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CAT/J/12

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH: JODHPUR

O.A. No. 273/2002 & 198  
T.A. No. M.A. No. 127/2002

DATE OF DECISION 4-2-2004Nem Singh

Petitioner

Mr. S.K. Malik

Advocate for the Petitioner(s)

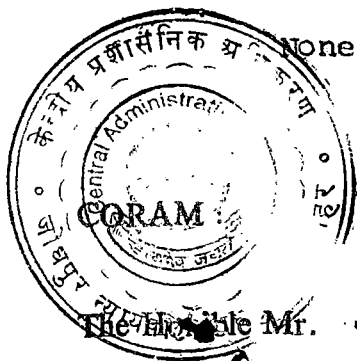
Versus

UOI and 3 others.

Respondent

Mr. Vinit MathurAdvocate for the Respondent(s)  
1 to 3

None present for the respondents.



The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *W*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

MGIPRRND-12 CAT/86-3-12-86-15,000

( G.R. Patwardhan )  
Member (A)

*J.K. Kaushik*  
( J.K. Kaushik )  
Member (J)

I/B  
1/10

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR.**

**Original Application No. 273/2002  
And M.A. No. 127/2002.**

**DAY OF January two thousand Four.**

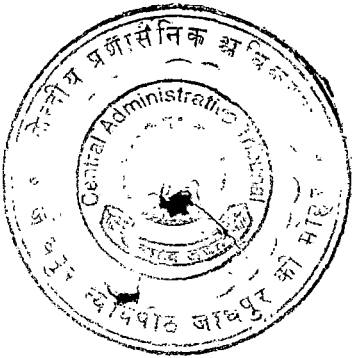
Hon'ble Mr. J.K. Kaushik, Judicial Member,

Hon'ble Mr. G.R. Patwardhan, Administrative Member.

Nem Singh.  
S/o Shri Devilal  
R/o C.55 Kirti Nagar,  
Magrapunjala  
JODHPUR. : Applicant.

By Mr. S.K.Malik. : Counsel for the applicant.

**Versus**



1. Union of India through the Secretary,  
Ministry of Defence,  
Raksha Bhavan,  
New Delhi.
2. Commander Works Engineer (CWE)  
A.F. Jodhpur (Rajasthan)
3. Chief Engineer,  
Southern Command, Pune.
4. Shri Bhupendra Singh,  
Electrician H.S.-I  
O/o The Garrison Engineer,(AF)  
Jodhpur.

: Respondents.

By Mr. Vinit Mathur: Counsel for the respondents.

None present for R.4

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**ORDER**

**Per Mr. J.K. Kaushik, Judicial Member.**

The applicant has filed this application with the following prayer:

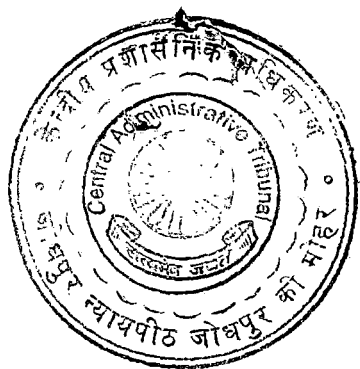
" that by an appropriate writ, order or directions respondents may be directed to promote the applicant with effect from the date from which junior to applicant Shri Bhupendra Singh and Shri Jagat Singh were promoted to HS -II with all consequential benefits including pay and allowances etc.

2. The material facts necessitated the filing of this Original Application are that the applicant was initially appointed to the post of Switch Board Attendant on 23.01.71 and promoted to the post of Electrician with effect from 23.03.81. He further enjoyed his promotion to the post of H.S.Gr.II and H.S. Gr.I with effect from 15.10.84 and 13.12.92 respectively. Respondent No. 4 is junior to the applicant in every respect and as per the seniority list at Annex. A.3, the name of the applicant is shown at Sl. No. 2, whereas the name of the respondent No.4 is at Sl.No. 16. Respondent No. 4 has filed O.A No.160/99, which was allowed by this Bench of the Tribunal with a direction to the respondents to promote him with effect from the date on which his junior Shri Jagat Singh was promoted, i.e. from 16.10.81 against 10% category of Switch Board Attendant vide order dated 30.11.96. The claim of respondent No. 4, for grant of promotion on the post of HS Gr. I with effect from 16.10.81 was based that Shri Jagat Singh, junior to respondent No. 4 was granted the said



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benefit. Shri Jagat Singh is junior to the applicant as well, whose name is placed at Sl. No. 17 of the seniority list. Thus respondent No. 4 has been allowed his due fixation of pay at par with his next junior vide order dated 21.02.2001( Annex. A.1 ). The applicant submitted a representation dated 10.12.2001, requesting therein for grant of similar benefits to him and the same was followed by reminders and the case of the applicant was also duly recommended, which shows that the applicant is senior to Bhupendra Singh. But nothing material has been done and the matter only remained under consideration without issuance of any final order. This O A has been filed on diverse grounds mentioned in para 5 (a) to (e) which we shall take up and discuss a little later in this order.



3. The respondents have resisted the claim of the applicant and have filed an exhaustive reply. In the reply a preliminary objection has been taken regarding the limitation, wherein it is averred in the O.A the application is within limitation but still an application for condonation of delay is filed. On the facts, it is averred that after examining the case of the applicant and considering the policy in vogue, the applicant was informed that his case was being processed at par with his junior, but instead of waiting for the outcome the applicant has approached this Tribunal. It is also stated that the applicant has waited for the decision in the case of Respondent No. 4 and then filed the

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instant Original Application and hence the case is clearly barred by limitation. The grounds have been generally denied.

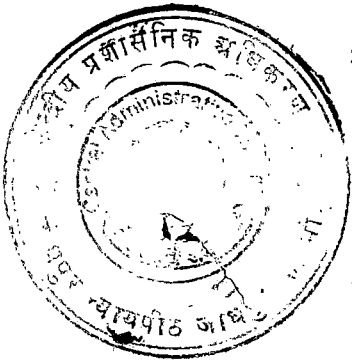
4. Misc. Application No. 127/2003 has been filed for condonation of delay to which reply has been also filed. The applicant has averred that after the order of this Tribunal dated 21.02.2001( Annex. A.1) and the pay fixation order dated 27.09.2001 ( Annex. A.2), he submitted a representation for the grant of the benefit as has been done in the case of his junior. Thereafter, the respondents had highlighted the facts of the case and recommended the case for placement in the H.S. Grade at par with his junior and the matter is still pending. It is averred that the application is within the period of limitation and by way of abundant caution, this M.A has been filed. In reply to the Misc. Application, it is stated that the cause of action to the applicant arose that when once Shri Jagat Singh was promoted, the applicant accepted the position and did not choose to raise any objection and there is no convincing, reasonable justification for not approaching the Tribunal in time. The applicant has not been vigilant and the Original Application is hopelessly time barred.



5. We have heard the learned counsel for the parties at great length and have anxiously considered the pleadings and recordings of the case. The learned counsel for the applicant has

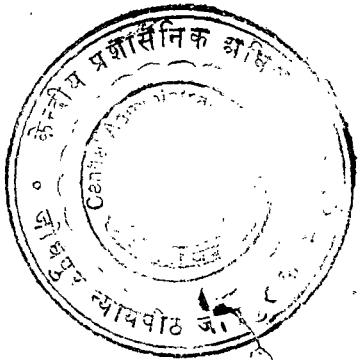
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reiterated his pleadings and has submitted that his case is squarely covered by the judgement of this Bench of the Tribunal dated 21.02.2001 in Original Application No. 160/99 (Bhupinder Singh vs. Union of India & others.) [ Annex. A.1]. He also contended that once junior to the applicant has been given the benefit, the applicant has a fundamental right for consideration of the promotion and his case ought not to have been neglected. He cited a number of decisions on the point and narrated good and sufficient reasons for condoning the delay. He further submitted that he is entitled to get the benefit of a judgement given to a person who is similarly situated and the law of limitation does not come in his way. He also contended that on coming to know that his junior has been promoted, he submitted a representation for extending the benefit to him.



6. Per contra, the learned counsel for the respondents has vociferously opposed the contention of the learned counsel for the applicant on the point of limitation. He submitted that the applicant has not been able put forward good and sufficient reason for the condonation of delay. Awaiting for a decision to come in a similar case, cannot be a ground for condonation of delay. He has also reiterated the stand of the respondents, taken in the reply that the matter is still under consideration of the authorities. He has further contended that limitation has been prescribed under the rules. He also submitted an objection that

if the application is allowed it would unsettle the settled things after the lapse of so many years. Further it would also open the floodgates for litigation. As far as the merits of the case are concerned, he has not disputed the averments relating to the seniority position of the applicant wherein the applicant has been shown as senior to the respondent No. 4 and Shri Jagat Singh. However, he has submitted that once law of limitation hits the application, the same cannot be entertained on merits and therefore the Original Application deserves to be dismissed with costs.



7. We have considered the rival contentions raised on behalf of both the parties. As regards the limitation as well as regarding the extension of benefit of a judgement in a similar case, the learned counsel for the applicant has cited numerous decisions before us. We do not consider it necessary to refer to all of them because several authorities have been cited for the same proposition. We shall notice such of them as appeared relevant for arriving at the decision in this case. As regards the limitation, there is no doubt that the grounds and reasons mentioned in the Misc. Application for condonation of delay are not at all happily worded. They do not disclose as to at what point of time, the applicant came to know regarding the benefit under the up gradation scheme with effect from 1981 in as much as his number of juniors at Sl. Nos. 7,8,9, 10 etc were granted

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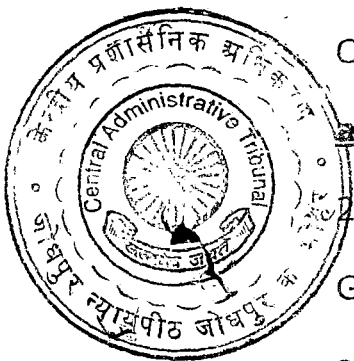


similar benefits and Shri Jagat Singh and the respondent No.4 have been granted only when they approached the Tribunal. In any case the position of the said juniors ought to have been come to the knowledge of the applicant when the Seniority List dated 07.02.2001 at Annex. A.3 was issued. However, we find that in the instant case if the date of promotion of the applicant is ante dated from 1984 to 1981, the seniority position of any of the individual would not be affected since in the said seniority list the position remains the same and the apprehension of the learned counsel for the respondents that the settled things would get un-settled would not be there. We also find that the applicant has got meritorious case in as much as on merits the respondents have not contended anything otherwise They have only submitted that the matter is under consideration; rather the subordinate authorities have recommended the case and on facts there is absolutely no dispute that the applicant would be entitled for consideration of the benefits claimed in the instant Original Application. In this view of the matter, we are required to apply justice orient approach and the beacon light purported by the decision of the Supreme Court in the case of **Collector Land Acquisition, Anantnag and another vs Mst Katiji and others** [AIR 1987 SC 1353 ] and decided to condone the delay and is hereby condoned in filing the O.A and therefore the M.A. No. 127/2002 stands accepted.





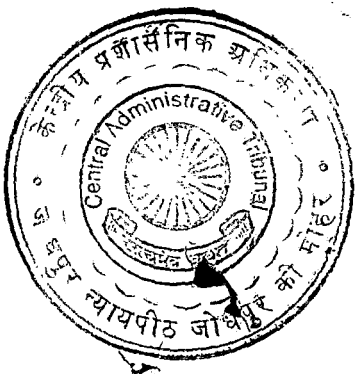
8. Looking the matter from yet another angle when once the respondents have averred in the reply that the matter is under consideration and the applicant has rushed up to the Tribunal without waiting for the outcome of the decision and on the other hand the plea of limitation has been taken, such a stand is nothing but a plea of volte-face and in case the matter is under their consideration, at the most it can be said that the O A is premature and if that be so it cannot be said that the same is hit by law of limitation. Thus on this count also we are not impressed that the stand of the respondents and the grounds set out in the reply are ground less.



9. Examining the matter from the law point of view, the Chandigarh Bench of this Tribunal, in the case of Savita Rani and others vs. Union Territory, Chandigarh and others [ 2003 (2) SLJ (CAT) 124 ] have categorically held that the Government should give the benefit of a final decision to all similarly placed persons and should not unnecessarily send the people to court. The issue has been exhaustively dealt with therein and the benefit of the order was extended. In the said case the question of delay also raised by the respondents therein and it has been held that when the benefit of earlier judgement is prayed for by similarly placed persons, the bar of limitation would not be attracted. This has been done by placing reliance on the judgement of a Constitution Bench of the Apex Court in

the case of K.C. Sharma and others vs. Union of India and others [ 1998 (1) SLJ 54 ] wherein their Lordships of the Apex Court have taken a view that where the applicant sought benefits of the decision of the Full Bench of the Tribunal by filing the Original Application , the application should not have been dismissed by the Tribunal as barred by limitation. This decision by implication is an authority on the point that where benefit of the earlier decision is sought, the consideration of delay would not apply.

10. Now advertng to the merits of the case, there is absolutely no dispute regarding the facts of the case. The applicant is admittedly senior to respondent No. 4 and Shri Jagat Singh. Shri Bhupendra Singh respondent No. 4 admittedly be given appointment to the post of HS Gr.II with effect from 16.10.81, when his junior Shri Jagat Singh was given appointment. Admittedly respondent No. 4 and Shri Jagat Singh both are junior to the applicant and hence the applicant is entitled to similar benefits as has been granted by this Bench of the Tribunal to Shri Bhupendra Singh (supra) and the Original Application deserves to be accepted in similar terms. However, since the applicant has not been diligent the relief will have to be restricted.



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11. The upshot of the aforesaid discussion is that the Original Application has ample force and deserves to be allowed and the same is hereby allowed. The respondents are directed to consider the case of the applicant for promotion to the post of HS Gr. II from the date when his junior Shri Bhupendra Singh respondent No.4 was promoted i.e. from 16.10.81 and in case found fit he shall be entitled to all the consequential benefits. However, the applicant shall be entitled to actual arrears of difference only from the date of filing of this O.A i.e. from 06.10.2002. No costs.

( G.R Patwardhan )

Administrative Member

( J.K. Kaushik )

Judicial Member.

Jsv.

R/C  
on 9/12  
for D. B. Sharma  
ADP

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6/2/04

Part II of the Act  
18/10/13

18/10/13  
D. B. Sharma  
23.10.2013