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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION 146 of 2004
Jodhpur, this the/3.11.2009**

CORAM :

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Jagdish Prasad Meena S/o Shri Navrang Ram, aged about 47 years, resident of Sharma Colony, Rani Bazar, Bikaner at present working as Superintendent Grade-I in 'P' Branch in Grade Rs. 6500-11500, North Western Railway, Bikaner.

[By Advocate : Mr. J.K. Mishra]

.....Applicant.

-Versus-

- (1) Union of India through the General Manager, North Western Railway, Jaipur.
- (2) The Divisional Railway Manager, Northern Western Railway, Bikaner.
- (3) The Divisional Personnel Officer, Northern Western Railway, Bikaner.

.....Respondents.

(By Advocate :Mr.G.Suthar for Mr. M.Bhandari)

**: O R D E R :
{PER JUSTICE S.M.M. ALAM, MEMBER [J]}**

This Application has been preferred by one Sh. Jagdish Prasad Meena, who is presently working as Superintendent Grade-I in 'P' Branch, North Western Railway, Bikaner, in the Grade Rs. 6500-11500.

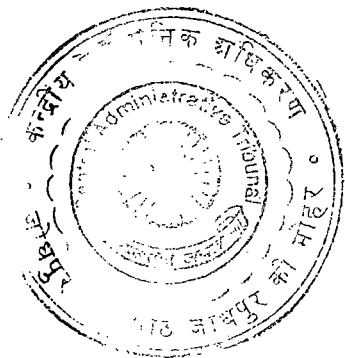
2- The main grievance of the applicant is that on 19/22.9.1986, a modified panel for selection to the post of Assistant Superintendent Grade Rs. 550-750 (RS) was issued and in the said panel, the name of the applicant was included at Sl. No. 9 vide Annex. A/2. Thereafter, on 25.4.1988, vide Annex. A/3, the



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applicant submitted a representation to the respondents praying therein to promote him on the post of Superintendent grade Rs. 2000-3200 from the date of occurring first vacancy in the Branch. After that on 12.1.1989 vide Annex. A/4 and on 13.2.1989 vide Annex. A/5, applicant filed his representation before the authority for promoting him to the post of Superintendent Grade-I on the first date of vacancy. But, for a considerable time, the respondents did not promote the applicant and only on 1.3.1993, he was promoted to the post of Superintendent Grade-I. Further, the case of the applicant is that after his promotion, on 12.11.2003, the applicant through Annex. A/7 filed a representation before the authorities concerned for granting him promotion w.e.f. 1.3.1988 when the first vacancy of Superintendent Grade-I arose. He also claimed all consequential benefits since 1.3.1988. Thereafter, on 15.1.2004, the respondents through Annex. A/1 gave reply of the representation which gave rise to the cause of action for filing this O.A.



3- After filing of the O.A., notices were issued to the respondents who appeared and filed reply to the O.A. The main contention of the respondents' is that promotion cannot be claimed as a matter of right. The applicant can only be granted promotion from the date he is found fit in accordance with law and he has got no legal and fundamental right to be promoted mainly because the post was lying vacant. It has further been contended that the seniority dispute amongst the general and reserve community had been referred to the Headquarters office, Northern Railway, Baroda House, New Delhi, for clarification and as no decision was received

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in this regard as such, the delay occurred in taking decision of promotion to the post of Superintendent Grade-I. It has also been contended that the O.A. is liable to be dismissed on the ground of gross delay and laches and on the ground that it is violative of Section 21 of the Administrative Tribunals Act, 1985.

4- After hearing the Counsel of both the sides and on perusal of the O.A. as well as the Annexures attached to the O.A. and also on consideration of the reply, we are of the view that this O.A. is not maintainable on two grounds; firstly, on the ground of delay and secondly, there is no such rule under which, the applicant can claim his promotion as a matter of right, merely because a particular post had fallen vacant, there is no infringement of any legal right accrued to the applicant.



5- Admittedly, the applicant was promoted to the post of Superintendent Grade-I on 1.3.1993. The Annexures attached to the OA shows that on 25.4.1988, 12.1.1989 and 13.2.1989, the applicant represented before the competent authority for grant of promotion to him from the back date i.e. from 1.3.1988 but, the respondents granted promotion to the applicant on the post of Superintendent Grade-I w.e.f. 1.3.1993 which means that the order of promotion was passed after considering the above mentioned representations and the competent authority did not consider the representations of the applicant fit to be allowed. This fact establishes that all the previous representations of the applicant with regard to his promotion from back date i.e. w.e.f.

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1.3.1993, was dis-allowed. The circumstances show that the applicant was very much satisfied from the order of his promotion as Superintendent Grade-I w.e.f. 1.3.1993 as after 1.3.1993 he did not prefer any representation before the concerned authority till 12.11.2003. Meaning thereby, that after a lapse of more than ten years from the date of his promotion, he for the first time raised a grievance that he was not given promotion from back date. This fact alone established that if the applicant had any grievance against the said order dated 1.3.1993 whereby he was given promotion to the post of Superintendent Grade-I w.e.f. 1.3.1993, it will be deemed that the cause of action had arisen to the applicant from that very date i.e. from 1.3.1993 and for counting the period of limitation, this date is relevant.



6- Section 21 of the Administrative Tribunal's Act, 1985 deals with the Limitation which is quoted below :

(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;

(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."



There cannot be any two opinion that in the present case, limitation starts from the date 1.3.1993 and at best from that very day. The applicant could have preferred O.A. within a period of one and a half year [if any representation was made] but, it appears that this application was filed in the year 2004. Meaning

thereby, that the OA was filed after eleven years from the date on which the cause of action was arose to the applicant. The fact that on 12.11.2003, the applicant filed a representation, shall not extend the period of limitation. Thus, we are of the view that this application is hopelessly time barred and be dismissed alone on this ground.

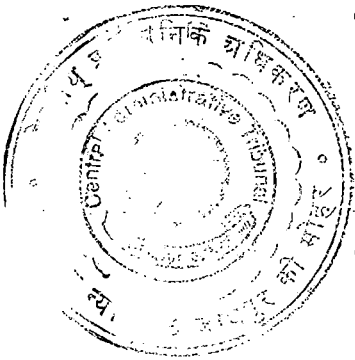
7- As regards the claim of the applicant with regard to his promotion from back date is concerned, there is no legal basis of such claim. The law is very clear and no employee as a legal right can be promoted which is based on several other aspects including administrative requirements and there is no provision showing that as soon as a vacancy is created, the senior most is required to be promoted automatically on that very post. The promotion cannot be claimed as a matter of right. The non-filling of the post by the authorities concerned, does not infringe any fundamental right of an employee. We are, therefore, of the view that not according promotion to the applicant from the date on which the vacancy for the post of Superintendent Grade-I arose, no legal and fundamental right of the applicant was infringed. In such view of the matter, we hold that on this score also, the O.A. is not maintainable.

8- In the result, we find no merit in this application and the same is therefore dismissed with no order as to costs.

(Dr.K.S.Sugathan)
Member (A)

(S.M.M.Alam)
Member (J)

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