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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 317/1998 with 199
T.A. No. connected M.A.
No. 190/98

DATE OF DECISION : 11.05.2000.

Bhanwar Lal Mundan, Petitioner

Mr. N.K. Khandelwal, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent (s)

Mr. Kamal Dave, Advocate for the Respondent (s)
1 to 3

None is present for Respdts No.4 & 5.

CORAM :

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

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO

2. To be referred to the Reporter or not ? Yes

3. Whether their Lordships wish to see the fair copy of the Judgement ? NO

4. Whether it needs to be circulated to other Benches of the Tribunal ? NO

Gopal Singh
(Gopal Singh)
Adm. Member

(B.S. Raikote)
Vice Chairman

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 11.5.2000

O.A. No. 317/1998

M.A. No. 190/1998 in OA No. 317/1998

Bhanwar Lal Mundan S/O Shri Mohan Lal aged about 51 years R/O Makrana, Quarter No.T-24/A Railway Colony, Makrana, presently working as P.W.I. Gr.III at Makrana.

... Applicant

VS

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.
4. Shri Thakur Ram, PWM/JU/PWI III, Luni C/O Assistant Engineer, Northern Railway, Samdari.
5. Shri Rakesh Kumar, PWM, Makrana/PWI III, Degana C/O Assistant Engineer, Northern Railway, Degana.

... Respondents

Mr. N.K. Khandelwal, Counsel for the Applicant.

Mr. Kamal Dave, Counsel for the Respondents 1 to 3

None present for Respondents No. 4 & 5.

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. GOPAL SINGH)

Applicant, Bhanwar Lal Mundan, has filed this application under Section 19 of the Administrative Tribunal Act, 1985, praying for setting aside the impugned orders

Gopal Singh

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dated 28.4.1998, 15.3.1993 and 17.11.1994 at Annexure A/1, A/2 and A/3 respectively and for a direction to the respondents to declare the applicant as an incumbent for the post of Permanent Way Mistry (PWM) right from 10.4.1981, and accordingly assign correct place in the seniority list dated 15.3.1993, with all consequential benefits. The applicant has also filed a Misc. Application No. 190/98 in this O.A, praying for condonation of delay in filing the O.A.

2. Applicant's case is that he was initially appointed as Gangman in the Railway on 15.1.1966, and while he was working as store issuer on ad hoc basis in Metropolitan Transport Project (MTP) on deputation, he was trade tested for the post of Permanent Way Mistry (PWM) and on passing the said trade test was appointed as PWM vide respondents' letter dated 10.4.1981 (Annexure A/4). Thereafter, the applicant requested the respondents many a time to depute him for training to Civil Engineering Training Academy (CETA) Kanpur and ultimately he was deputed for the said training vide respondents' letter dated 27.12.1991 (Annexure A/9) treating him as having passed the suitability test under respondents' letter dated 10.4.1981. The applicant was promoted as PWI-III vide order dated 17.11.1994 (Annex A/3). The contention of the applicant is that he should have been sent for training immediately after his passing the trade test on 10.4.1981. Since he was not sent for training in time, many of his juniors after passing the said training course earlier to the applicant, have become senior to him. Therefore, the applicant has also challenged the seniority list dated 15.3.1993.

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3. In the counter, it has been contended by the respondents that the application is hopelessly barred by limitation. The applicant has not challenged the seniority list dated 15.3.1993, and his promotion order dated 17.11.94 in time. The applicant had never represented against the seniority list dated 15.3.1993. Even the alleged representation dated 30.10.1995, regarding the applicant's seniority was never received by the respondents. It has also been averred by the respondents that no request was made to respondent No.2, by the applicant for deputing him for Training to CETA, Kanpur. The claim of the applicant for booking for training on 10.4.1981, has no foundation as he was neither selected against the direct recruitment quota nor was promoted against Twenty five per cent regular promotion quota. On 10.4.1981, he was just allowed to hold the post as an ad hoc officiating arrangement. The application is thus devoid of any merit and deserves to be dismissed, over the respondents.



4. We have heard the learned Counsel for the parties and perused the records of the case.

5. We would deal with the preliminary objections of the respondents first. The seniority list published on 15.3.1993, was never challenged before the respondents inasmuch as no representation was filed in regard to placement of the applicant in the seniority list. Similarly, promotion order dated 17.11.1994, was also not contested. Receipt of alleged representation dated 30.10.1995, by the applicant has also been denied by the respondents. Moreover, there was no occasion (to represent) on 30.10.1995 to file any representation. Learned Counsel for the applicant submitted that the applicant came to know of the impugned

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seniority list in 1995 is not tenable as he had already earned a promotion to the post of PWL-III on 17.11. 1994, on the basis of said seniority list. Further, the applicant is praying in the application filed on 23.11.1998 for accord- ing him seniority in the PWM cadre with effect from 10.4.'81, the date he was appointed as such in the MTP. The respon- dents have emphatically denied receipt of any representation in this regard. The applicant, however, maintains that he had made many representation to depute him for training for promotion course and finally he had taken up the matter through the Permanent Negotiation Machinery (PNM) where his claim was rejected vide Annexure A/1 & A/2. In this connec- tion, it is pointed out that repeated representations do not give fresh cause of action in the hands of the applicant. The grievance first arose in 1983-84, when some of his colleagues were sent for training to CETA, Kanpur. We have, therefore, no hesitation to observe that the applicant was sleeping over his rights all these years. Thus, the application suffers from laches and delays and can be dis- missed on this ground alone. Judgment in support of the contention cited by the learned Counsel for the applicant are discussed in subsequent paragraphs.

6. (i) AIR 1991 SC 424-A. Sagayanathan & Ors vs. Divnl. Personal Officer, Southern Railway.

In this case, it has been held that promotion to higher post is governed by the rule of seniority and in the face of supersession of the applicant therein, these cases deserve reconsideration, despite the delay. In the instant case supersession is not alleged. Moreover, promotion

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to higher post was not dependent on seniority. It was dependent on passing the promotion course which undoubtedly was passed by the applicant in 1992. Thus, the judgement does not help the applicant.

(ii) 1998 (7) Supreme 209- N. Balakrishna Vs M.Krishnamurthy

In this case the Trial Court had condoned the delay accepting explanation of delay. High Court held that delay not properly explained. It was held that once Trial Court accepts explanation as sufficient, superior court should not disturb such finding. In this case, no such finding exists and, therefore, the judgment does not come to the rescue of the applicant.

(iii) AIR 1999 Bombay 235-Sonerao Sadashivrao Patil & Anr. V. Godawaribai Laxmansingh Gahirewar & Ors.

In this judgement it has been held as under :

"The Court is armed with power to condone the delay. The discretion is given to the Court to condone delay and admit the appeal in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. If the spirit behind the empowerment of discretionary power on the Court is taken into consideration, it is beyond doubt clear that the Court is required to adopt liberal approach in the matter of interpretation of the phrase "sufficient cause". This concept is adequately elastic to enable the Court to apply law in a meaningful manner. The requirement of explanation of every day's delay does not mean that a pedantic approach should be taken. The Courts are required to adopt common sense approach and to take pragmatic approach while interpreting the concept of sufficient cause. Length of delay is not the matter, acceptability of explanation is the only criterion. The Court has to take into account whether there is acceptable explanation or pardonable explanation."

The explanation given for delayed filing of the O.A. reads as under :

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(i) That the applicant is dedicated and devoted employee of the Railway. As such, he was of the view that first Departmental avenue (including Union Channel) should be exhausted fully. Only with this view he was hesitant to take his superiors to Courts due to fear of more serious reprisals rather achieving any career advancement. This very view was also held by the Hon'ble Tribunal (1995) 29 ATC 71 (Bangalore) A.C. Prabhakaran V. Chief Personnel Officer & Ors.

(ii) That the top officials of the recognised Union assured the applicant that his case will be finally and properly disposed of during the Divisional P.N.M. As such, he should wait till the disposal of his Promotion and Seniority Issue by the Members of P.N.M. The applicant was left with no choice except to wait till the final decision of the Department on the issue of his promotion and seniority. However, the same was held in the P.N.M. vide Item ANNEXURE A/1 of the original application, being Item No.12/1998 and the same was decided against the applicant. Under these circumstances, the applicant was left with no any other alternative except to approach before this Hon'ble Tribunal for the redressal of his long pending genuine grievance of promotion and seniority.

(iii) That this Hon'ble Tribunal is fully competent to accept even oral prayer or request with regard to condonation of delay in presenting the original application. This view was held by the Hon'ble Tribunal in the matter of Hiralal Das V. Union of India 1995 (30) A.T.C. 702 Gauhati.

(iv) That the orders with regard to seniority of the applicant ANNEXURE A/2 and promotion of the applicant, as P.W.I. Grade III ANNEXURE A/3 are wholly illegal and void. The orders are not governed by the provisions of Limitation Act. The same was held in connection with Dhiru Mohan V. Union of India (CAT) (Full Bench) II/498 (Ahmedabad).

(v) That even the Apex Court i.e., Supreme Court of India has also held that the delay has no bar to consider the matter on merits 1996 (8) J.T. 47.

It is, therefore, most respectfully prayed that in view of the aforesaid facts and circumstances, the humble applicant prays that if there is any delay in presenting the original application then the same may kindly be condoned taking into consideration the aforesaid facts and legal position."

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In this application filed on 23.11.1998, the applicant is seeking seniority in the cadre of PWM with effect from 10.4.1981, and explanation given above cannot in any circumstances be treated as satisfactory even if we take most liberal view. Thus, none of the judgments cited by the learned Counsel for the applicant help the applicant.

7. Coming to the merit of the case, it is pointed out that the applicant's claim is based on his appointment as PWM in the MTP. This appointment is not in direct line of promotion of the applicant. The applicant was promoted on ad hoc basis while he was on deputation to MTP and promotion earned in deputation organisation does not confer any right on the applicant to be treated as promoted in the parent organisation from that date. Further appointment to the post of PWM is dependent on passing the promotion training course. The applicant had passed the said course in 1992, and immediately thereafter he was promoted as PWM and further promoted as PWI-III with effect from 17.11.1994. Of course, had he taken up the matter with the respondents in regard to his Training in Promotion Course in time he might have been promoted in the parent department earlier. Fact remains that he did not pursue this case with the respondents. The respondents have even denied the receipt of his alleged representation dated 30.10.1995. Thus, the applicant had been sleeping over his right all these years. At this late stage, the applicant cannot be permitted to disturb the settled position of seniority.

8. In the light of above discussion, we are of the firm view that the application is devoid of any merit and deserves to be dismissed.

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9. The Original Application and Miscellaneous Application
are accordingly dismissed with no order as to costs.



(GOPAL SINGH)
Adm. Member

(B.S. RAIKOTI)
Vice Chairman

J

R/C

NP
Chh.
19/5

Recd by
Recd
19/5/06

Part II and III destroyed
in my presence on 27/10/06
under the supervision of
Section Officer (R) as per
order dated 23/8/06

Section officer (Record)