

I/S

CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO.: 162/2001

Date of Order: 27.10.05

Harish Dutt s/o Sh. Jeewanand by caste Joshi, at present working as Helper Grade-I in the office of the Section Engineer (Bridge) Maint., Northern Railway, Jodhpur. Also permanent r/o Village Talla Khatera Post Malla Khatera Dist. Champawat (Uttranchal Pradesh).

....Applicant.

V E R S U S

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Senior Civil Engineer (Bridge), Line 1, LPNR Lajpat Nagar, Northern Railway, New Delhi.
3. The Assistant Bridge Engineer, Northern Railway (Bridge), Line 1, LPNR Lajpat Nagar, Northern Railway, and New Delhi formerly having its office at Jodhpur.
4. The Section Engineer (Bridge) Maint., Northern Railway, Jodhpur formerly known as Bridge Inspector, Maintenance, Northern Railway, Jodhpur.
5. Sh. Hanuman Singh s/o Sh. Chog Singh at present working as Motor Driver Gr.-III in the office of the Section Engineer (Bridge) Maint., Northern Railway, Jodhpur.

....Respondents.

Mr. H.R. Soni, counsel for the applicant.

Mr. Kamal Dave, counsel for the respondent no. 1 to 4.

None present for respondent no. 5.

CORAM:

HON'BLE MR. JUSTICE G.L. GUPTA, VICE CHAIRMAN.

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.



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## : O R D E R :

PER MR. JUSTICE G.L. GUPTA:

The applicant seeks the following reliefs:

"(i) by appropriate order or direction the respondent be directed to release the promotion on the post of Motor Driver Gr. III to the applicant with effect from the date 17.6.85 itself the date when his junior private respondent no. 5 stand promoted.

(ii) by appropriate order or direction the respondent be directed to release the actual payment of arrear of difference of back wages of the post Motor Driver Gr. III to the applicant.

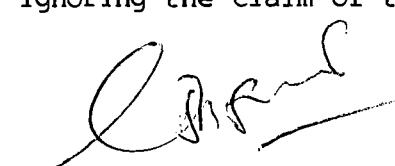
(iii) by appropriate order or direction the seniority list dated 28/6 published for the post of Motor Driver Gr. III, marked as Annex. A/l may kindly be set aside and official respondents be directed to re-assign the appropriate seniority to the applicant over and above the private respondent no. 5 on the post of Motor Driver Gr. III and

(iv) any other appropriate relief which this Hon'ble Tribunal deem it proper in the facts and circumstances of the case, found favourable to the applicant may kindly be granted to the applicant.

(v) cost of this application be allowed to the applicant."

2. The applicant was appointed as casual labour under the respondent on 5.9.77 and he had rendered casual service for 3495 days. Shri Hanuman Singh, respondent no. 5 was appointed as casual labourer on 13.10.97 and he had rendered casual service for 3426 days only. In other words, it is averred, the applicant has rendered more number of days of casual service than respondent no. 5. It is also stated that in the result-sheet of screening test held for the casual labourers on 11.8.89, the applicant's name figured at Sl. No. 46 and that of the respondent no. 5 at Sl. No. 55, thus the applicant was senior to private respondent no. 5.

The official respondents it is alleged, while organising the trade test in the year 1984 for the post of Motor Driver in the scale of pay of Rs 260-400, called Hanuman Singh for the trade test ignoring the claim of the applicant and thus they violated para 179



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(xiii) (c), of the Indian Railway Establishment Rules. The applicant made several representations from 1984 to 2001, stating that private respondent no. 5 was wrongly called for the trade test in the year 1984 and that he was entitled to be trade tested before respondent no. 5.

It is averred that the applicant came to know about the seniority position of respondent no. 5 when the seniority list annex. A/l was published. He thereafter made representations for granting him the relief but no action was taken. Hence this Original Application.

The applicant filed additional affidavit on 16.07.2001, stating that temporary status was conferred on him w.e.f. 03.01.1978. He was made Khalasi Helper under re-structuring scheme w.e.f. 03.11.1979. In the second additional affidavit filed on 24.07.2001, it is stated that the respondents have replied the representation of the applicant for the first time vide communication dated 03.11.2001 (Annexure A/l (a) and therefore the matter is within the period of limitation.

3. In the counter, the official respondents have resisted the claim of the applicant mainly on the ground that it is belated. It is averred that the applicant was aware of the fact that the respondent no. 5 was called for the trade test in 1984 but he did not challenge the action of the official respondents and now he should not be permitted to assail the orders passed in the years 1984 or 1985. It is, however, not denied that the applicant was appointed as casual labourer before the private respondent no. 5 and he had rendered more number of days of service. It is prayed that the application be dismissed being barred by limitation.



4. In the rejoinder, the applicant has reiterated the facts stated in the Original Application.

5. In the reply to the rejoinder, it is stated that the trade test was conducted on 07.04.1984 and the applicant cannot challenge the same and unsettle the settled position after a lapse of 16 years. It is stated that there cannot be any comparison of the applicant and the private respondents as the applicant at the time of filing the Original Application, was working as Khalasi Helper (Group-D) and the respondent no. 5 has been working as Motor Driver (Group-C) since 1984.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. Mr. Soni pointed out that the applicant was not granted proper seniority in the Seniority List (Annex. A/1), hence he made representations and when relief was not granted to him, he has filed this Original Application. He canvassed that the applicant was senior to respondent no. 5, as per the position of the Railway Establishment Rules and hence he cannot be non-suited on the ground of limitation. He placed reliance on the case of Munna vs. Union of India and others (O.A. No. 458/94 decided on 13.11.1998 by this Tribunal) and Sukhbir Singh vs. Union of India and Others (O.A. No. 387/94 decided on 01.10.1989 by this Tribunal). He also relied on the ruling of the Supreme Court in the case of Ram Ramual vs. State of Himachal Pradesh and others (AIR 1989 SC 357).

8. On the other hand, Mr. Kamalk Dave, learned counsel for the official respondents vehemently contended that the Original Application being having been filed after the expiring of period of



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limitation, the Court should not enter into the merits of the case. It was pointed out that the applicant has not even filed Misc. Application for condoning the delay in filing the Original Application. His further contention was that the representation of the applicant was rejected vide communication dated 03.07.2001 wherein reasons were stated, and the applicant has not refuted the facts either in the O.A. or in the affidavits or in the rejoinder.

9. We have given the matter our thoughtful consideration. It is admitted position that the applicant was Group 'D' employee when he filed this O.A. and respondent no. 5 was in Group 'C'. Respondent no. 5 had been given promotion in Group 'C' on the post of Motor Driver Gr. III in the year 1984 pursuant to the trade test held on 07.04.1984. It is manifest that the respondent no. 5 was treated senior to the applicant right from 1984.

10. It is significant to point out that the copy of the letter Annex. A/3 dated 20.03.1984 calling upon respondent no. 5 for trade test was also supplied to the applicant. This fact is evident from the endorsement on the letter. It is not the case for the applicant that he had not received copy of the letter Annexure A/3.

In the said letter, it was stated that Hanuman Singh (Respondent no. 5) was to undergo the trade test and in case he refused to take part in the trade test then Harish Dutt (applicant) would undergo the trade test. This letter clearly informed the applicant that his turn for the trade test would be after Hanuman Singh and he would be tested only after Hanuman Singh declined to appear in the trade test. The applicant had thus the knowledge in March 1984 itself that Hanuman Singh (Respondent no. 5) was considered senior to him in the cadre of Khalasi.

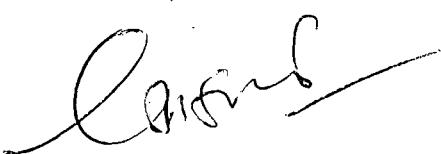


11. It is nowhere stated by the applicant that he had made representation to the authorities against placing Hanuman Singh above him in the cadre of Khalasi. What is stated in the O.A. is that the applicant had made several representations right from 1984 to 2001 for the redressal of his grievances.

We have seen the copies of the representations filed by the applicant along with O.A. In the representation made in the year 1983 (Annexure A/5) Annexure A/6 (date not given) Annexure A/7 dated 04.02.1984 Annexure A/8 dated 20.02.1990, it was nowhere stated that the applicant was senior to Hanuman Singh and he ought to have been called for the trade test before Hanuman Singh. What the applicant has stated in the representations was that a vacancy of Motor Driver was likely to fall and since he possessed the licence, his case should be considered.

12. It is evident that the applicant had not represented till 1990 that he ought to have been called for trade test prior to Respondent no. 5. No representation seems to have been made from 1990 to 1999. When the applicant did not challenge the order of calling the private respondent no. 5 for the trade test in the year 1984, till 1999, he cannot be permitted to challenge the order by way of this application filed in 2001.

13. It is for the first time in 2000, when the applicant stated in his representation Annexure A/9 that he ought to have been given the chance for trade test before Shri Hanuman Singh and that he should be given promotion to the post of Driver. In the representation Annexure A/10 dated 01.09.2000, the same facts were reiterated.



The representation of the applicant filed in 2000 was rejected by the respondents vide order dated Annexure A/l (a) filed with the affidavits. In this order it was stated as to how the private respondent no. 5 was considered senior to the applicant. It was stated that temporary status was conferred on both applicant and respondent no. 5 on the same day and as per the second criteria i.e. criteria of date of birth, Shri Hanuman Singh was considered senior to Harish Dutta.

It is not averred in the O.A. or in the affidavits or the rejoinder that there is no such criteria for fixing the seniority of casual labour. If the date of conferment of temporary status on both the employees was the same, the next criteria to be adopted for fixation of seniority was the date of birth. Therefore respondent no. 5 was rightly considered senior to the applicant.

14. Section 21 of the Administrative Tribunals Act, 1985, provides for limitation for filing an application before this Tribunal. It reads as under:

"(1) A Tribunal shall not admit an application:-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

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It is evident that an application can be filed within one year only from the date of accrual of the cause of action. According to the applicant the cause of action had accrued to him in the year 1984 itself when respondent no. 5 was called for the trade test. He did not think it proper to challenge that order. He even did not care to challenge the order of appointment of respondent no. 5 as Motor

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Driver Gr. III. Therefore the application is liable to be dismissed being barred by limitation.

15. It has been held in the case of Secretary to the Government of India and others. vs. Shivram Mahadu Gaikwad (1995 SCC (L&S) 1148), that the Tribunal cannot overlook the question of limitation if the O.A. is filed after the period of limitation. These observations were reiterated in the case of Ramesh Chand Sharma vs. Udham Singh Kamal and others. (2000 SCC (L&S) 53). It is also observed in that case that if an application is filed beyond the limitation, the same can not be considered on merits. It is significant to point out that the applicant has not even filed an application for condoning the delay. Therefore the O.A. is liable to be dismissed on the ground of limitation alone.

16. As to the cases relied on behalf of the applicant, it may be stated that from the orders passed in the cases of Munna and Sukhbir Singh (supra) it does not appear that the objection of limitation was raised by the other side. Every decision does not have binding force. It is only the ratio decidendi that has the binding force. When there was no objection of limitation and it has not been considered by the Tribunal it cannot be accepted that the Tribunal had held that even when the matter is beyond the limitation the relief should be granted. Moreover, in the case of Munna (supra) the seniority list was published for the first time on 30.11.1993. It is obvious that the O.A. was filed within a period of one year of the publication of the seniority list.

17. As to the case of R.M. Ramual (supra), it may be stated that was not the case where the matter was filed before the Administrative Tribunal. The Act of 1985 provides limitation. In



that case, it was a writ petition filed before the High Court. It may be stated that under the writ jurisdiction, no time limit is prescribed. Moreover, in that case, the impugned order was communicated on 28.04.1982 and from the particulars of the appeal, it is clear that the writ petition was filed either in 1982/1983 itself. Therefore, there was no delay in filing the Writ Petition.

18. The applicant made an attempt to bring the matter within the limitation from the seniority list Annex. A.1. There is, however, no covering letter of the seniority list and therefore it is not known as to what was the date of publication of the seniority list. In any case, it is not the seniority list wherein the name of the applicant and that of the private respondent No. 5 are stated. It only shows the name of private respondent No. 5 Hanuman Singh at Sl.No.20, stating that he is a motor driver Gr.III. When the name of the applicant who was group 'D' employee could not be there in the seniority list of higher grade officials, how can it be said that the cause of action arose to him on the publication of the seniority list. It is manifest that the applicant's name does not and could not figure in the said seniority list. He therefore cannot seek relief on the basis of the said list.

19. Apart from that, it is not the case for the applicant that according to the criteria adopted by the respondents, 5th respondent could not be given higher seniority. As a matter of fact, the applicant has not assailed the order Annex. A.1 (a) by making necessary averments. He has simply filed this document along with additional affidavit without refuting the facts stated in that letter. The fact remains that the applicant does not dispute ~~as the~~ position stated in the order Annex. A.1(a) Therefore even on merits, it cannot be accepted that the applicant was entitled to be considered senior to respondent No. 5.



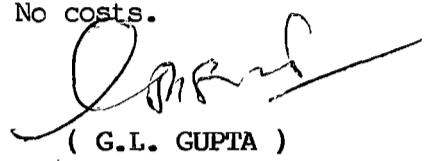
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20. Having considered the entire material, we are of the firm view that the Original Application is liable to be dismissed being barred by limitation.

21. Consequently, the application is dismissed. No costs.

( A.P. NAGRATH )

Administrative Member



( G.L. GUPTA )

Vice Chairman

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