

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

**Original Application No.231/2010
This the 7th day of December, 2012**

**Hon'ble Sri Justice Alok Kumar Singh, Member (J)
Hon'ble Sri D.C. Lakha, Member (A)**

Ram Ashrey aged about 55 years son of Late Mangal Das presently posted as Carriage Helper, B.G. Charbagh, Lucknow P.F. 06638296.

...Applicant.

By Advocate: Sri J.P. Verma.

Versus.

1. The Union of India, through its Secretary, Department of Railways, Rail Bhawan, New Delhi.
2. The General Manager, Northern-Eastern Railways, Gorakhpur Zone, Gorakhpur.
3. The Divisional Rail Manager, Northern-Eastern Railway, Ashok Marg, Hazratganj, Lucknow.

... Respondents.

By advocate: Sri D.B. Singh.

(Reserved on 05.12.2012)

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

In this O.A. the reliefs have been sought in the following manner:-

“(i). A declaration/direction may kindly be pleased to be issued in favour of the petitioner holding him

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entitled to get all due promotions against the post of Fitter Khalasi, Technician III, II and I from the year 1983 till date promoting him on such post w.e.f. the date when his juniors/similarly situated persons i.e. Arjun and Pitamber were getting and to allow him all usual/consequential benefits of such promotions along with usual increments and time scale etc. and applicant may also be allowed to be designated on any suitable post.

(ii). That the costs of the original application along with such other reliefs as may be deemed fit and proper in the circumstances of the case may also be pleased to be awarded to the petitioner against the opposite parties."

2. The case of the applicant is that he was initially appointed on 07.08.1981 under P.W.I. in the Northern Railway, Charbagh, Lucknow Division, Lucknow. Since then, he has not been promoted to any post/designation. In 1992, when Loco was closed the applicant worked here and there. On 20.08.1999, he was sent for working in carriage department. Earlier, he passed the Screening Test on 03.10.1983 and was found medically fit and also passed examination of Fitter-III. One Sri Arjun and Pitamber have been promoted to the post of Fitter Grade-I, who are getting all the benefits of the said post. But, the applicant has not been promoted. Both the above are similarly situated persons (Annexure-2 and 3). The applicant moved an application on 18.03.1994 (Annexure-4) followed by an application dated 04.04.1995 (Annexure-5) and 07.09.2009 (Annexure-6) but without any effect. The Ministry of Railways/Railway Board had also sent directions to all the General Managers of Indian Railways for extending the benefits of MACP after completion of 10, 20 and 30 years of service (Annexure-9). But the applicant has not been given that benefit also.

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3. The O.A. has been contested firstly on the ground of limitation by filing an objection vide M.P.No.1091/2010 saying that according to the applicant he has been working since August 1983. Therefore, there is delay of about more than 27 years. He has also not filed any application for condonation of delay.

4. Besides, a detailed Counter Affidavit has also been filed denying the pleadings contained in the O.A. But, it has been said that initially the applicant was inducted as Engine Cleaner (Mechanical Loco Department). When after closure of Loco he was declared surplus, he was absorbed in the other wing of mechanical department on the post of Khallasi on 30.07.1999 and any thing alleged contrary to the aforesaid has been denied. According to the respondents, the applicant is not entitled for promotion on the post of Fitter Grade-I and the entire petition is misconceived. The respondents have also requested that the applicant may be called upon to produce his pay slips received from time to time to show his alleged continuous working. In respect of giving the benefit under M.A.C.P., it has been merely said that one will be granted benefit subject to fulfilment of the conditions laid down in the scheme itself. Further, it has been said that since the applicant was brought/adjusted/redeployed in the new unit in 1999, he cannot be granted promotional benefits from any date prior to it because he was not in the unit.

5. An application has also been moved on behalf of the respondents to order the deletion of the name of Respondent No.1 on the ground that in view of the

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provision of CPC, in the case of railways, it has to be represented through General Manager of the Railways and not through Secretary.

6. A Rejoinder Affidavit has also been filed reiterating the pleadings of the O.A.

7. We have heard the learned counsel for the parties at length and perused the entire material on record.

8. Firstly, we would like to discuss the point of limitation. According to the applicant's case he is working since 1981 and passed the screening test of Fitter Grade-III in 1983. Two similarly situated persons namely Arjun and Pitamber were given promotion to the post of Fitter Grade-I but he was deprived of the same. He has not clearly mentioned as to when the above two persons were given posting/designation and promotion. But, if it was around 1983 then he should have moved a representation to the concerned authorities or file an O.A. before the Tribunal within a reasonable time. During the course of arguments, it was conceded that around the year 1992 the Loco was closed where the applicant was working. Then, for the first time the applicant claims to have moved an application dated 18.03.1994 followed by application-dated 04.04.1995 (Annexure-4 and 5). Though, the applicant has claimed that even after closure of Loco in 1992, he was working here and there but he has not disclosed either the exact period or the places where he allegedly worked. He has also not filed any evidence to prove it. According to the respondents after closure of the Loco the staff including the applicant

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became surplus and they did not work till the applicant was absorbed in Mechanical department as Khallasi in the year 1999. Even the applicant himself discloses that in 1999, he started working in carriage department. Again, he slept-over the matter for a long period of about 10 years. If, he had any grievance, he should have either moved any representation or filed a case before the Tribunal/Court. Admittedly, after coming to carriage department in 1999, he moved an application in respect of his grievance only on 07.09.2009 (Annexure-6). Obviously, this application after about 10 years was nothing but a device so that the present case may be filed before the Tribunal showing it to be within a period of limitation of one year. Accordingly, on 19.5.2010 this O.A. was filed. Obviously, therefore this O.A. is hopelessly barred by limitation. Even repeated unsuccessful representations not provided by the law cannot bring a matter within the purview of the limitation. In the present case, as we have seen above there is highly unexplained delay of about more than 27 years, as said above or at least more than 10 years if the date is to be reckoned from 30.07.1999, i.e. the date of his absorption in the mechanical department as Khallasi. Most important is the fact that the applicant has not even moved a separate application supported by any affidavit for condonation of delay. Therefore, the point of limitation is decided against the applicant so far it relates to relief no.1. Under relief no.2 there is a prayer for granting any other relief as may be deemed fit and proper in the circumstances of the case, which we intend to consider to meet the ends of justice. Moreover even though the O.A. is barred by limitation, we would be discussing this case

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also on merits hereinafter and on the basis of that discussion, we would reach a conclusion as to whether or not the applicant is entitled for any other relief.

9. Now, we enter into the merits of the case. The case of the applicant is that he has been continuously working from 07.08.1981 and worked as such up to 1992 in the Loco and after that he worked for some period here and there and then he was brought to the carriage department on 20.08.1999. According to him he also cleared screening/ medical test for the post of Fitter in 1983 alongwith his juniors /similarly situated persons namely Arjun ad Pitamber who have been given usual/ consequential benefits and promotions whereas, the applicant has been deprived. From the other side, the respondent have come forward with a definite case that he was inducted as Engine Cleaner in the mechanical (Loco Department) where he worked for some time and then declared surplus after 1992 on account of closure of Loco. However, from 30.07.1999 he was absorbed in the other wing of mechanical department on the post of Khallasi. The respondents also requested that the applicant may be called upon to produce his pay slips to prove his claim of continuous working. But, the applicant has not brought on record either any pay slip or any other document to show that he was in continuous working with the respondents w.e.f. 07.08.1981. Similarly, he has also failed to prove that the aforesaid two persons were either junior or similarly situated persons, and that both of them have been allowed all the usual/ consequential benefits and promotion etc. whereas, the applicant have been deprived. In support of

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the pleadings on the aforesaid point the applicant has placed reliance only on two documents placed at Annexure-2 and 3. On perusing these documents, we find that Annexure-2 is a physical fitness certificate issued in favour of Ram Ashrey, a candidate for appointment as Khallasi in the mechanical branch. It was issued on 1983-84. Annexure-3 is dated 26.07.1986, which in fact is a notice, which was pasted on the Notice Board, saying that the mentioned substitutes are hereby informed that their services will be terminated w.e.f. 26.08.1986 as they were appointed after 1980. The name of the applicant finds place in this list. In the remark column, it is mentioned that he was screened and found medically fit but it is also mentioned that he has not been yet posted. Thus, none of these papers support the claim of the applicant. In fact above Annexure-3 rather proves that with effect from 26.08.1986 applicant's service was terminated. Admittedly, he did not challenge this termination till date. The applicant himself has mentioned in one of his application/ representation dated 07.09.2009 (Annexure-6) that aforesaid Arjun and Pitamber were also screened on the same date but neither of their names could be shown in Annexure-3, which contains about 24 names though majority of them including the applicant have been shown to have been appointed on the same date i.e. 07.08.1981. In the light of the pleadings of the parties and the evidence brought on record, it appears that after his induction on 07.08.1981 the applicant's services were terminated in August, 1986. However the applicant has claimed to have worked in the Loco department till 1992 when, it was closed. In response to this contention, no specific reply

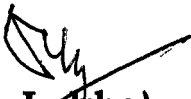
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has been given from the side of the respondents in the counter affidavit. Then, admittedly, the Loco was closed after 1992. Consequently, such staff including the applicant became surplus and there is no evidence to show that the applicant worked even thereafter until he was absorbed in carriage department under the extent rules/instructions. The applicant claims to have started working in the carriage department from 20.08.1999. His objection has been admitted by the respondents. But according to them the date of absorption in the mechanical department was w.e.f. 30.07.1999 itself. From the side of the respondents a circular issued by Railway Board dated 28.11.2000 was submitted for perusal. It deals with the case of such absorbed officials and provides that for the purpose of promotion and seniority old service would not be counted. From the side of the applicant nothing otherwise could be shown. Therefore, the applicant is neither entitled to get any promotion either on the basis of his alleged continuous working from 07.08.1981 nor on the ground of parity of so called similarly placed above two named persons. Similarly, the above circular of the Railway Board makes it very clear that old service, if any, could not be counted for the purpose of promotion and seniority. Now therefore, the applicant can only claim promotion or other benefits, if any, from the date of his induction in mechanical department as Khallasi w.e.f. 30.07.1999/20.08.1999, as the case may be. However, his claim for promotion as Fitter Grade-III since 1983 has no basis. Otherwise, also as we have already observed that this O.A. is hopelessly barred by time by several years for which even any application for condonation of

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delay has not been moved with or without affidavit. Nevertheless, as has been already observed by us that we intend to consider any other suitable relief to meet the ends of justice and in our view the only such suitable relief appears to be in respect of consideration for extending the benefit of MACP Scheme in favour of the applicant on completion of 10, 20 and 30 years of service provided the same is applicable in the case of the applicant. In this regard, the applicant has placed reliance on Annexure-9, which probably deals with such an employee, who has been adjusted/redeployed in the regular employment.

10. In view of the above, the O.A. is finally disposed of. Relief No.1 is declined on merit and also on the ground of it is being hopelessly time barred. Under Relief No.2, the respondents are directed to consider the claim of the applicant in respect of granting M.A.C.P. in accordance with Railway Board circular dated 04.12.2009 (Annexure-9) or other relevant circulars, if any, applicable in the case of the applicant and in the light of observation made hereinabove. It is hoped that such exercise would be completed expeditiously say within a period of six months from the date of this order. The application for deletion of Respondent No.1 stands allowed for the reasons mentioned in it. No order as to costs.


(D.C. Lakha)
Member (A)


(Justice Alok Kumar Singh)
Member (J)