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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.80/2009

Date of decision: 25th May, 2011.

Hon'ble Dr. K.B. Suresh, Judicial Member.
Hon'ble Mr. Sudhir Kumar, Administrative Member.

Ashuji Srivastava S/o Shri Ajay Chandra Srivastava, aged about 45 years, R/o 25, Sai Vihar Colony, Abu Road, District Sirohi. Presently working on the post of J.E. Millwright in the office of S.S.E. (C&W), N.W.R., Abu Road.

Rep. By Mr. S.K. Malik : Applicant.
Rep. By Mr. S.K. Malik : Counsel for applicant.

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
3. Senior Divisional Personnel Officer, North Western Railway, Ajmer Division, Ajmer.

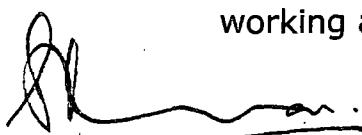
: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for respondents.

ORDER

Per Sudhir Kumar, Administrative Member.

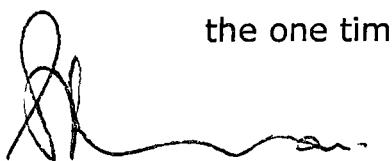
The facts of this case lie in a brief compass, and revolve around two focii. First focus is regarding the place where the applicant happened to be working at a particular point of time, which resulted in his being ineligible to participate in a process of selection for which he was earlier eligible. The second focus is regarding the direction of the Railway Board, issues regarding the posts of Crew Controllers/Power Controllers being merged with the running cadre, and to be manned from personnel drawn from among the running staff, rather than the maintenance staff then working as Crew Controllers/Power Controllers.





2. The second issue had come before this Tribunal earlier also in O.A. No.182/2002, **Brijesh Kumar & Ors. Vs. Union of India**, in which final order had been passed on 20th February, 2004. When five of the employees of Ajmer Division of the ~~Erstwhile~~ Western Railway, including the applicant as the fifth among them, had to be accommodated, while working as Assistant Loco Foreman (A.L.F.) in the grade of Rs.1600-2660, on ad-hoc basis, and had been given the benefit of the merged grade of Rs.2000-3200 also on ad-hoc basis, they were accommodated and appointed as FCH in grade of Rs.1400-23000 by downgrading the post of ALF grade Rs.1600-2660. But, they were already holding the higher pay scales, and came to occupy substantive posts in a lower pay scales, it was decided by the competent authority to regularize their services in the higher pay scale already occupied by them, subject to their passing the requisite selection of ALF in terms of channel of promotion issued vide order dated 19.02.1986. It was further prescribed, through Annexure-A/7 dated 19.03.2002, that the concerned five employees (including the applicant as fifth among them) should pass the selection in one attempt, and if they fail in the selection, their substantive grade will alter to the lower pay scale where they had been accommodated.

3. However, this proposal to fill up the posts of Assistant Loco Foreman (A.L.F.) by the five employees from among the maintenance side of the respondent Railway met with resistance from the running staff. Even though the examination, according to the one time selection notified in favour of the five persons through



Annexure-A/7, dated 19.03.2002, was proposed to be held on 23.07.2002, in the meanwhile, 17 applicants from among the running staff of the Division, working as Driver Goods/Mail Express Drivers, filed the O.A. No.182/2002, **Brijesh Kumar & Ors. Vs. Union of India**, making the five candidates included in the notification dated 19.03.2002 as private respondents, including the present applicant as private respondent No.R/7, praying that the official respondents may be directed not to fill up the posts of Crew Controllers/Power Controllers from among the fitting/maintenance staff, and that official respondents may be directed to fill up the post of Crew Controllers only from among the running staff, including the 17 applicants therein, in terms of the circular of Railway Board dated 25.11.1992 & 10.02.1998, which had given clear direction of the Railway Board that the posts of Crew Controllers/Power Controllers had been merged with the running cadres, and were to be manned from the running staff.

4. The above O.A. No.182/2002 was decided on 20.02.2004, and relying on para 3.7 of the Railway Board circular dated 25.11.1992, it was noticed that the direction had been issued that the posts of Assistant Loco Foreman (A.L.F.) will be filled from the maintenance categories only, apart from the medically de-categorized Loco Running Staff. It had been further prescribed in the said Para 3.7 that even other loco running staff could be made eligible for that post, if they so desire, and if considered feasible by the General Manager in consultation with the recognized Unions, though in such a case, the running staff stood to lose their further

benefits in their regular channel of promotions. That O.A. No.182/2002 was, therefore, dismissed on 20th February, 2004.

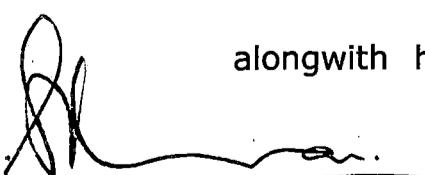
5. Subsequently, through the letter dated 31.03.2004 (Annexure-A/11), the selection for the posts of Assistant Loco Foreman was again re-scheduled to be held on 12.04.2004. However, this delay due to the filing of the O.A. No.182/2002, and postponement of the selection examination from the earlier fixed date, i.e.23.07.2002, to the newly fixed date, i.e. 12.04.2004, worked against the interest of the applicant. In between these two dates, the new North Western Railway had come into being, and Ajmer Division of the erstwhile Western Railway had been bifurcated, and the first four out of the five persons, whose names had been notified for taking the one time selection through Annexure-A/7 dated 19.03.2002 and Annexure-A/18 dated 06.05.2002, continued to be in the Ajmer Division of the newly constituted North Western Railway, while the present applicant, who was at the serial No.5 in the list contained in the Annexure-A/7 and Annexure-A/8, and was posted at Gandhidham, in that portion of the erstwhile Ajmer Division which remained with the Western Railway, was not within the control of the Ajmer Division of N.W. Railway as on that date. As a result, through Annexure-A/12 dated 27.05.2004, the list of only four persons, not including the applicant, who was not within the control of the Ajmer Division, was again notified for the purpose of taking the one-time selection examination, and all the four persons were notified to have been selected through Annexure-A/12 dated 27.05.2004. Later on, two

among them got further promotion through Annexure-A/13 dated 15.10.2004.

6. The applicant is, therefore, before us, aggrieved of having been left out of this process of selection after it was re-started subsequent to this Tribunal's order dated 20.02.2004 passed in O.A. No.182/2002. He submitted that in between these two dates of selection, on 06.03.2003 (Annexure-A/10) he had applied for his services being transferred to the Ajmer Division rather than the Ahmedabad Division, but that his option was never acted upon by the respondents.

7. In their reply written statement, the respondents of Ajmer Division have totally denied ever having received the applicant's option dated 06.03.2003 (Annexure-A/10). It also appears that the applicant did not actively pursue for his transfer to the newly constituted North Western Railway. Only later, when once again the options were called for, he applied once again for transfer to Ajmer Division through Annexure-A/14 dated 13.01.2005. This time his representation was acted upon by the respondents, orders for his relief from the Ahmedabad Division were issued through Annexure-A/16 dated 03.05.2007, and he reported for duty in the Ajmer Division of North Western Railway through order dated 17.05.2007 (Annexure-A/17).

8. Discovering then that he had been left out of this one time process of selection, for which he was eligible in the year 2002 alongwith his four other colleagues, the applicant represented

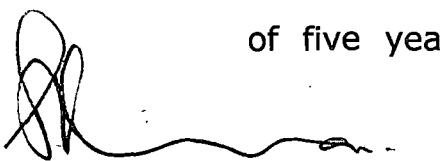


through Annexure-A/18 dated 11.03.2008, and Annexure-A/19 dated 03.05.2008, but they remained unrepplied. Ultimately, the applicant sought information regarding the filling up of the posts of Crew Controllers/Power Controllers (CCR/PCR) in Ajmer Division, and Annexure-A/1 dated 04.04.2008, and Annexure-A/2 dated 06.06.2008, were issued to him as replies under the RTI Act in response to the information sought by him. It was communicated through these that in accordance with the later decision of the North Western Railway Head Office dated 15.05.2006, now the posts of Power Controllers and Crew Controllers cannot be filled up by non running staff, and have to be filled up only from among the running staff. The applicant is, therefore, aggrieved that he has been left out altogether from a process of selection for which he was once eligible, and has sought for the replies received by him in response to his RTI Applications through Annexure-A/1 and Annexure-A/2 to be declared illegal, and to be quashed and set aside, and for orders or directions upon the respondents to conduct his selection for the post of Assistant Loco Foreman (fitting), and if he is selected, promote him on the said post with retrospective effect from the date of 27.05.2004, when similarly situated four persons were so promoted through Annexure-A/12.

9. In their reply written statement, the respondents submitted that the order dated 20.02.2004, passed in O.A. No.182/2002, was further challenged before the Hon'ble High Court also by the ~~17~~ ¹⁷ applicants therein, but the Hon'ble High Court had also dismissed the Writ Petition No.2296/2004, **Brijesh Kumar & Ors. Vs. Union**

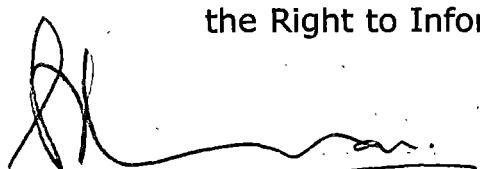
of India & Ors, on 17.05.2004, for want of jurisdiction to entertain the writ petition. Therefore, the orders of this Tribunal dated 20.02.2004, having become final, the respondents acted upon those orders, and the examination of the four eligible employees available within the Ajmer Division was conducted, and vive voce was held on 25.05.2004, and subsequently the panel dated 26.05.2004 was notified vide order dated 27.05.2004 (Annexure-A/12). The respondents submitted that since the applicant was at that time in Ahmedabad Division of Western Railway, and he has joined on transfer in Ajmer Division much later, subject to the conditional undertaking in option given by him on 13.01.2005 (Annexure-A/14), he was not eligible for claiming relief of being allowed the chance of one time selection for the post of Assistant Loco Foreman now, for which he was earlier eligible in the year 2002, through Annexure-A/7, in the then undivided Ajmer Division. The respondents had, therefore, prayed that the O.A. has no merit, and deserves to be dismissed, more so since the applicant has sought relief only against information provided to him under the RTI Act, and not against any order passed in a specific case by any of the respondents.

10. It was further submitted that the cause of action, if any, in favour of the applicant, arose when in the year 2004 when the selection examination was conducted in respect of the four of his erstwhile senior colleagues, and their promotion orders were issued. It was, therefore, prayed that there has been a gross delay of five years in the applicant coming before this Tribunal for



seeking relief, and on this ground also, since the O.A. has been filed after the statutory period of limitation as provided under Section 21 of the AT Act, this O.A. cannot be entertained by the Tribunal and deserves to be dismissed. It was also submitted that though primary relief sought by the applicant was for promotion on the post of ALF w.e.f. 27.05.2004, an alternative relief was prayed for by him for regularization on the post of J.E. 1st (Mill Wright) post w.e.f. 12.10.2000. The respondents submitted that firstly both the reliefs were independent of each other, and could have only provided separate cause of action to the applicant, and secondly relief in respect of a claim of the applicant in respect of the year 2000 cannot be claimed now, through this O.A. Hence the respondents had prayed that the O.A. deserves to be dismissed.

11. Heard. Having considered the facts of the case as discussed in the above paragraphs, and the arguments advanced by both the learned counsels, we find that none of the prayers, prayed for by the applicant, survive as on today. He was not within the Ajmer Division as is stood after its bifurcation in the newly constituted North Western Railway, and he was in the Western Railway, and, therefore, the applicant could not have participated in the selection which resulted in four of his erstwhile senior colleagues being selected as Assistant Loco Foreman (fitting), through Annexure-A/12 dated 27.05.2004. Secondly, no cause of action has now arisen, except for the information provided to the applicant under the Right to Information Act, through Annexure-A/1 and Annexure-

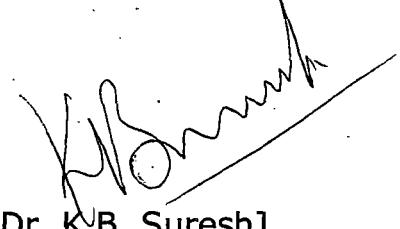


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A/2, which providing of information cannot be stated to have given rise to a cause of action to be pursued before this Tribunal.

12. Fortuitous circumstances are a part of one's life. The applicant has lost out an opportunity of his promotion in the year 2004, since he happened to remain in that portion of the erstwhile Ajmer Division which became a part of Ahmedabad Division of Western Railway. But that cannot give rise to any cause of action now for the applicant to agitate the matter before us in the manner as he has sought to do in this O.A. As already discussed above, since none of the prayers made by the applicant are within the period of limitation, and the respondents are right in pointing out that he cannot claim reliefs in respect of events which took place in the year 2004, and cannot lay a claim of substantive appointment w.e.f. 27.05.2004, as the claim has now become barred by law of limitation, apart from plurality of reliefs having been asked for in the O.A. Therefore, the O.A. is dismissed, but there shall be no order as to costs.


 [Sudhir Kumar]
 Administrative Member


 [Dr. K.B. Suresh]
 Judicial Member