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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Decision : 15.3.2002

O.A. No. 12/1999.

1. Rajendra Prasad S/o Shri Ram Nihor, aged about 48 years, Dy. Chief Controller, Control Office, Divisional Office, Northern Railway, Bikaner, resident of 111 D, Railway Colony, Civil Lines, Bikaner.
2. Tulsi Ram Meena S/o Sh. Kalyan mal aged about 43 years, Chief Controller, Control Office, Divisional Office, Northern Railway, Bikaner, Resident of T-65-B, Railway Mal Godam Colony, Bikaner.

... APPLICANTS.

v e r s u s

1. Union of India through; General manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner.
3. Senior Divisional Personnel Officer, Northern Railway, Bikaner.

... RESPONDENTS.

Mr. Y. K. Sharma counsel for the applicants.
Mr. Manoj Bhandari counsel for the respondents.

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Hon'ble Mr. Gopal Singh, Administrative Member.
Hon'ble Mr. J. K Kaushik, Judicial Member.

: O R D E R :
(per Hon'ble Mr. J. K Kaushik)

The applicants have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and have prayed for the following reliefs :-

"A. That this Hon'ble Tribunal may kindly be pleased to quash and set aside the impugned orders vide Annexure A/l.

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B. That Respondents may kindly be directed to promote the applicants to the post of Dy. Chief Controller Grade Rs. 2000-3200 (RPS) in terms of instructions contained in Annexure A/3 with all consequential benefits.

C. That any other orders/Relief/directions may kindly be passed/granted which this Hon'ble Tribunal deems fit, proper and just in favour of the applicants.

D. That the cost of the application may also be awarded."

2. The brief facts of the case are that the applicants have completed three years training for Traffic Apprentices and were appointed to the post of Section Controller in the grade of Rs. 470-750 w.e.f. 24.05.1984 and 11.07.1984 respectively. They have stated that there was a restructuring of the cadre of the Section controllers w.e.f. 01.01.1984 by virtue of which number of posts in higher grade of Rs. 700-900/2000-3200 became available but the requisite number of Section Controllers were not available on the feeder post i.e. the Section Controller in the scale of Rs. 470-750. At the relevant time, the Railway Board issued a circular PS No. 8091, which provided that one must work for two years on the feeder post for becoming eligible for promotion to the next post later being a safety category post. The post of Section Controller is a safety category post. However, subsequently, the Railway Board issued a circular dated 12.09.1985, wherein it has been provided that for post restructuring vacancies in the safety categories, the period of two years in

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lower grade for promotion may be relaxed to one year in case of promotion to be ordered up to 30.06.1986. In this view of the matter, both the applicants have become due for consideration of promotion to the post of Deputy Chief Controller in the grade of Rs. 700-900 w.e.f. 24.05.1985 and 11.07.1985 respectively, on completion of one year service, against the vacancies which were available as a result of the restructuring of the cadre of Section Controller.

3. Both the applicants have submitted a representation dated 18.06.1997 (vide Annexure A-4) and requested the Second respondent to grant their due benefits as per the rules framed by the Railway Board in the matter. But their case was turned down vide letter dated 01.09.1997 (Annexure A-1) at Page 13, hence this application.

4. The show cause notices were issued to the respondents for admission on 14.01.1999. The respondents have filed a detailed reply to the Original Application and have taken preliminary objection regarding the limitations amongst other objections. They have contraverted the facts and grounds taken into the Original Application and have submitted that the application may be dismissed with exemplary cost.

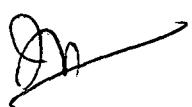
5. The applicants have filed rejoinder to the reply and have submitted a seniority list for the

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post of Chief Controller issued vide letter dated 14.03.1995. The respondents have also submitted a counter affidavit to the rejoinder to the reply. It has also been stated that the applicants were promoted to the post of Deputy Chief Section Controller in the scale of Rs. 700-900/2000-3200 vide order dated 24.11.1986. These promotions were given to them after adjudging their suitability and competence as per the rules in vogue. They have been given the correct seniority as per rules and they have no case on merits.

6. We have heard the learned counsel for the parties and have carefully peruse the records.

7. In the first instance on the point of limitation, the respondents have vehemently argued and stressed that there has been a gross delay of about thirteen long years inasmuch as the applicants are asking their promotion from the year 1985 and they have filed the Original Application in the year 1998. The counsel for the respondents has argued that the applicant cannot come at any time, submitting a representation and on his disposal cannot contend that the cause of action arises on rejection of his representation. In this communication, the principle of law has been laid down by a constitution bench consisting of seven judges of Hon'ble the Supreme Court in the case of S.S.Rathore vs. State of Madhya Pradesh (AIR 1990 SC 10), that submission of a



just memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation. The Hon'ble Supreme Court has observed in Para 20 of the said judgement as under :-

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S:21 of the Administrative Tribunals Act, Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

8. On the other hand, the counsel for the applicants asserted that his representation has been decided on merit and has not be rejected on the ground of delay. The cause of action arises to the applicants from the date Annexure A-1 has been passed and their Original Application is within the limitation. He has also taken support

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of the judgement of Hon'ble the Supreme Court in Collector, Land acquisition, Anantnag vs. Katiji (AIR 1997 SC 1353). In this case, the Hon'ble Supreme Court has laid down that justice oriented approach should be adopted and the matter mainly deals with the condonation of delay. In the present case there is no application for condonation of delay and there is no prayer to this effect and question of explaining and giving good and sufficient reason to the delay does not arises, so the ratio of the said case has no application to the controversy involved in the present case. Thus, the Original Application deserves to be dismissed on the ground of delay and latches and the ratio of the judgement of Hon'ble the Supreme Court in SS Rathore (Supra) case fully applies to this case inasmuch as there was no statutory representation provided under the rules and there was delay of about thirteen long years.

8. We are of the considered opinion, that the Original Application merits rejection on the ground of delay and latches itself and there is no need to adjudicate upon as the merits of this case. In view of the aforesaid discussion, the Original Application is dismissed and there shall be no order as to costs.

J. K. KAUSHIK
(J. K. KAUSHIK)
MEMBER (J)

Gopal Singh
(GOPAL SINGH)
MEMBER (A)

Part II and III destroyed
in my presence on 3/3/01
under ~~supervision of~~ ~~supervision of~~
Security Officer ~~as per~~ ~~as per~~
Ordered dated 12/1/00 ~~as per~~ ~~as per~~
Security Officer (Recorded)

R. M. Gandy
1991-3-2002

Refiled and
2002-3-2002