

**Central Administrative Tribunal
Lucknow Bench**

Original Application No.75 of 2006

This 9th the day of May 2007.

HON'BLE SHRI A.K. SINGH, MEMBER (A)

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

M.A. Khan, son of late Sri S.M. Khan, aged about 65 years
resident of House No.76, Martin Purwa, Khurram Nagar,
Lucknow.

... Applicant.

By Advocate: Shri K.P. Srivastava.

Versus.

- 1.Union of India Through General Manager, Northern Railway,
Baroda House, New Delhi.
- 2.Divisional Railway Manager, Northern Railway, Hazratganj,
Lucknow.
- 3.Senior Divisional Finance Manager, Northern Railway,
Hazratganj, Lucknow.

... Respondents.

By Advocate: Shri Saurabh Lawania.

ORDER

BY HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

The applicant who is the retire Parcel Clerk of Norther Railway filed this Original Application to quash the orders of 2nd Respondents, rejecting the claim of the applicant for promotion for the post of CBS/CPS in th grade of Rs. 6500-10500 and also claiming refixation of his pay in the grade of RS. 6500-10500 at par with his juniors w.e.f. 25.7.1994 and with consequential benefits of pension and its arrears etc.

2.The respondents have opposed the claim of the applicant

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by way of preliminary objections that the claim of the applicant is barred by limitation and further he never claimed this present claim of promotion in his earlier O.As and thus the said claim is barred by the principles of Order 2 Rule -2 of C.P.C. And also principles of res-judicata/ constructive res-judicata.

3.The applicant filed Rejoinder reiterated his pleas in main O.A.


4.Heard both sides.

5.The point for consideration is whether the application is liable for dismissal at this admission stage basing on the preliminary objections of the respondents.

6.The brief facts of the case that in the year 1986 the applicant was temporarily appointed as Chief Parcel Clerk drawing a pay of Rs 1640/- with effect from 09.07.1986 in the Grade of 455-700 pending selection. Annexure-6 is the copy of the said order dated 09.07.1986. When the same has been reduced to Rs 1560/- with effect from Dec,1987 by the impugned orders of the respondent dated 28.02.1986, the applicant challenged the same by filing OA 296 of 1996.

7.After considering the rival contention of the parties and without going into the legality impugned revision order, the tribunal the disposed off the OA with a direction to the respondents to reexamine the case of the applicant in the light of the pay records and having regard to the fact that the applicant was in the pay scale of Rs 1400 to Rs 2300/- and no reversion order had been served upon him. Annexure 10 is the copy of the Order in OA 296 of 1996 dated 11.12.2003. It is also not in dispute that during the pendency of the said OA, the applicant had retired from service on attaining at the age of superannuation on 31.01.2003.

8.Against the said orders of the respondents the applicant filed OA 32 of 2005 and the same was disposed off on



29.06.2005 with a direction to the respondents to decide the pending representation of the applicant within a period of 3 months by reason and speaking order. Annexure 3 is the copy in OA 32 of 2005.

9.As per the directions of the Tribunal in OA 32 of 2005, the respondents have considered the representation of the applicant and revised the pay of the applicant in the grade of Rs 1600 to 2660 (5500 to 9000) at par with his juniors B L Maurya and S N Mishra w.e.f 01.03.1993 and thus re fixed . Annexure 4 is the copy of the order dated 29.11.2005.

10.By way of separate order under Annexure 5 dated 24.11.2005, the respondents rejected the claim of the applicant for a regular promotion for the post of CBS / CPS in the grade of Rs 6500/- - 10500 on the ground that the said post is a selection post and the staff can not be given the benefit of regular promotion without passing the selection and empanelment for the said post and whereas the applicant had been retired on 31.10.2003 on attaining superannuation.

11.Aggrieved by the said orders of Annexure 5 dated 24.11.2005, the applicant has filed the present original application to refix the pay in the grade of Rs 6500/- to 10500/- w.e.f. 25.07.1994 and with consequential benefits in pension and gratuity on the ground that his juniors were promoted in the said grade w.e.f 25.07.1994.

12.The main arguments of the learned counsel for the respondents by way preliminary objection is that the claim of the applicant who refix his pay in the grade of Rs 6500 -10500 in the post of CBS / CPS is a selection post and for claiming the benefits of such regular promotion the applicant should have raised at the time of OA 296 of 1986 or earlier and claiming of such relief at this stage is clearly barred by limitation and also barred by the

principle of Res-judicata and also Order 2 Rule 2 of CPC.

13. Admittedly, the applicant was not promoted after due selection on the post of CPS and he never made any claim in respect of regular promotion for the said post. It is also not in dispute that the post of CBS / CPS is a selection post and benefits of the regular promotion without passing the selection are not available to the applicant. When the applicant claims benefits of promotion at par with his juniors w.e.f. 25.07.1994, and when he was not called for the selection along with them, the cause of action for claiming such relief would arise at that time only. But admittedly, the applicant did not claim such benefits either in O.A.No.296/1996 or subsequently and simply questioned the orders of revision of pay from 1640-1560.

14. The applicant never questioned the act of the respondents in omitting him to call for regular selection for the post of CPS, when his juniors were called. Under such circumstances, giving benefit to revise the pay of the applicant in the grade of Rs.6500-10,500 at par with his juniors w.e.f. 25.07.1994 ~~under Annexure-4~~ is not at all a justified ground to claim regular selection pay for the post of C.P.S. at par with his juniors, who were subsequently selected and thus promoted in the grade of Rs.6500-10500 w.e.f. 25.07.1994.


15. The applicant who was not promoted after due selection on the post of C.P.S. and without making such claim in earlier occasion and in earlier O.As., now claiming such benefits w.e.f. 25.07.1994, the date on which his juniors were promoted is clearly barred by limitation and also barred by the principles of Res-judicata and also under Order-2 Rule -2 of C.P.C.

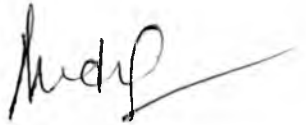
16. In view of the above circumstances, the applicant has not made out any case and also his case is barred by

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limitation and also barred by principles of res-judicata
and also Order-2 Rule-2 of C.P.C.

In the result, OA is dismissed no costs awarded.


(M. KANTHAIAH)
MEMBER (J) 9.5.07


(A.K. SINGH)
MEMBER (A)

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