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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application no. 145/2004

Date of Judgement. 16-01-2009

Hon'ble Mr. N.D. Raghavan, Vice chairman.

Hon'ble Mr. Shankar Prasad, Administrative Member.

1. Mohd Salim, S/o Shri Abdul Rahim ji, aged about 44 years, R/o H. No. 6 B ACFC Colony, Opposite Loco Gate Jodhpur. (Rajasthan).
2. Jagdish Prasad S/o Sh Tej Palji, aged about 43 years, R/o block No. L.182, F New Loco Colony, Jodhpur. (Rajasthan)

Presently both the applicants are working on the posts of Senior Diesel Assistants, in the office of Deputy Mechanical Engineer (Power) NW Rly, Jodhpur (Rajasthan).

: applicants.

Rep. By Mr. S.K. Malik : Counsel for the applicants.

VERSUS

1. Union of India through the General Manager, North Western Railway, Jaipur, (Rajasthan).
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur (Rajasthan)
3. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur (Rajasthan)
4. Shri Chiman Singh, Goods Driver, C/o Loco Fore Man, North Western Railway, Jodhpur Division, Jodhpur (Rajasthan)
5. Shri Gaje Singh, Goods Driver, C/o Loco Foreman, North Western Railway, Jodhpur division, Jodhpur (Rajasthan)

: Respondents.

Mr. Salil Trivedi : Counsel for the respondents 1 to 3

None present for the respondents.



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ORDER

Per Mr. Shankar Prasad, Administrative Member.

By this O.A, the applicants challenge the retrospective correction of their seniority in the grade of Cleaners/Second Firemen resulting in their non-promotion as Goods Guard in 2003. They seek the quashing of this correction of seniority and a direction to respondents to promote them as goods guards in place of private Respondents.

2. The case of applicants in brief is that they were initially engaged as casual Labour and were screened/absorbed as Boiler Maker Khalasi/Fitter Khalasi in March 1985. They were transferred to the posts of cleaner on bottom seniority vide letter dated 30.11.87 (Ann. A/9). Their names appear in the seniority list dated 21.08.89 (Annex. A/10). The services of private respondents were regularized only subsequently (annex. A/10). Both the applicants and private respondents were promoted as Second Fireman vide order dated 17.12.91 (Annex. A/12). In the seniority list of Second Firemen dated 31.03.92/28.04.92 (Annex. A/13) they were shown as senior. They were promoted together as first fireman vide order dated 20.05.93(Annex. A/14).

The applicants were not aware of the letter dated 23.04.92 (Annex. A/6) and 29.01.93 (annex. A/7) revising their seniority in the grade of cleaner/second fireman respectively and making them junior to the private respondents. When they had approached the official respondents as to how the name of private respondents



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appears above their names in the order promoting them as Fireman-I they had been assured that the names have been shown up and down and that the same will make no difference. (No documents are enclosed in support of this statement).

When the results of written test for the post of Goods Guard had been declared (Annex. A/15) the applicants found that their names were included below the private respondents. Thereafter, they represented to the respondents but of no avail. (Neither the selection notification for the posts of Goods Guard nor the representation made is on record). The panels were declared vide letter dated 17.06.2003 & 01.07.03(Annex. A/3) & A/4). The respondents published the draft seniority list of Senior Diesel Assistant/Diesel Assistant vide letter dated 18.07.2003 (Annex. A/2). The applicants submitted their representation against the seniority list on 16.08.2003 (AnnexA/16) 10.11.2003 (Annex. A/17) and 17.03.2004 (annex. A/18). The second one has been replied to vide letter dated 22.03.2004 (Annex. A/1). During the intervening period an order dated 03.112.2003 (sic) (Annex. A/5) was issued promoting persons including private respondents as Goods Drivers.

When the respondents along with their reply produced seniority lists of Second Fireman dated 31.01.93 (Annex. R/3) and of Diesel Assistant dated 30.01.97(Annex. R/4) the applicants moved M.A. No. 90/2005 to challenge these orders also. It was stated that these orders had not been brought to their notice and



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they were not aware of it. The M.A was allowed vide order dated 11.10.2007.

No rejoinder is filed. No M.A for condonation of delay has also been moved.

3. The official respondents filed their reply on 03.03.2005. They raised a preliminary objection that the O.A is time barred as their seniority had been revised in 1992. It was contended that OA is required to be dismissed on the ground of limitation alone. It was also contended that the applicants have suppressed material information from the Tribunal and hence have approached the Tribunal with unclean hands. This conduct disentitles them from any relief. On facts it is stated that panel dated 18.01.88 was provisionally issued in continuation of panel dated 08.10.87/09.10.87 and the same was finalized vide letter dated 06.09.90. The private respondents were working as substitute Loco Cleaner w.e.f. 8/7/82 whereas the applicants joined as loco cleaner on 02.12.87 and 03.12.87 after acceptance of change of category.

The applicants seniority in loco cleaner was modified vide letter dated 23.04.92. This was inadvertently not incorporated in the seniority list of second Firemen issued on 31.03.92/28.04.92. The Union had represented against this change in seniority vide their letter dated 29.04.92 (Annex. R/1). They had been replied to vide letter dated 23.06.92(Annex. R/2). The Seniority list of second fireman was also corrected vide letter dated 31.01.93(Ann.R/3).

The seniority list of Senior Diesel Assistant/Diesel Assistant dated



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30.01.97 shows private respondents as Senior (Ann. R/4). These were not challenged in the past. The seniority assigned to them in letter dated 18.07.03 is correct. It is ^{well} ~~sell~~ settled that subsequent representations do not enhance the period of limitation.

The respondents had resisted the M.A for amendment. The essence of the reply was reiterated. Orders promoting private respondents and applicant as Senior Diesel Assistant with the name of private respondents appearing above these applicants was brought on 'record'. (Annex. R.M/1 dated 10.01.2003.)

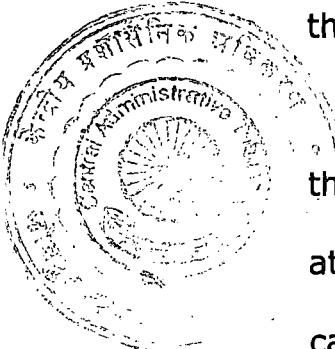
A reply to the amended OA was filed reiterating the earlier positions.

4. The private respondents have been served. They have neither entered appearance nor filed any reply. The O.A, has therefore been proceeded ex parte against them.

5. The learned counsel for the applicant has submitted as under:

(a) The seniority in promotional grades of senior cleaner/second fireman/first fireman cum Diesel Assistant has to follow the seniority in the grade of cleaner. The order modifying the seniority is void ab initio.

(b) The applicants were not aware of the decisions modifying their seniority. In any case seniority is required to be considered at the time of promotion. The decision of the Apex Court in the case of Collector, Land acquisition, Anantnag and ors. Vs. Mst



Katiji and ors [AIR 1987 SC1353] lays down that meritorious case cannot be thrown out at the threshold.

- (c) The information given to the Union cannot bind the applicant.

(d) Reliance has been placed on the following decisions.

Apex Court

Guj HC

(i) Shantilal K. Solanki vs. UOI 2003 (2) ATJ 91

CAT

(i) S.Rajagopalan & ors.
Vs. GM Southern.Rly. 1987 (10) ATR 12

6. The learned counsel for the respondents on the other hand has contended that the OA is hopelessly barred by limitation and that no MA for condonation of delay is moved. The O.A cannot, therefore, be heard on merit. The applicant has not also approached the Tribunal with clean hands. He has placed reliance on the following decisions of Apex Court. A



(i) The Ramjas Foundation AIR 1993 SC 852
 Vs.
 UOI and ors.

(ii) P.K.Ramachandran (1997) 7 SCC 556
 vs.
 State of Kerala and ors.

(iii) Ramesh Chand Sharma 2000 SCC (L&S) 53
 vs.
 Udhamp Singh Kamal

7. We have heard the learned counsel and gone through the records.

8. The following questions arise in the O.A.

(a) Could the respondents have modified the order of seniority in respect of the applicants.? Were these orders required to be challenged on time ?

(b) Is the O.A barred by limitation? Is it hit by delay and laches?

(c) Were the applicants required to move Misc. Application for condonation of delay?

(d) Is the applicant entitled to any relief?

9. Both the applicants and private respondents were working as casual Labour/substitutes. Annex. A/8 shows that name of applicant no. 1 was on the panel of 559/1/SA dated 30.01.85 but had accepted regularization as boiler maker in loco shed as post of cleaner were not available. Annex. A/10 shows that the private respondents were casual labour/substitutes in Mechanical Department. The question that would arise is as to whether regularisation of casual labour was to be given precedence to recruitment by transfer Para 179 (xiii) of IREM makes it clear that Substitute, casual and temporary worker



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will have prior claim over other to permanent recruitment. This question, which according to us, may provide an answer to the existing controversy, was, however, not argued before us. We accordingly express no final opinion.

10. The position obtaining in respect of applicants and private respondents can be summarised as under:

	Apptt.	Cle an er	Seni ority war	Com bined senio rity war	Secon d prom otion	Fire Seni Ority	man List	First Fire Pro Mot Ion	Man Seni Ority list	Sr. Die. Asst Pro mot ion	Goo ds Dri Ver
1.Md. Salim (App.No. 1)	Change of posts as iow cleaners (Ann.A/7 dated 30.11.87)	7	20	20	2843	790	803	17	297	29	57
2.Maq Sood Ahmed		8	21	21	2844	791	804	18	298	30	58
3.Ram Krishna	comes on bottom seniority	9	21A	22	2845	792	805	19	299	31	
4.Lal Mohd.		10	21B	23							
5.Jag dish prasad (App. No.2)		11	22	24	2846	793	806	20	300	32	59
6.Chiman Singh (R.No.4)	Applican Ts produce Ann.A/11	19	07	07	2847	794	794	11	290	23	52
7.Gaje Singh (R.No.5)	Dt.06.09 1990 that they are on panel of casual labour	12	09	09	2849	796	796	13	291	24	53
8.War son james.	substi tute Ann.	13	10	10	2850	797	797		292	25	
9. Santosh Kumar		14	11	11	2851	798	798	14	293	26	54
10.Sri kant Pandey	Assigns Merit No. 3/88 to 15/88	22	19	19	2859	806	806	16	296	28	
	Pvt.	An.	Ann.	Ann.	Staff	Ann.	Ann	Ann	Ann	R	Ann

	Respds. are Substi tutes From July 1982 as per Respds.	A/ 10 Dt. Dt. 21. .92 08. 89	A/6 23.4 modi fying A/10	R/3 31.1. 93	No. as men tioned in Ann .A.12 Dt.17/ 12/ 91 repeat ed in sub seque nt grades also	A/13 31/3 /	A/7 29.1 199 3	A/14 Dt 20 May 93	R/4 Dt. 30 jan. 97	M.1 Dt 30 Jan 03	A/5 Res ults Wri Tten test
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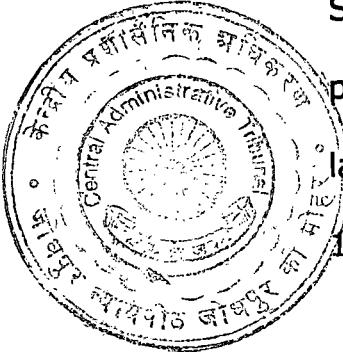
11. The above table would show that on the basis of seniority assigned to them in the letter dated 21.08.89[Annex.A/10] the applicants are also assigned seniority in the 2nd Fireman vide letter dated 31.3/28.4.92 (Annex. A/13) The seniority assigned as cleaner is recast vide order dated 23.04.92 after promotion is given as 2nd Fireman in December 1991. The Union represents (AnnR/1). The Administration maintains its position. The seniority assigned in 2nd Fireman is recast vide order dated 29.01.93 (Ann.A/7). The promotion order as first fireman is issued on 20.05.93 in which the names of these applicants appear below private respondents. In the seniority list of 1997 (Ann.R/4) they are shown below. In the order promoting them as Senior Diesel Assts. their names appear below. (Ann. R.M/1) The selection notification for a the post of Goods guard is not brought on record by either the applicant or the respondents. In the result of written tests (Annex. A/15) their names appear below private respondents. ^{Their} ^{an} claim seems to have been objected to but without bringing any document on record.



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12. The order modifying their seniority as Cleaner/IIInd Fireman was issued in 1992/1993. It results in their being shown below the private respondents in promotion order of Fireman/Diesel Assistant and the Seniority list of Diesel Assistant of 1997. The applicants are aware of the former (para 4.11 of the O.A). The promotion order of Senior Diesel Assistant shows them below the private respondents. We also note that the applicants have not brought on record the selection notification for the post of Goods Driver. The list of eligible employees and the stand by employees in their order of seniority are enclosed with the selection notification. Even the said selection notification could have been the notice to the applicants and could have been treated as constructive notification to the effect that he has been placed below the private respondents.

13. The draft seniority list dated 18.07.2003 shows date of birth/date of appointment in Railways also date of appointment/promotion as cleaner/Senior Cleaner/Second Fireman/First Fireman cum diesel Assistant. A comparison with the 1997 seniority list of Diesel Assistants shows that while Shri Chiman Singh and one Shri Indra Chanda (staff No. 2901) are at Sl. No. 290 and 331 respectively, they are at sl. No. 64 & 90 of the present list. Shri Indra Chanda is the last person on the list. The last person promoted as Senior Diesel Assistant vide order dated 10.01.2003 is Shri Kanhaiya Lal [Staff No. 2876] and whose name



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appears at Sl. No. 307 of 1997 list. The page containing his name in 2003 list has not been produced.

14. Sec. 21 and 33 of AT Act, 195 is as under:

21. Limitation

(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 (20 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;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1) where

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court

the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of sub -section (10 of within a period of six months from the said date, which ever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2) if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

Section 33- Act to have overriding effect:

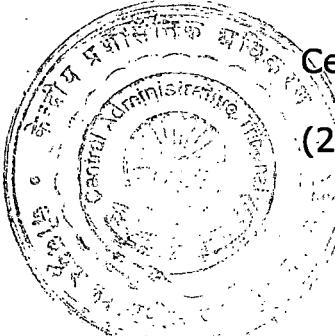
The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for a the time being in force or in any instrument having effect by virtue of any law other this Act.

15. Rule 8(4) & 10 of CAT (Procedure) Rules, 1987 framed by the

Central Government in exercise of powers conferred under Sec 35

(2) (d) (e) (f) and 36 (c) of the AT Act are as under:

8. Contents of application *8.*



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(1).....

(2).....

(3).....

(4) Where the applicant seeks condonation of delay, he shall file a separate application supported by an affidavit.

10. Plural Remedies

An application shall be based upon a single cause of action and may seek one or more reliefs, provided that they are consequential to one another.

16. Para 16 of the Judgement of 7 Judges Bench in L.

Chandra Kumar vs. UOI [AIR 1997 SC 1125] is as under:

" Chapter IV ("Procedure") comprises Sections 19 to 27. Section 21 specifies strict limitation period and does not vest the Tribunals under the Act with the power to condone delay. "

17. Another 7 Judge Bench in the case of S.S. Rathore vs.

State of M.P. [AIR 1990 SC 10] has held

21. *It is appropriate to notice the provision regarding limitation under Section 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.*

22. *It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.*

18. The Apex Court in **Ramesh Chand Sharma** (supra) has held

as under: 



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" On a perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Sec. 21 (3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of statutory provision contained in Sec. 21 (1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled (See. Secy. To Govt. of India, vs. Hiram Mahadu Gaikwad)

19. The three judge Bench of the Apex Court in **Ramjas Foundation vs UOI** [AIR 1993 SC 857] has held

" 14..... Thus we find no justification at all for the delay in not challenging the notification issued under Sec. L4 on 13.11.1959 till 1973. Even notifications under Sec. 6 of the Act were issued in 1968 and 1969 but not challenged till 1973. As already mentioned above in Aflatoon's case [AIR 1974 SC 2077] (supra) a Constitution Bench of this Court has clearly held that even after the declaration under Sec. 6 of the Act published in 1966, the appellants had approached with their writ petitions in 1970 when the notices under Section 9 were issued to them the writ petitions were liable to be dismissed on the grounds of laches and delay. Mr. Tarkunde, learned senior counsel made strenuous effort to distinguish the aforesaid case on the ground that in the aforesaid case the Court was influenced with the fact that the petitioners had sat on the fence and allowed the government to complete (emphasis added) the acquisition proceedings. Much emphasis has been laid on the word 'to complete' the acquisition proceedings. We find no force in this submission as the facts narrated in the above case clearly show that the petitioners in those cases had filed writ petitions in the High Court in 1970 and in the Supreme Court in 1972 after the issuance of notices under Sections 4,6 and 9 of the Act. The use of the word 'complete' was not of much significance and the main reasoning of the case was that grounds to attack the notification under Sections 4 and 6 of the Act were available at the time of publication of such notifications. In the facts and circumstances of the case before us the appellants were also sitting on the fence and did not take any steps of challenging the notifications under Sections 4 and 6 of the Act till 1973 though the grounds now sought to be urged were available to the appellants as soon as such notifications were issued. Thus viewing the matter from any angle we are clearly of the view that the writ petition was also liable to be dismissed on the ground of laches and delay on the part of the appellants apart from other grounds.....

20. The Apex Court in **P.K. Ramachandran vs. State of Kerala and anr.** [(1997) 7 SCC 556] has held as under:

5..... The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order. We are not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent -State for condonation of the inordinate delay of 565 days.



6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.....]

21. The Apex Court in **Raja Harish Chandra** (supra) in the context of Land Acquisition Act held

"..... Thus considered the date of award cannot be determined solely by reference to the time, when the award is signed in his office it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively....."

22. Para 19 and 20 of the decision of a Constitution Bench in **Qamar Ali** (supra) are as under:

19. On the authority of Babu Ram Upadhyas case (supra) we must hold that if the provision in para 241 that a police officer on acquittal by a criminal court " may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment" is mandatory and not directory, the order of dismissal is wholly invalid. It is quite clear that the words " may not be punished" in the collection of words used is equivalent to "shall not be punished". The obvious object of the rule making authority was that the Police officer in holding the departmental enquiry should not sit in review over a considered decision of a criminal court of competent jurisdiction. It is only reasonable to think that having decided on such an object the rule making authority had also the intention that the object should be fully achieved. Reading the words used in the rule in the light of these considerations we have no hesitation in holding that the intention of the rule making authority was to make this provision against departmental punishment on a charge of which a police officer had been acquitted by a criminal court mandatory, that is, it could be broken only on pain of the order made in breach becoming invalid.

20. We therefore hold that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under section 7 could be exercised, is totally invalid. The order of dismissal had therefore no legal existence and it was not necessary for the respondent to have the order set aside by a court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected.

23. The decision in **Mst. Katiji** (supra) emphasis the need for a liberal approach in construing the expression "sufficient cause" in



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Section 5 of Limitation Act. Amongst others it was stated when substantial Justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non deliberate delay.

24. Para 4 of the decision in **Kuldip Chand** (supra) reads as under:

4. When the aforesaid facts are taken into consideration, it would be obvious that the preparation of seniority list per se was illegal. Therefore, the mere fact that he did not challenge the seniority list, which was illegally prepared, till he was aggrieved for non-consideration of the claim to the post of accountant, his legitimate right to be considered cannot be denied. Under these circumstances, the delay is of no consequence for considering the claim of Ashok Kumar for the post of accountant.

25. The Hon'ble Gujarat High Court in **Shantilal K. Solanki** was considering the challenge to the orders of CAT Ahmedabad Bench dismissing the OA seeking compassionate appointment on the ground of limitation. The relevant portion reads as under:

4. The Tribunal has mainly rejected the application on the ground that the application being Original application No. 616 of 1999 was filed beyond the period of limitation prescribed under Sec 21 of the Administrative Tribunals Act, 1985 (the Act) and there was no separate application for condonation of delay despite the fact that there was a delay of five years after the accrual of the cause of action as the said application was made on 13.04.1999.

....

9. We have no hesitation in holding that by taking the overall picture from the provisions incorporated in the scheme by the Railway Authority, through the Railway Board, which would clearly go to show that the scheme is not devised to see that the rightful person is given appointment without any further delay and that too, with the help and assistance of the Administration, whereas in the present case, the approach, the defence and the entire objections raised against the rightful appointment are unfortunate and the Tribunal's observation is running diametrically counter to the proposition laid down in the revised scheme of appointment on compassionate ground....."



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26. A Three Judge Bench of the Apex Court in **S.K. Ghosh** (supra) has held as under:

" The petitioners were shown as being senior to the respondents in the time scale of Class I Service. They were selected for promotion to the grade of Directors of Postal Services. The respondents were also later on appointed to such posts. The Government sought to disturb the order of seniority in the grade of Directors to the prejudice of the petitioners on the ground that their seniority while in the time scale was wrongly determined. Under these circumstances, Held that though the Government could justifiably revise their seniority in time scale of Class I service, it could not so revise their order of seniority in the grade of Directors and that such an action by the Government was arbitrary and liable to struck down as violating Art. 16 of the Constitution."

27. The learned counsel for the applicants has also relied on the decision in **S. Rajagopalan** on the question of inter se seniority.

28. A Constitution Bench in **Rabindra Nath Bose and ors vs. UOI and ors.** [AIR 1970 SC 470] has held as under:

"....Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would be set aside after the lapse of a number of years.... "x

29. The Apex Court in **M/s Dehri Rohtas Light Railway Company Ltd. Vs. District Board Bhojpur and ors.** [AIR 1993 SC 802] has held:

The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to the disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. *Ab*



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30. The Apex Court in the case of S.P. Chengalvaraya Naidu (dead) by LRs vs. Jagannath (dead) by LRs and ors. [JT 1993

(6) SC 331] has held:

"..... We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The court of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

.....A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage....."

31. The Apex Court in the case of Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education and ors.

[(2003) 8 SCC 311] has held as under:

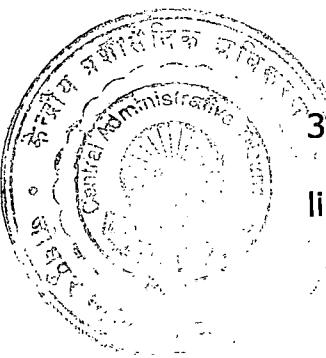
" 13. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See Derry v. Peek.)

14. In Lazarus Estates Ltd vs. Beasley the Court of Appeal stated the law thus : (All ER p.345 C-D)

" I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgement of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgements, contracts and all transactions whatsoever,"

15. In S.P. Chengalvaraya Naidu vs. Jagannath this court stated that fraud avoids all judicial acts, ecclesiastical or temporal.

32. Sec 21 of the A.T. Act contains provisions relating to limitation. Sec. 33 of the AT Act is the non obstinate clause. The



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observations of the Seven Judges Bench in **L. Chandra Kumar's** case are to the effect that the Administrative Tribunal's Act has a special scheme of limitation. Rule 8 (4) provides that an application for condonation of delay has to be moved separately. This Rule was subsequently incorporated. It is well settled that Rules are part of statute and therefore this provision has to be treated as having been part of the Act. The Constitution Bench in **Rabindra Nath Bose** case (supra) has held that each person is entitled to sit back and consider that his appointment and promotion effected, after a long time would not be set aside after lapse of number of years. The Apex Court in **Dehri Rohtas Light Railway Company Ltd.** (supra) has explained the concept of limitation by stating that a person must approach the Tribunal before the rights in favour of other persons have crystallized.

The Three Judges Bench in **Ramjas Foundation** has held that due to delay and laches the Court must have dismissed the Writ Petition.

33. The decisions in **Qamarali and Kuldip chand cases** has proceeded on the hypothesis that the orders of termination and publication of seniority list were *per se* illegal.

The decision in **Raja Harish Chandra** is in the context of an award under the land acquisition Act and uses the expression 'actual' or constructive notice. The decision in **Mst. Katiji**, states

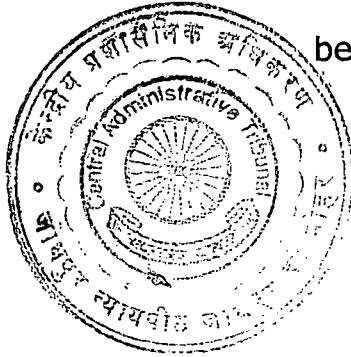


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that the expression 'sufficient causes' should be interpreted liberally. The decision of Hon'ble Gujarat High Court has not noticed the decision in **L. Chandra Kumar** or the provisions of Rule 8 (4). It is given in the context of compassionate appointment and not inter se seniority.

34. The distinguishing features of this case have been set out in paras 9 to 13 above. This is a case regarding inter se seniority of two sets of employees. The seniority assigned to the applicants were corrected retrospectively after 4-5 years. The applicants have nowhere disclosed in the O.A as to how they came to know the various orders recasting their seniority. We have noted that the name of the applicant had appeared below that of private respondents in the promotion order for First Fireman [later redesignated as Diesel Assistant] and Senior Diesel Assistant. This could be treated as constructive notice to the applicants. The applicants states in para 4.11 of the O.A that they had objected at that point of time. But no proof of the same has been produced before us.

35. A Three Judge Bench of the Apex Court in **Wg. Cdr. J Kumar vs. UOI** [AIR 1962 SC 1064] has held that even if the basis of decision conferring seniority is changed by legislature amendment the promotions granted pursuant to that order cannot be withdrawn. In the instant case the seniority assigned is *Ad.*



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modified after the promotion. Simultaneously the seniority in promoted rank is also modified.

36. Annex. R/1 is the representation of the Union regarding inter se seniority of five individuals qua Shri Shrikant Pandy and not the private respondents. The Personnel wing has informed the officer in charge of labour cell that this contention cannot be accepted.

37. A Three Judge Bench of the Apex Court in the case of **State of Punjab and ors. Vs. Gurdev Singh** [AIR 1991 SC 2219] after distinguishing of the decision in **Syed Qamar Ali (supra)** held as under:

"" A suit for declaration that an order of dismissal or termination from service passed against the plaintiff dismissed employee is wrongful, illegal or ultra vires is governed by Article 113. It cannot be said that there is no limitation for instituting the suit for declaration by a dismissed or discharged employee on the ground that the dismissal or discharge was void or inoperative. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases, which could not be covered by any other provision in the Limitation Act. The party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for.

38. No steps have been taken to challenge these orders and the private respondents have continued to be treated as seniors from 1993. The applicants have raised this issue when they found after result of written test that they will not be promoted.



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39. Hence in our considered view the O.A is barred by limitation. It is also hit by delay and laches.

40. Rule 8 (4) of the CAT Procedure Rules, makes it clear that there must be a separate Misc. Application for condonation of delay. The Apex Court in the case of **Ramesh Chand Sharma** had held that in such cases the Tribunal cannot enter into the merits of the controversy. The said decision will apply to the facts of the present case.

41. We are not entering into the question as to whether the occupants have withheld documents from the Tribunal and hence by that very act are disentitled from obtaining any relief.

42. In any case the merits of the case would perhaps oblige us to examine the question raised in para 9 of the O.A and for which there are not pleading on record.

43. In conclusion the O.A is barred by limitation. It is hit by delay and laches. It is fit to be dismissed. It is dismissed. No costs.

Shankar Prasad

[Shankar Prasad]
Administrative Member.

N.D. Raghavan

[N.D. Raghavan]
Vice Chairman.

jsv



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20-1-09

S. K. Malhotra
S. K. Malhotra
23/11/09