

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.145/2004

Reserved on 25.11.2013.

Pronounced on 12th December 2013.

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Munsarim Khan, aged about 58 years, son of Sri Ghani Khan, resident of Mohala Azad Nagar (Gurchahi Road), Risiya , District Bahraich.

-Applicant.

By Advocate: Sri Prashant Kumar Singh.

Versus.

1. Union of India, through its Secretary, Ministry of Railway, Department of Railway, New Delhi.
2. General Manager (Personal), North-Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, North-Eastern Railway, Ashok Mar, Lucknow.
4. Divisional Railway Manager (Personal), North-Eastern Railway, Lucknow.
5. Sri I.B. Tewari, son of not known, resident of House No.554/172 K, Chhota Barha, Alambagh, Lucknow.
6. Sri M.M. Srivastava, son of not known, retired as Booking Clerk from Badshahnager Railway Station, North Eastern Railway, Lucknow.
7. Sri Arun G. Srivastava, son of Sri A.P. Srivastava, resident of village and Post Office Rustampur, District Gorakhpur.

-Respondents

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By Advocate: Sri Rajendra Singh for Official Respondents.

Sri Praveen Kumar for Private Respondent No.6.

Sri M.A. Siddiqui for Private Respondent No.5

O R D E R

Pre Ms. Jayati Chandra, Member (A).

The instant Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief(s):-

(a). to set aside the part of order dated 12.12.1996 and modified the order dated 16.7.1999 and order dated 22.10.2003 by which the applicant has been given proforma promotion in the pay scale of Rs.1400-2300 from 24.01.1996.

(b). to direct the opposite parties to promote the applicant in the pay scale of Rs.1400-2300 from 01.03.1993 and pay al difference of salary with all consequential benefits.

(b-1). to direct the opposite parties to promote the applicant in the pay scale of Rs.5500-9000 from 01.11.2003 with all consequential benefits.

(c). to award the costs of the present application in favour of the applicant.”

2. Earlier, the applicant had filed O.A.No.172/2003 seeking the same relief as have been sought in the present O.A. as Relief No.2 and 3. The O.A.No.172/2003 was disposed of with the following directions:-

“Having heard the counsel for the parties, we dispose of this O.A. with the direction to the competent authority to decide the representation of the applicant dated 27.03.2000 (Annexure-12) by passing a reasoned and speaking order within a period of three months form the date of receipt of this order. Incase the applicant has any grievance, he will be at liberty to approach this Tribunal it so advised.

The O.A. is disposed of as above without any order as to costs.”

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3. The respondents have complied with the order dated 14.07.2003 passed in O.A.No.172/2003 by passing the impugned order dated 22.10.2003.

4. The crux of the matter is the applicant has sought his promotion in the pay-scale of Rs.1400-2300 from 01.03.1993 and sought the next promotion on the scale of Rs. 5000-9000 from 01.11.2003 at par with Respondent No.5 Sri I.B. Tewari, Respondent No.6 Sri M.M. Srivastava and Respondent No.7 Sri Arun G. Srivastava.

5. The facts necessary for the adjudication of this OA are that the applicant was appointed as Goods Clerk on 17.12.1966 and continued to work in the pay-scale of Rs.975-1450 as Goods Clerk, ^{1u} of the posts of Goods Clerk, Transhipment Clerk and Booking Clerk were merged into one commonly designated post of Commercial Clerk. A seniority list of Goods Clerk had been issued by Divisional Railway Manger, Lucknow on 25.09.1987 (Annexure1). A combined seniority list of Commercial Clerk was issued on 20.11.1990 showing position of Commercial Clerk in the pay scale of Rs.975-1450 as on 01.05.1990 in which the applicant's name is placed at Serial No.25 and Sri I.B. Tewari, Resp.No.5 was placed at Serial No.27 Sri M.M. Srivastava Resp.No.6 at 34 and Sri Arun G. Srivstava Resp.No.7 at 35. The applicant was awarded the penalty of withholding of increments for two years with cumulative effect by punishment order dated 24.5.1988 (Annexure No.2). As a result of this, he lost his chance of regular promotion alongwith his juniors. The penalty order was finally set-aside in the year 1994 vide

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Order NoC/431/Baraich/M Kha1/91 dated 28.10.1994 (Annexure-5).

6. In the meanwhile, a seniority list of Commercial Supervisors in the pay scale of Rs.1400-2300 was issued on 01.04.1996 (Annexure-6). In this seniority list, he was placed at Serial No.118 and Sri I.B. Tewari Respondent No.5 is at Serial No.62. The respondents continued to draw the benefit of the wrongly fixed seniority list of 01.04.1996 in the pay-scale of Rs.1400-2300. Finally, the Respondent No.5, 6 and 7 were promoted to the scale of Rs.5000-9000 w.e.f. 01.11.2003 by promotion order dated 27.07.2004 (Annexure-11).

7. After the decision to remove the penalty imposed upon him, the applicant was given proforma promotion in the scale Rs.1200-2040 from 20.11.1989 and to the scale of Rs.1400-2300 w.e.f. 12.12.1996 (Annexure-7). This order was further revised on his representation by an order dated 16.7.1999 (Annexure-8) by which he was given proforma promotion in accordance with his senior Sri Dinesh Singh and junior Sri Nain Lal and Uma Kant in as Commercial Clerk in the pay-scale of Rs.1200-2040 (revised to Rs.4000-6000) on 12.09.1990 as Commercial Supervisor in pay scale of Rs.1400-2300 (revised pay-scale of Rs.5000-8000) w.e.f. 24.1.1996. In this letter, it was clearly held that Sri I.B. Tewari was junior to him. He gave his representation against this order on 27.03.2000 demanding he be given the pay parity with M.M. Srivastava and I.B. Tewari, who had been given the pay-scale of Rs.5000-9000 w.e.f. 1.11.1993 vide order dated 05.08.1993 (Annexure A-4). As his representation

S. Upadhyay

was undecided, he filed O.A.No.172/2003 which was disposed of with the order as quoted in para-2 above. The applicant has placed reliance on the judgment of **Hon'ble Apex Court in the case of R.K. Singh Vs. State of U.P. and Others reported in 1991 Supp (2) Supreme Court Cases 126** demonstrating therein that once the punishment order has been withdrawn the employee ^{J.Ch} must be returned to its seniority and given all consequential benefits thereof.

8. The respondents have rebutted the contention of the applicant through their Counter reply and Supplementary Reply. They have raised a preliminary objection of limitation through the short counter reply at the first instance stating therein that under Section 21 of Administrative Tribunal Act, 1985 the maximum limit for approaching the Tribunal is within one year from the date on which such final order has been made.

9. The applicant is seeking his promotion w.e.f. 01.03.1993 whereas he has filed this OA in 2004 after a lapse of about 10 years. This claim is based on the seniority position of list of Commercial Clerks issued on 20.11.1990. This list was followed by issuing list dated 01.04.1996. Even if this date of issuance of the seniority list is taken to be the date of which the cause of action arose as the I.B. Tewari etc. were shown senior to him the applicant filed this OA in 2004 after a gap of almost 8 years. This gap cannot be adequately explained. The applicant has stated that he gave his first representation to the General Manager on 27.03.2000 which itself was made after a delay of 6 years from the date of cause of

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action (1993) and 4 years from the publication of seniority list in 1996. The OA is filed without any application for condonation of delay explaining the justification for such a delay.

10. Coming to the merits of the case, the respondents have stated that the applicant was posted as Goods Clerk whereas M.M. Srivastava and I.B. Tewari were posted as Coaching Clerks. The seniority list of 01.05.1990 in the grade Rs.975-1500 was drawn up as a consequence of the Circular dated 7.10.1998 by which these two cadres were merged and a combined seniority list of Commercial Clerk was issued. In the grade of Rs.975-1500 based on the seniority position as 01.05.1990 but the list was issued on 20.11.1990. Admittedly, in the list of 1990, the applicant is placed at Serial No.25, I.B. Tewari finds place at Serial No.27 and M.M. Srivastava find place at Serial No.34. however, the placement was wrongly given for the following reasons:-

(i). Sri I.B. Tewari was wrongly included in the, list of pay-scale of Rs.975-1500 as he had already been given next higher scale of rs.1200-2040 w.e.f. 07.10.1988. therefore on the dated of issue i.e. on 21.11.1990, he was already on a higher grade.

(ii). Sri M.M. Srivastava was working on the post of Booking Clerk in pay scale of Rs.260-430 w.e.f. 24.4.1981 before the merger of the cadres. About 30 Booking Clerks were promoted in the next higher grade of Senior Booking Clerk in the pay-scale of Rs.330-530 revised to Rs.1200-2040 vide order dated 20.02.1987. At that time Sri M.M. Srivastava was serving out a minor

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penalty by which his one increment was withheld for the period of one year. On expiry of the penalty he was given proforma promotion alongwith his peers to the post of Senior Booking Clerk on 20.02.1987. Thus, both Sri I.B. Tewari and Sri M.M. Srivastava were in the pay-scale of Rs. 1200-2040 prior to the merger of the cadre thus their placement in the seniority, list of 01.05.1990/20.11.1990 (which is the seniority list of relied upon by the applicant) was erroneous.

11. The applicant on the expiry of penalty period was given proforma promotion of the pay-scale of Rs.1200-2040 revised to Rs.400-6000 from 12.09.1990 as his position just below one Sri Dinesh Singh and above one Sri Nain Lal by order dated 16.11.1999 (Annexure-8) and he was given the pay-scale of Rs. 1400-3000 (revised to Rs.5000-9000 in the post of Commercial Supervisor w.e.f. 24.1.1996 and his pay was fixed accordingly.

12. The applicant has filed Rejoinder reply and Supplementary Rejoinder reply whereby the averments made in the OA have been further reiterated and the contentions of the respondents are denied.

13. We have heard the learned counsel for both the parties and perused the entire material available on record.

14. The technical objection of delay raised by the learned counsel for the respondents is being taken up first. Section 21 of the Administrative Tribunal Act, 1985 reads as follows:-

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“Section-21 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 (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.

(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 (1) or within a period of six months from the said date, whichever 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.”

15. The applicant has sought through this O.A. the porforma promotion to the scale of Rs.1400-3000 w.e.f. 01.03.1993 and in the pay-scale of Rs.5000-9000 from 1.11.2003. The second relief of promotion to the pay-scale of rs.5000-9000 arises from the basic claim made i.e. promotion to the pay-scale of Rs.1400-3000 from 01.03.1993. The basis of this claim arises from the promotion order of 05.08.1993 passed in favour of Sri I.B. Tewari. Admittedly, on that date the applicant was

I.B. Tewari

still undergoing a penalty but the penalty was set-aside on 28.10.1994. Therefore, the applicant should have immediately made his claim for parity with Sri I.B. Tewari and Sri M.M. Srivastva, who are promoted on the pay-scale of Rs. 1400-2300 by an order dated 05.08.1993 effective from 01.03.1993. The second cause of action again arose from the publication of provisional seniority list on 01.04.1996 in which the applicant was placed at Serial No.118 whereas Sri I.B. Tewari and Sri M.M. Srivastava were placed higher than him. The seniority list of 1996 is a provisional seniority list in which all persons whose names are placed in the seniority list were invited to give the objections against that seniority list within 60 days of publication of the same. The applicant has made no averment to the fact that he had given an application for correcting his seniority position vis-à-vis Shri I.B. Tewari and Shri M.M. Srivastava subsequent to his punishment order being set-aside by order dated 28.10.1994.

16. The applicant has sought to skirt the issue of limitation by virtue of order dated 14.07.2003 was passed in O.a.No.172/2003. It is seen from the order passed in O.A.No.172\2003 that the question of limitation was not discussed and disposed. Moreover, the liberty given in the OA to approach this Court in case of any grievance is not absolute. The order dated 14.07.2003 specifically stated that the O.A. was disposed of with a direction to the respondents to decide the representation of the applicant dated 27.03.2000 by passing a reasoned and speaking order. No comments has been made on the merits of the case nor that to the

question of limitation. It is stated in the order that "in case the applicant has any grievance, he will be at liberty to approach this Tribunal if so advised." The interpretation of this order would mean the liberty of Tribunal will lie in the context of various pronouncements of CAT and the ruling given by various Courts on this issue of limitation. The ***Hon'ble Apex Court particularly in the case of S.S. Rathore v. State of Madhya Pradesh reported in 1990 SCC (L&S) 50*** has held that successive representations cannot extend the period of limitation. The observations of Para 20 and 21 of the said judgments is reproduced herein under : -

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. ***Repeated unsuccessful representations not provided by law are not governed by this principle.***

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Ac. 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."

13. In the case of *Administrator of Union Territory of Daman and Diu and others Vs. R.D. Valand 1995 Supp(4) Supreme Court Cases 593* the Hon'ble Supreme Court has held as under : -

"..... The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent

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has been making representation from time to time and as such the limitation would not come in his way."

18. The learned counsel for the applicant has argued that the order dated 14.07.2003 gave him liberty to approach the Tribunal in case he has any grievances. The applicant has failed to see that this order liberty was not given to him unconditionally. He was given the liberty to approach the Tribunal "if so advised". The interpretation of giving liberty in the present case would be legal advice in the context of various pronouncements of Hon'ble Apex Court. The Hon'ble Apex Court has reiterated its earlier view on this matter in the case of ***Union of India & Ors. v. A. Durairaj reported in JT 2011 (3) SC 254*** and held as under:-

Re: Question(i)

13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly for grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be a great disadvantage of effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

19. The question of limitation being nullified by filing an OA and getting an order with direction to decide the pending representation was also examined by the Hon'ble Apex Court in the case of ***Union of India & Ors. v. A. Durairaj reported in JT 2011 (3) SC 254***, and ^{T. Un} held in para-14 of which reads as follows:-

J. Chandrasekhar

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same, and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This Court had occasion to examine such situations in Union of India v. M.K. Sarkar (JT 2009 (15) SC 70: 2010(2) SCC 58) and held as follows:-

"The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. Xxxxx

When a belated representation in regard to a 'stale' or 'dead' issue dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviewing the 'dead' issue or time barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation. Or erase the delay and laches.

A Court or Tribunal before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be legal position and effect."

20. Therefore, in the light of the discussion made above the present OA is liable to be dismissed on the ground of delay and latches.

21. Coming to the merits of the case the applicant has repeatedly place reliance on the combined seniority list of

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different cadres of Goods Clerk, Transhipment Clerk and Booking Clerk into one commonly designated post of Commercial Clerks dated 20.11.1990. A glance of this list shows that this is a provisional list. . Endorsement at Point-4 of the said list clearly stated that if any employee has any objection to the list then they allowed to give their representation against their placement within 60 days. The applicant has not provided any list which has been finalized subsequent to this provisional list, which may have been drawn up after getting objection from any one of 260 persons mentioned in the list which includes the name so Sri I.B. Tewari and Sri M.M. Srivastava. The seniority list of Goods Clerk dated 25.9.1987 prior the merger was also tentative. In that list of 1987 of Goods Clerks the applicant shown at Serial No.19 and one Sri Dinesh Singh is placed at Serial No.18 i.e. just above him in the seniority list dated 01.05.1990 the applicant is shown at Serial No.25 and the same Sri Dinesh Singh was shown at Serial No.24. The entire seniority list of 01.04.1996 has not provided by the applicant. However, it can be seen from the hand written correction made into it that Sri Dinesh Singh was shown at Serial No. 62-A and the applicant below at 62-B. Moreover, in the proforma promotion given to him by order dated 16.11.1999, he has been given parity with the same Sri Dinesh Singh. Throughout this O.A. the applicant has sought parity with Sri I.B. Tewari and Sri M.M. Srivastava and he has never demonstrated that the said Shri Dinesh Singh has been given parity with Sri I.B. Tewari etc.

J. Chandra

22. The respondents have made a very concrete statement about the date of promotion of Sri I.B. Tewari in the pay-sale of Rs.1200-2040 at 1988 and Sri M.M. Srivastava in 1987 on which date admittedly the applicant was working in the pay-scale of Rs. 975-1500.

23. In the impugned order dated 20.10.2003, it has been stated that the applicant was given promotion to the pay-scale of Rs.1200-2040 w.e.f. 12.09.1990 and in that pay-scale no person junior to him was given promotion to that scale prior to him. The relevant portion of the impugned order dated 20.10.2003 is reproduced below:-

“आपके प्रत्यावेदन के मद संख्या 6 के बारे में स्पष्ट किया जाता है कि दिनांक 1.3.93 से लागू केडर री-स्ट्रक्चरिंग के अन्तर्गत सामान्य श्रेणी के अन्तिम कर्मचारी के रूप में श्री रामकुमार प्रवर वाणिज्य लिपिम, 1200-2040 को प्रधान वाणिज्य लिपिक (अब वाणिज्य पर्यवेक्षक) वेतनमान 1400-2300 में पदोन्नति का लाभ दिया गया, क्योंकि इनकी पदोन्नति प्रवर वाणिज्य लिपिक में 23.11.89 को की गई थी। आपकी पदोन्नति वेतनमान 1200-2040 में दिनांक 12.9.90 को की गई थी, ऐसी स्थिति में आप से कनिष्ठ कोई भी कर्मचारी री-स्ट्रक्चरिंग का लाभ नहीं पाया है। ऐसी स्थिति में आपको भी केडर रीस्ट्रक्चरिंग का 1.3.93 सक कोई भी लाभ देय नहीं बनता है।

आपके प्रतिवेदन के मद संख्या 7 के बारे में स्पष्ट किया जाता है कि श्री तिवारी को वेतनमान 1200-2040 में पदोन्नति का जो लाभ दिया गया है, वह बुकिंग कलर्क, गुडस कलर्क, पार्सल कलर्क के मर्जर के पूर्व बुकिंग कलर्क की हैसियत में दिया गया था न कि मर्जर के बाद।

आपके प्रत्यावेदन के मद संख्या 8 के बारे में अवगत कराया जाता है कि प्रवर वाणिज्य लिपिक वेतनमान 1200-2040 की स्थिति में दिनांक 2.2.95 को जारी वरीयता सूची में संशोधन करते हुए आप से वरिष्ठ श्री दिनेश सिंह का नाम कम संख्या 62 पर स्थित श्री ए० के० धींगरा के नीचे एवं कम संख्या 63 पर अकिंत श्री बेचनलाल के ऊपर कम संख्या 62 ए पर तथा आपका नाम श्री दिनेश सिंह के नीचे और बेचनलाल के ऊपर कम संख्या 62 बी पर रखते हुए संशोधन कार्यालय आदेश संख्या 1665 दिनांक 22.10.2003 के माध्यम से प्रकाशित कर दिया गया है।”

The applicant has not made any statement to prove the illegality or irregularity of this statement particularly with regard to the following:-

(a). His placement between Sri Dinesh Singh Serial No.62A below A.K. Dhigra at Serial No.62 and above Shri Bechan Lal Serial No.63 is wrong.

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(b). That the basic promotion to Shri I.B. Tewari was given prior to the merger of cadre.

24. Therefore, in the light of the discussions above the applicant has failed to establish his case. The OA is liable to be dismissed on merits and also on the ground of delay and laches. No order as to costs.

J.Chandra
(Ms.Jayati Chandra)
Member (A)

U.R.S. Agarwal
(Navneet Kumar)
Member (J)

Amit/-