

Ito
16

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application No. 282/2004
And
Misc. Application No. 166/2005.**

Date of decision: 10.05.2007

Hon'ble Mr. Kuldip Singh, Vice Chairman,

Hon'ble Mr. R.R. Bhandari, Administrative Member.

Jagsish Rai Agarwal, S/o late Shg Atma Ram Agarwal aged about 69 years, retired Office Superintendent Gr. II, Mechanical Branch, DRM office, North Western Railway, Bikaner, resident of II B-4 JNV Colony, Shiv Bari Road, Bikaner.

: applicant.

Rep. By Mr. Nitin Trivedi : Counsel for the applicant.

VERSUS

1. Union of India through Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, North Western Railway, HQ office, Jaipur.
3. Divisional Railway Manager, North Western Railway, Bikaner.
4. Jt. Director (Public Grievance) Railway Board, Railway Bhawan, New Delhi.
5. Shri Lala Ram Meena, Dy. Chief Personnel Officer (HQ) North Western Railway, HQ Office, Jaipur.
6. Shri Rajiv Singh, Divisional Personnel Officer i/c. North Western Railway, DRM office, Bikaner.

: Respondents.

Rep. By Mr. Manoj Bhandari ; Counsel for the respondents.

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

Misc. Application No. 166/2005 has been filed by the 2nd respondent in this case to delete him from the array of parties. In view of the order we are going to pass in this O.A, no orders are necessary in this M.A.



Ito
17

2. The applicant has filed this O.A seeking the following reliefs:

- " (A) Letter No. dated 01.06.04 (A/1) and 15.07.04 (A/2) be quashed and set aside.
- (B) The respondents be directed to condon the break in service for the period from 15.07.64 to 22.08.80 by treating the period as dies non for the purpose of pensionary benefits and complementary passes
- (C) Cost of rupees one lac be imposed on respondent No. 5 & 6 for misusing their office intentionally against the applicant & to give harassment as well as mental tourcher for a period of more than two decades.
- (D) Any other relief as deemed fit keeping in view the facts and circumstances of the case may kindly be granted.

3. The facts as alleged by the applicant are that originally he was selected by the Railway Service Commission as Clerk with effect from 18.02.56. However due to grave family circumstances he was compelled to resign the job and the same was accepted with effect from 14.07.64 (AN).

4. After certain years the applicant approached the respondents to re appoint him as clerk and the respondents after due consideration of his past service with effect from 18.05.56 to 14.07.64, appointed him as Clerk in the pay scale of Rs. 260-400 at Rs. 260/- and he joined his duties on 23.08.80. It was specifically stated in the appointment that his appointment will be fresh appointment and no benefit of past services shall be given him. Thereafter the applicant gained certain promotions like Sr. Clerk, Head Clerk and became Office Superintendent Gr.II in the year 1990. During his service he earned certain cash awards and he retired from service



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18

on attaining the age of superannuation on 31.08.94. However, the respondent No. 5 was bias against him since he was an office bearer of an anti reservation organization and was championing the cause of unreserved employees.

5. Though the applicant has accepted the conditions stipulated in the offer of appointment, he had submitted a representation to the Hon'ble Railway Minister to condone the break in service purely on humanitarian grounds so that he could get some better pension and complimentary passes which were not admissible to those who have rendered less than 20 years of service. Various correspondences were taken place between the authorities but no avail. No order of condoning the break in service had been passed. Hence the applicant has prayed before this Tribunal that the break in service be condoned as had been done to similarly situated persons.
6. The respondents are contesting the O.A. by filing a detailed reply. The learned counsel for the respondents submitted that the applicant want's to condone the break in service pertaining to the years 1964 to 1980. The matter relates to before 1982. As per the Administrative Tribunal Act, 1985, this Tribunal has no power to entertain the matters relating to the period prior to three years of the establishment of this Tribunal and this case relates to the year 1980, the applicant cannot agitate this matter now before this Tribunal. Besides this the applicant had preferred a representation in the year 1994 and the same



II/13

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was rejected. Thereafter the applicant preferred an O.A which was dismissed in limine on the ground of limitation. Hence subsequent belated representation and its disposal by the respondents will not condone the delay and will not give a fresh cause of action to applicant. Hence the learned counsel submitted the present OA is barred by delay and laches and also on the principle of constructive resjudicata.

7. We have heard the learned counsel for both sides and carefully perused the records and pleadings of this case. The learned counsel for the applicant admitted the filing of earlier O.A and hence the applicant cannot reagitate the matter before this Tribunal as the same is barred by constructive resjudicata. It is also the case of the respondents that when the applicant was re-appointed on 22.07.80 it was made clear to him that he will not be given the benefit of his past service and the applicant accepted the same and joined duties. The applicant did not challenge the same at the appropriate time rather acquiesced and obtained reappointment. If he had any grievance he could have agitated the same before the appropriate court of law at that time. As that was not done and the matter pertains to the period between 1964-1980, this Tribunal has no jurisdiction to entertain the matter. Assuming that the representation of the applicant was rejected in 1994, the applicant had already preferred OA against the same and the same was dismissed in limine



JG

114
19

on the ground that subsequent representation will not give a fresh cause of action. It is well settled principle that repeated representations will not extend the limitation as has been held by the Apex Court in the case of S.S. Rathore vs. State of Madhya Pradesh [AIR 1990 SC 10].

8. In view of the above discussion, we hold that the O.A is barred by limitation and on the principle of constructive resjudicata. The O.A therefore dismissed. No order as to costs.

R.R.Bhandari
(R.R Bhandari)

Administrative Member

Kuldeep Singh
(Kuldeep Singh)
Vice Chairman.

jsv



Copy of order sent to P-5 & R-6
vide SW no - 107 (c) 108.
Dt. 17.5.92

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Parag Cm
15.05.92
for Mr. Mansi Phadnis

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