjay Kohli died, and some of his colleagues from Bikaner Division had called on him and it is only, thereafter, he was agitating this matter and ultimately, he gave his representation vide Annexure A-1 dated 20.02.1998. But the respondents have not considered his representation. Therefore, the present OA is filed in the year 1998 for appropriate reliefs.



3. By filing separate replies, the respondent No. 5 and the respondents Nos. 1 to 4, have denied the allegations made by the applicant. They stated that the application itself was barred by time. Since the cause of action to the applicant arose on the basis of the pleading only on 21.03.1964, as such, this application is liable to be dismissed on this count alone. They have also stated that the applicant has not challenged the promotion orders of his

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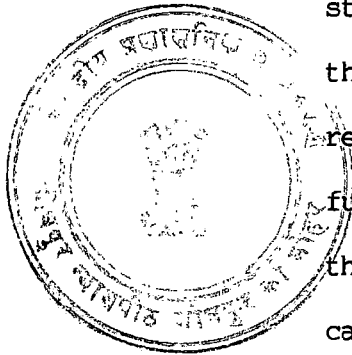
juniors, and the alleged provisional seniority list dated 01.07.1982, by making the juniors as parties. This application is also liable to be dismissed on the ground of plurality of the cause of action. They have also stated that the belated representation filed by the applicant after his retirement, was considered by the Divisional Railway Manager, Northern Railway, New Delhi, and rejected his case vide Annexure R-1 dated 14.12.1994. But thereafter, the applicant made another representation vide Annexure A-1 dated 20.02.1998. A time barred cause of action does not get revived only because the applicant makes another representation to the department. The applicant is making up the alleged claim of the year 1964, nearly after 36 years, and this OA is liable to be dismissed on the ground of laches only. They have also stated that the applicant was transferred to Bikaner Division on 07.03.1970, but he reported at Bikaner Division after nearly three and a half years on 18.09.1973. Therefore, departmental proceedings were initiated against the applicant and ultimately, he was removed from service with effect from 23.10.1975. But on an appeal filed by him, the Appellate Authority modified the penalty of dismissal from service to that of WIT for 2 years by directing his reinstatement, and accordingly, he was posted as STC at Sirsa, Bikaner Division. They also stated that the applicant was not promoted on account of bad entries in his record of service. The Service Book and the service records of the applicant were full of punishments and such punishments awarded would certainly adversely affect ~~an~~ the career of the applicant. They have also stated that the applicant is not eligible for promotion under restructuring Scheme on 01.01.1979 or on 01.01.1984. On the representation of the applicant, the mistake, if any, as to the date of promotion from TC to TC-II, was corrected in the Ambala Division vide Annexure A-3 dated 07.08.1990. They have also stated that the date 05.01.1978 is only the date of his resuming the duty at Sirsa as T.T.E. The applicant was not due



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for any promotion as alleged, due to his undergoing punishments at the relevant time. Therefore, the applicant is not entitled to any relief. They have also stated that the applicant was not due for promotion to higher grades with effect from 01.01.1984 as alleged, and the applicant was undergoing punishments of WIT for 3 years, when he was transferred from Bikaner Division to Allahabad Division. Therefore, he was not entitled to any relief during that period. Accordingly, the respondents submitted that the application is liable to be dismissed being devoid of merits. This Tribunal has no territorial jurisdiction.

4. The applicant by filing rejoinder denied the allegations made in the reply statement of the respondent no. 5, reiterating his stand stated in the application. In the rejoinder, he further stated that he has not made his juniors as parties to this OA, since they have also retired and they would not be affected, if the reliefs as prayed for by the applicant is granted. The applicant further stated that, the application is not barred by time, and there is no misjoinder of cause of action. He also stated that no cause of action arose to him in Delhi Division. He further stated that after the order of the Appellate Authority, setting aside the order of the disciplinary authority, the applicant was reinstated with continuity of service, treating the intervening period as leave due. A copy of this letter is filed at Annexure A-5. From the record, it appears that the applicant has filed one more rejoinder to the reply filed on behalf of the respondent Nos. 1 to 4 on 18.04.2001, stating certain additional facts. He also stated in the further rejoinder that he approached before the Pension Adalat, Headquarter Building, New Delhi in the year 1997, but no information has been received from this Adalat. It is only thereafter, the applicant made a representation vide Annexure A-1 dated 20.02.1998, and the limitation starts from the date of passing of the final



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order, and therefore, this application is in time. In both the rejoinders, he had repeated all the things what he has stated in the OA. Alongwith the second rejoinder, he filed Annexure A-6 issued by the Divisional Personnel Officer, Ambala Cantt, stating that the punishments awarded to the applicant was during the period dated 01.01.1981 to 31.03.1992. He contended that on 1.1.79 on which date the persons, who were juniors were promoted under the Restructuring Scheme, overlooking the applicant, there was no punishment order against the applicant. The applicant should have been considered for promotion under the said Restructuring Scheme in the year 1979, when his juniors were promoted. Therefore, the applicant is entitled to the reliefs, as prayed for.

5. Heard the learned counsel for the parties.

6. On the basis of the pleadings and also the contentions urged on behalf of the respective parties at the Bar, we have to see whether the applicant is entitled to relief, as claimed by him in the application.

7. It is not indispute that the applicant retired from service with effect from 31.03.1992 and the present OA is filed on 19.11.1998. The case of the applicant is that when there was promotion under restructuring of the cadre as on 01.01.1979, his case for promotion to the next higher grade was not considered, whereas the case of his juniors have been considered for promotion in the Bikaner Division. His case was not considered as on 01.01.1979 by taking his promotion from the cadre of T.C to T.C-II mistakenly as 05.01.1978, instead of 21.03.1964, as reflected in the combined seniority list as on 01.07.1982. If that is so, the applicant's grievance relates to the cause of action arising in the year 1978 - 1979, and this application is filed in the year 1998. Thus, there would be a delay of about 20 years in filing this



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application. Though, the applicant refers to promotion orders on restructuring as on 01.01.1984, but the details are not given, nor such promotion orders are filed. Assuming that there was subsequent promotions on the basis of restructuring as on 01.01.1984, even this cause of action from this date would be the one, that occurred about 14 years back before filing this OA. At any rate, it is the case of the applicant that the wrong date as 05.01.1978 as the date of promotion from T.C to T.C-II has been rightly corrected on his representation as 21.03.1964 in Ambala Division vide Annexure A-3 dated 07.08.1990. If that is so, even this date as 07.08.1990 is taken as the date giving him a cause of action for consideration of promotion to the next cadre on the basis of the above correction, the applicant had not moved his little finger to seek remedy in the Court within one year from 07.08.1990. Even from this date also, the OA filed in the year 1998 would be hopelessly barred by time. It is also the case of the department that after retirement of the applicant on 31.03.1992, he had no doubt, made a belated representation, but the same was rejected by the Delhi Division of Northern Railway on 14.12.1994 vide Annexure R-1. As contended by the counsel appearing for the respondents, even this order the applicant has not challenged, and even if this date as 14.12.1994 is taken, then also the application is barred by time. However, the case of the applicant is that the said order relates to his grievance in the Delhi Division but not in the Bikaner Division. Therefore, not challenging Annexure R-1, would not have any consequence. But in our considered opinion, Annexure R-1 has bearing on the case of the applicant. It is the case of the applicant that, he was first appointed in Delhi Division, and he got the lien on the post in Delhi Division. In the Delhi Division, it appears that he made a representation, stating that he was senior to one Shri K.S. Mathur. But vide Annexure R-1 dated 14.12.1994, the same was rejected holding that Shri K.S. Mathur was senior to



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the applicant, and the applicant could not make any grievance on the basis of the combined seniority list. They have also stated that the persons shown in the combined seniority list of 1986 were the persons promoted on adhoc basis. From Annexure R-1, it is clear that the representation ^{based} on the seniority list of Delhi Division as against one Shri K.S. Mathur, has ben rejected vide Annexure R-1 dated 14.12.1994. The fact also remains that the applicant was transferred from Delhi Division to Bikaner Division. Meanwhile, departmental proceedings were initiated against him for unauthorised absence and he was removed from service. Thereafter, on an appeal filed by the applicant, the Appellate Authority has modified the punishment of dismissal from service to that of WIT for 2 years, and the applicant was reinstated. Thereafter, he was transferred to Allahabad Division, from Allahabad Division, he was later transferred to Firozpur Division and from there, he was transferred to Ambala Division, and the applicant retired from Ambala Division with effect from 31.03.1992. On a specific question of the Court, whether there is any grievance of the applicant against his seniority in Ambala Division, the learned counsel for the aplicant after due instructions, submitted that the applicant had no grievance regarding his seniority in Ambala Division. He also submitted that on his representation, even after correcting the date of promotion as 21.03.1964 vide Annexure A-3 dated 07.08.1990, the applicant has no grievance in the Ambala Division. But his grievance relates to the promotions made as on 01.01.1979 and with effect from 01.01.1984 in Bikaner Division under restructuring of the cadres. In these circumstances, it is clear that the applicant is shifting his case from one division to another. The applicant being a Central Government employee, is liable to be transferred from one division to other. It is admitted by the applicant that the seniority is maintained division-wise. If the applicant had any grievance during his stay in Bikaner Division as on 01.01.1979 or as



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01.01.1984 regarding certain alleged promotions made on the basis of the Restructuring Scheme, he should have approached this Tribunal within one year in the year 1979 or in 1984. That the applicant has not done for the best reasons known to him. If that is so, this application is liable to be dismissed as barred by time, as contended by the official respondents. Admittedly, after the correction of the date of promotion as 21.03.1964, instead of 05.01.1978 in the year 1990 vide Annexure A-3, the applicant retired on 31.03.1992. He did not seek any redressal in any forum before his date of retirement. After his retirement also, one of his belated representations has been rejected by the Northern Railway, Delhi Division, vide Annexure R-1 dated 14.12.1994. If the applicant was really aggrieved by that order, he should have approached the appropriate Tribunal, within one year from 14.12.1994. That also, the applicant has not done. But he filed another representation vide Annexure A-1 dated 20.02.1998, and immediately thereafter, he filed the present application before this Tribunal on 19.11.1998. Filing one representation after the cause of action hopelessly barred by time, would not have the effect of reviving the cause of action. In these circumstances, in our opinion, this application is liable to be dismissed on the ground of delay and laches on the part of the applicant. It is not in dispute that under Section 21 of the Administrative Tribunals Act, 1985, the prescribed period of limitation is one year from the date of passing the final order. As we have stated above, the applicant has filed this application after nearly 16 to 20 years.



8. The applicant also relied upon the seniority list as on 01.07.1982 alleging that his date of promotion has been wrongly taken in the said seniority list. But the said seniority list has not been filed as one of the Annexures by the applicant. During the arguments, a smudged and unclear zerox copy of seniority list has

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been produced. As directed by the Court, the applicant has shown one provisional seniority list and taken it back. With reference to this seniority list dated 01.07.1982, he stated that the date of promotion from T.C to T.C-II has been taken as 24.03.1978 under Column No. 12 and, therefore, it is a mistake. But on our verification, we found that the date given in column No. 12 of the said seniority list, is the date of confirmation. The department had also stated in the reply that the date as 24.03.1978 is the date of confirmation. If that is so, the contention of the applicant that by taking his date of promotion from T.C to T.C-II as 24.03.1978, he has not been considered for promotion on the basis of restructuring as on 01.01.1979, is not tenable. From the seniority list, according to the year-wise arrangement, we find that the applicant has been placed over the persons who were promoted during the year 1963 from T.C to T.C-II, therefore, his contention that the department took wrong date of promotion from T.C to T.C-II as 24.03.1978, is incorrect. From the zerox copy of the seniority list as on 01.07.1982, we find that the Sl. Nos. of the persons in the list are not clear. In this zerox copy, the applicant has written Sl. no. as against his name as '49' in ink. In column No. 9, regarding the date of confirmation in substantive post, is not visible. However, somebody has written in ink as 24.03.78. We find that Shri Narendra Nath is the one promoted in the year 1963, and thereafter, one Shri J.K. Bhatia promoted as on 01.01.1963. From this, it follows that the applicant's name being found between these two names, the applicant is taken as promoted in 1963. The date 24.03.1978 found in column No. 12 is the date of confirmation, and the applicant has been transferred to other division. At any rate, this is the seniority list of 1982, but the applicant's grievance is of the year 1979, and he has not produced any seniority list of the year 1979, to appreciate his contentions. As per the applicant, it is in the year 1979, certain persons were promoted under the



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Restructuring Scheme, and who were junior to him. But the department contended that he was not eligible for such a promotion as on 01.01.1979. In this application filed nearly after 16 to 20 years from those dates, it is difficult for us to verify what was the position in the year 1979 or in the year 1984. It is also difficult for the department to produce all the records of 20 years old. The Railway being a huge department, it would be difficult to produce such records which are of 20 years old. Moreover, the applicant has not filed the promotion orders of those alleged juniors in the year 1979 and of the year 1984, who were promoted on restructuring of the cadre, nor he has challenged those promotion orders. He has also not challenged the seniority list holding the field in the year 1979 and 1984. In these circumstances, in our considered opinion, the applicant has not made out a case in his favour on the basis of the materials available on record.



9. The applicant himself has brought to our notice the Annexure A-6 dated 08.10.1993, which indicates that necessary records were not available even in the year 1993 to verify whether the applicant was transferred from Allahabad Division on his own request or in the public interest. It also appears that the applicant opted for T.N.C.R. grade in the pay scale of Rs. 425-640 on 30.07.1979 and H.T.T.E. grade in the pay scale of Rs. 425-640 on 09.11.1979, as per the service records. Annexure A-6, also gives the details of the punishments awarded to the applicant during the period 01.01.1981 to 31.03.1992. We think it appropriate to extract the entire Annexure A-6, as under :-

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Divisional Office,
Ambala Cantt.

Dt. 8.10.93

Divl. Railway Manager,
N. Rly., DRM Office,
FEROZPUR

Sub: Non-giving of promotion to Sh. K.K. Kohli, Ex. TTE, Grade

Rs. 1200-2040 (RPS).

Ref: Your Office No. 847-E/12/FIA dt. 17.9.93.

In reference to your letter referred above, the position as per s/record of the employee is as under :-

1. As per enteries available in S/record, there is no mention to clarify whether the employee was transferred from ALB div. on request of Admn. grounds.
2. As per enteries recorded in the S/record, the employee have opted for TNCR gr. Rs. 425-640 on 30.07.1970 & HTTE gr. Rs. 425-640 on 09.11.1979.
3. The detail of punishment awarded to above named during 01.01.81 to 31.3.92 as per s/record is as under :-
 - i. Awarded punishment of WIT 3 years by DCs/ALB vide D.No. CS/MCG/01/80 dt. 16.06.82.
 - ii. Awarded "censure" vide Sr. DCM/FZR L.No. ISIR/44-78 dt. 27.2.86.
 - iii. Awarded WIT for 6 months vide ACB/FZR L.No. 25-CT/D6 dt. 5.9.86.
 - iv. Reverted to the lower gr. Rs. 850-1500 (RPS) as TCR with punishment effect vide Sr. DCS/FZR, D. No. ISTE/64-65 dt. 15.06.87. This punishment reduced to the minimum of gr. Rs. 1200-2040 (RPS) for 3 years vide L. No. ISTE/64-85 dt. 17.8.87.
 - v. Awarded censure vide Sr. DCS/FZR L.No. Vig./comml/1585-C dt. 2.12.87.
 - vi. Awarded censure vide case No. 423-CT/BTI/89 dated 10.8.89. However photo copy of the s/record of the above named is enclosed herewith alongwith his representation dt. 24.9.93.



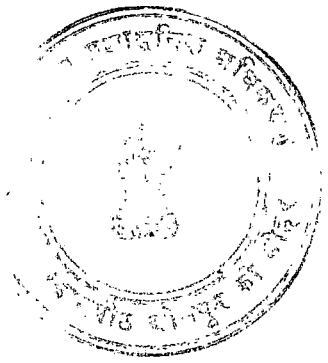
Sd/-

For Divl. Personel Officer
Ambala Cantt."

10. From the above order, it is clear that certain grades were given to the applicant on his options, and now he cannot turn around and say that he should have been given promotion, as claimed in the application. This order also further indicates that the aplicant himself opted for HTTE in the grade of Rs. 425-640 on 09.11.1979, and this is a promotional post from T.C-II. If that is so, the applicant has got his relief he wanted in the year 1979. Now after 6 years of his retirement, he has moved this application

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belatedly for some reliefs, to which he is not entitled at all. The entire application is vague and without furnishing necessary documents to come to any conclusion. Therefore, we are of the opinion that we do not find any substance on the merits of the case. This application is therefore, liable to be dismissed on the ground of limitation as also on the ground of being devoid of any merit. Accordingly, we pass the order as under :-



"Application is dismissed. But in the circumstances without costs".

Gopal Singh

(GOPAL SINGH)
Adm. Member

B.S. Raikote

(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.