CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Applications No. 438/2012 with MA 210/2012, 439/2012 with MA 211/2012, 440/2012 with MA 212/2012 & 496/2012 with MA 234/2012

Jodhpur this the 28th October, 2014

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)

Keshtra Pal Singh S/o Shri Pati Ram, by caste Yadav, aged 70 years, resident of Merta Road, District Nagaur (Retired).

Applicant in OA No. 438/2012

Amrish Chand S/o Shri Mathura Prasad, by caste Kulshreth, aged 71 years, R/o Kaka Photo-state, Near Bus Stand, Merta Road, District Nagaur (Retired).

Applicant in OA No. 439/2012

Nizamuddin S/o Shri Jamaluddin, by caste Musalman, aged 70 years, resident of Merta Road, District Nagaur (Retired).

Applicant in OA No. 440/2012

Shyama Bohra W/o Late Shri Kanti Chand Bohra, by caste Kulshreth, aged 63 years, R/o Chandpol, Vidhyashala, Jodhpur (Raj).

Applicant in OA No. 496/2012

By Advocate: Mr B.K. Vyas.

Versus

1. Union of India through General Manager, Headquarter, North-Western Railway, Jaipur.

2. The Divisional Railway Manager, North-Western Railway, Jodhpur.

.....Respondents

By Advocate : Mr Kamal Dave.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

The applicants have filed these OAs under Section 19 of the Administrative Tribunals Act, 1985 praying for giving a direction to the respondents to regularize services of the applicant(s)/husband of the applicant(s) w.e.f. 01.10.1972 and consequentially, to grant all the pensionary benefits including the promotions as allowed to the junior incumbent. Since, common issue has been raised in OAs No. 438/2012, 439/2012, 440/2012 & 496/2012 and facts in issue are similar/identical, therefore, all these OAs are being decided by this common order.

2. The brief facts of the case, as stated by the applicants, are that the applicant in OA No. 438/2012 i.e. Mr Keshtra Pal Singh was promoted to officiate as Junior Clerk in the Grade 105-135 (AS) vide order dated 22.09.1972 after passing suitability test and he was declared qualified in order of seniority as Junior Clerk in grade 225-308 (RS) after adjudging his suitability vide order dated 16.08.1978. 55 posts of Store Issuer/Junior Clerk in the grade of Rs 105-135 were upgraded as Material Clerk w.e.f. 01.10.1972 and against these posts Junior Clerks were regularized w.e.f. 01.10.1972 and 9 officials had been transferred or regularized in other cadre therefore, total 64 employees were regularized. Consequent upon instructions dated 28.08.1980, the posts of clerk grade 260-400 (RS) which were being operated by down grading in the Grade 225-308 (AS) were restored

in original grade vide DPD/JU's letter dated 10.11.1980 (Annex. A/2) and fixed from the date of their posting or from 01.10.1972, whichever is later. 50 Clerks were fixed from their posting or from 01.10.1972 on account of implementation of Annex. A/2 but applicant was given seniority from 21.09.1983. The applicant through Union NRMU raised the issue that applicant and similarly situated persons namely Chatra Pal Singh, Babulal Yadav who were promoted as ad-hoc clerks should be regularized from ad-hoc promotion on the same analogy on which the decision with NRMU at GM's PNM has been taken. Similarly, NRMU had taken up the issue of regularization of Shri Udairaj who was promoted on ad-hoc basis and was senior to Shri Likma Ram and Kishtoora Ram who were regularized from the date of ad-hoc working in pursuance to decision of Hon'ble Tribunal, from the date these juniors have been regularized. It has been averred in the OA that the applicant passed suitability test alongwith other employees in the year 1971 but respondents did not declare result of said suitability post and only posting were given and the applicant was appointed in down-graded post which was subsequently restored to the original grade vide order Annex. A/2, therefore, the applicant was entitled for benefits of seniority from 01.10.1972. Further, the applicant's case is exactly identical to Kistoora Ram and Likma Ram and the Hon'ble Tribunal further granted similar relief to Ram Lal, Hari Singh & 3 others but the same relief has arbitrarily denied to the applicant. The matter regarding grant of benefit was discussed in the meeting held on 14.08.2003 (Annex. A/5) and further in the meeting held on 19/20.11.2003

(Annex. A/6). The applicant & other employees had also submitted the representation on 20.01.2004 (Annex. A/7) and the applicant served a notice dated 18.02.2009 for demand of justice to the respondents. Thereafter, the applicant filed S.B. Civil Writ Petition No. 5471/2009 before the Hon'ble Rajasthan High Court which was allowed vide order dated 26.05.2009 with a direction to the respondents to consider the petitioner's representation if filed afresh within a period of one month and pass an appropriate order (Annex. A/9). In pursuance of order of Hon'ble High Court, the applicant submitted a representation dated 16.06.2009 to the respondents but the respondents did not reply the same and the applicant filed Contempt Peition No. 92/2010 which resulted in deciding the representation of the applicant and the respondents rejected the claim of the applicant on the ground that the applicant's case is time barred and request for regularization and assignment of seniority w.e.f. 01.10.1972 cannot be accepted. The Hon'ble Rajasthan High Court vide order dated 18.07.2011 dismissed the said Contempt Peition giving finding that the representation has already been disposed of by the competent authority of the respondent-department (Annex. A/13). It has been averred in the OA that due to carelessness and default on the part of his counsel the applicant should not suffer huge loss and the applicant prayed for one more opportunity to get the case decided on merit. Being aggrieved with the action of the respondent to deny the benefits of seniority to the applicant, the applicant has filed this OA claiming relief broadly mentioned in para No. 1.

3. The applicants in OAs No. 439/2012, 440/2012 i.e. Mr Amrish Chand, Mr Nizamuddin & Late shri Kanti Chand Bohra husband of the applicant Ms Shyama Bohra i.e. the applicant in OA No. 496/2012 were promoted to officiate as Junior Clerk in Grade 105-135 (AS) w.e.f. 22.09.72 and bears the similar facts as averred by Mr Kshetra Pal Singh.

4. By way of reply, the respondents denied the claim of the applicants and averred that the applicants already stand superannuated long back and as such the OAs are hopelessly time barred. The applicants are praying for a relief to assign seniority after regularization w.e.f. 01.10.1972 and as per pleading itself grievance is ventilated by way of representation in the year 2004 and notice for demand of justice in the year 2009. The seniority from the year 1972 cannot be agitated after such a long period. The Central Administrative Tribunal was constituted in the year 1985 and no grievance in respect of year 1972 can be examined. The applicants were ordered to be reverted from their officiating promotion as Junior Clerk Grade 105-135 vide order Annex. A/1. In the Mechanical Department of Jodhpur Division total 55 posts of Store Issuer/Junior Clerk Grade 105-135 were upgraded as Material Clerk Grade Rs 110-180 w.e.f. 19.09.67 (for 5 posts) and 55 upgraded posts of Material Clerk Grade Rs 110-180 senior most 55 Store Issuer/Junior Clerk Grade Rs 105-135 were allowed benefit of upgradation w.e.f. 01.10.1972. Out of these 55 senior most staff 9 employees prior to

1.10.1972 were transferred/absorbed in other cadre/category on regular basis against which 9 other Store Issuer/Junior Clerk grade Rs 105-135 strictly in order of seniority were regularized as material Clerk. Since the name of the applicants as per the then seniority does not fall in the zone of consideration which was confined to total 55+9=64 promotions, therefore, they were not allowed benefit of upgradation as Material Clerk Grade Rs 110-180 w.e.f. 01.10.1972. In furtherance of the decision communicated vide order dated 28.08.1980 the downgraded posts of Material Clerk Grade 110-180/260-400 as Junior Clerk/Store Issuer in the Mechanical, Engineering and Signal & Telecommunication Department were restored and the staff working against these posts were also restored in the grade of 110-180/260-400 as Material Clerk and were extended the benefit of pay fixation in the grade as Material Clerk from the date of their posting or from 01.10.1972 whichever is later and the applicants were also allowed the benefit of the same. The selection for the post of Clerk Grade 260-400 against promotee quota was conducted in the year 1980-82 and as a result of this selection some of the Store Issuer/Junior Clerk including the applicants/husband of the applicant could not find place on the panel. The demand was raised by the union side and outcome of the deliberation was that such Store Issuer/Junior Clerk who could not find place on the panel of Clerk Grade 260-400 against promotee quota and officiating as clerk on adhoc basis may be regularized with effect from the date of their completing 3 years' from the date of original selection which was of 21.09.1980. The applicants claim for

grant of benefit of regularization and assignment of seniority in Grade 260-400 as clerk from the date of working on adhoc basis is not tenable. As the matter of regularization in Grade 110-180 as clerk w.e.f. 01.10.1972 of the applicants had already been examined at HQr's/Divisional Level several times and was not found tenable and considerable at all so the demand of the applicant for regularization and assignment of seniority in Grade 110-180 as Clerk w.e.f. 01.10.1972 has correctly been denied. It has been averred in the reply that no record in respect of the referred fact regarding qualifying the suitability tests in the 1971 is available. The applicants/husband of the applicants were posted to officiate as Store Issuer/Junior Clerk provisionally and they were sanctioned officiating allowance in the Grade 105-135 and in furtherance of the decision dated 28.08.1980 the applicants were extended the benefit of pay fixation from 01.10.1972 on 10.11.1980, thus, denying the granting of any benefit with regard to regularization in the grade from 10.11.1980. It has been further averred in the reply that entire process of posting as Store Issuer and providing benefits of pay fixation was purely on adhoc and provisional basis which does not confer any perspective right of regularization and assignment of seniority from the date of adhoc working. The referred cases of regularization has no nexus with the applicant's case as in all those cases the issue raised were decided in view of the directive of Hon'ble Supreme Court. The representations of the year 2004 are of no consequence when the issue already stands decided long back. Thus, respondents denied the claim of the applicant and prayed to dismiss the OA.

5. By way of rejoinder in OA Nos. 438/2012, 439/2012 & 440/2012 reiterated the same facts as averred in the applications.

6. Counsel for the respondents did not file any reply in OA No. 496/2012 and prayed that reply filed in other similar OAs in the issue may be treated as official reply for this OA also which is allowed.

7. Heard both the parties. Counsel for the applicants contended that the applicants have not been regularized from the year 1972 whereas juniors to them have been regularized from 1972 and the applicants are senior to Shri Likma Ram, Kishtoora Ram and others. Counsel for the applicant contended that the applicants were posted to officiate as Junior Clerk after adjudging their suitability and were working against down graded post of clerk grade 260-400 (RS) Consequent upon the instruction GM (P)/NDLS'S letter dated 28.08.1980, the posts of clerk grade 260-400 (RS) which were being operated by down grading in Grade 225-308 (AS) were restored in original grade vide letter dated 10.11.1980 (Annex. A/2), and were fixed from the date of their posting or from 01.10.1972 whichever is later. As such applicant should be regularized from the date of their posting or from 01.10.1972 whichever is later but the applicants/husband of the applicant have been given seniority from21.09.1983 on the ground that they have not passed selection test on 21.09.80. Counsel for the applicant contended that once they have passed suitability test it was not necessary for them to appear

again for suitability test and the applicants should be promoted according to their seniority. Some more persons junior to the applicants like Shri Kistoora Ram were regularized from 01.10.1982 and the applicants case is identical to him. Therefore, counsel for the applicant contended that a direction may be given to the respondents to regularize services of the applicant(s)/husband of the applicant(s)give w.e.f. 01.10.1972 and consequentially, to grant all the pensionary benefits including the promotions as allowed to the persons junior to them.

8. Per contra, counsel for the respondents contended that the applicants/husband of the applicant were appointed on various dates of the year 1972 or earlier and a departmental test for regularization was held in the year 1980-82 but the applicants were not declared successful. The applicants were working on adhoc and provisional basis from the year 1972 and the adhoc appointment do not confer any right in favour of the applicants. He further contended that vide letter Annex. A/12 dated 05.02.2010 Shri Kshetra Pal Singh, Amrish Chand Kulshresth and Nizamuddin were informed regarding non-regularization of their services and assignment of their seniority at appropriate place. It is referred in the said letter that later that they have been paid salary in the grade of Rs 260-400 w.e.f. 01.10.1972 but due to non-passing of the suitability test they could not be regularized and he further submits that this has specifically been averred in para 5.4 of the reply in OA No. 438/2012. Counsel for the respondents further contended that the applicants have neither submitted any seniority list nor arrayed any private person as

respondent and further a grievance of seniority 3 years prior to 1985 cannot be entertained i.e. coming into force of Administrative Tribunal's Act, 1985 and submission of representation does not provide any recurring cause of action and simply by filing a representation in the year 2004 after a lapse of 14 years of the denial of the claim to the applicants and another notice in the year 2009 cannot be said to provide fresh cause of action to the applicants.

9. Heard both the parties and also perused the material available on record. Counsel for the respondents in support of his arguments relied upon the judgment of Hon'ble Apex Court passed in State of Tripura & Ors vs Arabinda Chakraborty and Ors reported in (2014) 6 SCC 460 and judgment of Hon'ble High Court D.B.C.W.P. No. 4718/2012 dated 01.03.2013 passed in Sunil Kumar vs UOI & Ors in which its has been held that inordinate delay without explaining any reason is fatal for filing the claim. In this particular case, the cause of action available to the applicant during 1980s was raised for the first time in the year 2004 and later in the year 2009 and this delay has not been properly explained by the applicants in their applications. In addition to it, even on merits we see that even seniority list has not been submitted or filed with the original applications by the applicants in support of their claim, and they have also not arrayed any private party as respondents. Further as per reply filed by the respondents, it is clear that the applicants failed to qualify the suitability test of 1980-82, therefore, there was no reason for the respondents to regularize the services in officiating post from the year 1972 or date

of their posting whichever is later. So far as pay is concerned, as per reply in para 5.2 and 5.4, the applicants were getting the pay in the grade of Rs 260-400 from 01.10.1972. Accordingly, the applicants are not entitled to get any relief.

9. Consequently, OA Nos. 438/2012, 439/2012, 440/2012 & 496/2012 are dismissed on the ground of delay as well as merit. Accordingly, MAs No. 210/2012, 211/2012, 213/2012 and 234/2012 for condonation of delay filed alongwith these OAs are also dismissed. There shall be no order as to costs.

Sd

[Meenakshi Hooja]
Administrative Member

Sd

[Justice K.C.Joshi]
Judicial Member

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Dated... 11/11/2014

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