

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

O.A.No. 311/2010

Resrvd on : 17.7.2012

Date of order: 20.7.2012

CORAM

**Hon'ble Mr. K B S Rajan, Judicial Member
Hon'ble Mr. B K Sinha, Administrative Member**

Mani Ram Khylia son of Shri Kashi Ram,
R/o Quarter No.12/2, MES Colony,
Suratgarh Cantt, Dist.Sriganganagar,
Rajasthan presently working on the post
Of Mate Carpenter in the office of GE
(Engineer Park), Suratgarh Cantt.Applicant

(By Advocate Mr. S.K.Malik)

Vs.

1. Union of India through the Secretary,
Ministry of Defence, Raksha Bhawan,
New Delhi.
2. Chief Engineer, Bhatina Zone, Bhatinda (Punjab).
3. Commander Works Enginer (AF)
Bikaner.
4. Garrison Engiener (Engineer Park)
Suratgarh Cantt. Dist.Sriganganagar.

....Respondents

(By Advocate Mr. Sanjeet Purohit)

ORDER

Per: Dr.KBS Rajan, Judicial Member

The applicant is a Matriculate and was initially appointed as Peon in 1984. As at that period, there was deficiency of Motor Pump Attendants and Switchboard Attendants, the authorities had decided to

train matriculate Mazdoors, vide Annexure A-1 and appoint them in such a capacity. The applicant was one of the individuals who had to be imparted the aforesaid training before being inducted as Motor Pump Attendant/Switchboard Attendant. Since the post of peon was not in the direct line of promotion to the aforesaid post of Motor Pump Attendant/Switchboard Attendant, respondents initially reclassified the applicant from the post of Peon to the post of Mazdoor, vide Annexure A-3. The applicant attended the requisite training. Thus, according to the applicant, he was sanguinely hoping to be inducted as Motor Pump Attendant sometimes in late eighties. However, the reclassification as Mazdoor was cancelled by Annexure A-9 Part II order and A-10 letter dated 15-03-1986. Some of the affected individuals had challenged the aforesaid cancellation order by filing original application before this Tribunal. The OA was allowed, vide Annexure A-11 order and the cancellation order of the administration was nullified. The applicant was not a party in the above Original Application though he too has been affected by the cancellation order. He had separately moved OA No. 347 of 1996 which was also allowed vide Annexure A-12 order dated 21-12-1998. And, it was declared that the applicant would continue to be reclassified as Mazdoor with all the consequential benefits including promotion, subject, of course, to qualifying in the trade test for promotion. As according to the applicant the aforesaid order was not complied with in as much as he was not promoted, he moved the Tribunal again by filing Contempt Petition No. 59/99. This contempt petition however, was dismissed holding that direction given in the Order of the Tribunal

for promotion was subject to qualifying in the trade test and since the applicant had not passed the test there was no disobedience by the respondents. Order dated 12-04-2001 at Annexure A-14 refers. Subsequently, the applicants could pursue the matter of his promotion only in 2009 by filing a representation dated 23-07-2009 vide Annexure A-15. He had in this representation referred to another individual by name Ram Nath, who was similarly situated as the applicant but who had been given the post of Motor Pump Attendant.

His representation was forward to the command headquarters by Annexure A-16, A-17 and A-18 but there is no response and hence this application has been filed seeking the following reliefs:-

- (i) *By an appropriate writ, order or direction the respondents may kindly be directed to appoint/regularize the services of the applicant on the post of MPA with effect from 20.12.85 ie. after completion of successful training with all consequential benefits.*
- (ii) *Exemplary cost be imposed on the respondents or causing undue harassment to the applicant.*
- (iii) *Any other relief which is found just and proper in the facts and circumstances of the case be passed in favour of the applicant in the interest of justice.*

2. Respondents have contested the OA. They had raised two preliminary objections, one as to Res-judicata and the other, limitation. They have also stated that the present application amounts to challenging the order passed by the Tribunal in the contempt proceedings, that too after nine years of the dismissal of the Contempt Petition.

3. Counsel for the applicant submitted that law is very clear that similarly situated persons have to be treated similarly and in this regard he had submitted that since Shri Ram Nath who was similarly

situated like the applicant was already afforded promotion to the post of Motor Pump Attendant, the applicant is also entitled to the same. In support of his contention the counsel referred to the following decisions: -

- (a) (2006) 2 SCC 747 *State of Karnataka vs C. Lalitha*
- (b) (2009) 2 SCC (L & S) 413
- © (2009) 9 SCC 514
- (d) 2007 (1) SCC (L & S) 951.

4. Counsel for the respondents submitted that the applicant is not entitled to any relief because of long delay coupled with the fact that the matter had been once decided and thus, principles of Res Judicata would spring into play.

5. Arguments were heard and documents perused. It is true that when the respondents had accommodated Shri Ram Nath, they could have, subject to the applicant's qualifying in the trade test, accommodated him as well. But the same could have been possible had the applicant approached the authorities at the appropriate time and had qualified in the trade test. The Apex Court did observe in the case of *C. Lalitha (supra)* as under:-

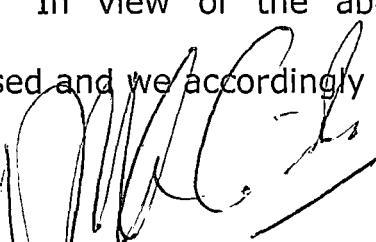
“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.

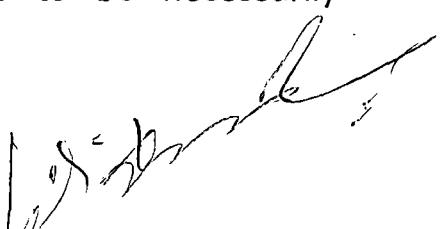
6. But the above would not assist the applicant because of the

inordinate delay of as many as 9 years. Further it is not the case of the applicant as well that he had cleared the Trade Test. Some training held in 1986 was attended by him and nothing more. Law on limitation is clear. In **Bhoop Singh vs Union of India (1992) 3 SCC 136** wherein the apex court has held as under:-

7. It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by lateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our ¹⁴¹opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement.

7. In view of the above, the O.A. has to be necessarily dismissed and we accordingly do so. No costs.


(B K SINHA)
Administrative Member


(Dr. K B S RAJAN)
Judicial Member

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