

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Original Application No.349/2004.

Lucknow; this day of 17th January, 2005.

HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN.

HON'BLE SHRI M.L. SAHNI, MEMBER (J).

Imtiaz Hussain, aged about 44 years S/o Late F.A. Hussain, Sr. Diesel Asstt. under the respondent no. 1 and 2 and resident of C/o Locoforeman/N.Rly/Diesel Shed/Alambagh/ Lucknow.

2. Avdhesh Kumar aged about 37 years S/o K.P. Dubey, Diesel Asstt. under the respondent and residence of Rly. Qr. No. II 5 C/N.Rly/Colony/Faizabad .

3. K.K. Sethi aged about 36 years S/o J.C. Sethi, Diesel Asstt. under the respondent and posted at Faizabad C/o Item No.2 above.

... Applicants.

By Advocate:-None.

Versus.

The Union of India through General Manager/N.Rly/Hd.Qrs. office/Baroda House/New Delhi.

2. Divl. Railway Manager, N.Rly, Divisional Office, Hazratganj, Lucknow.

3. Ram Narain aged about 44 years Diesel Asstt. (Senior) and posted under the respondent at N.Rly Station Varanasi. C/o Locoforeman, N.Rly, Varanasi.

4. Balbir Singh aged about 38 years, Diesel Asstt. under the respondent posted at Lucknow . C/o Locoforeman , N.Rly, Diesel Shed, Alambagh, Lucknow.

... Respondents.

By Advocate: Shri Umesh Kumar Srivastava for  
Shri M.K. Singh.

O R D E R ( ORAL )

(BY HON'BLE SRI V.K. MAJOTRA, V.C.).

We have proceeded to consider and dispose of this matter in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987 by considering the pleadings, hearing the learned counsel for respondents and considering the material on record.

2. Learned counsel for the respondents has pointed out that respondents have filed a Short Counter Reply stating that the applicant No., who had been initially engaged as Substitute Electric Cleaner in Grade Rs. 196-232 temporarily w.e.f. 21.01.19977 was subsequently, appointed as Electric Cleaner. After qualifying the selection for the post of Fireman I, in Grade Rs.950-1500, he was placed in the panel vide order dated 23.10.1990. In pursuance thereof, he was promoted on the post of Fireman I vide order dated 24.12.1990. He has continued on the post as such till 29.2.1998. Thereafter, he joined the post of Diesel Assistant vice Sri Ravindra Kumar on mutual transfer. It is pointed-out that the post of Diesel Assistant and Fireman I are one and the same being identical. He pointed out that the applicant has never represented against the seniority allocated to him. He relied upon the judgment rendered in B.S. Bajwa's case reported in 1998 SCC (L&S) 611, S.S. Rathore Vs. State of Madhya Pradesh reported in 1990 SCC (L&S) 50, R.L. Buxi Vs. Ministry of Defence reported in 1987 Vol. V ATC and Hansa erry Vs. State of Tamilnadu reported in 1994 SCC (L&S) 1277 and objected to the inordinate delay in filing the present O.A. Similarly, applicant No.2 ,

who was initially appointed on the post of Diesel Asistant vide order dated 29.9.1993 at New Delhi was transferred from Delhi Devision to Lucknow Division vide order dated 7.4.1995 on mutual transfer. Applicant No.3 stated to have been initially appointed on 17.2.1994 and was placed at serial no.159. It has also been contended that applicants have never challenged the seniority list for inclusion of their names in the list for selection of Driver Goods.

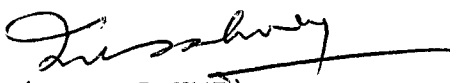
3. On 17.11.2004, the applicants were provided an opportunity to file Rejoinder Affidavit to the Short Counter Affidavit of the respondents within a period of 4 weeks. The applicants have not filed any Rejoinder Affidavit to the Short Counter Affidavit in terms of direction dated 17.11.2004 as such the contentions made in the Short Counter Affidavit have remained unrebutted.

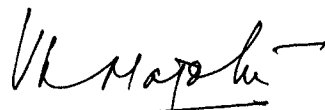
4. We have gone into the respective pleadings as also th material on record. On facts we find that applicants who had been transferred to Lucknow Division on mutual request have not challenged the seniority list for several years. At this belated stage now they have challenged the non-inclusion of their names for selection for the post of Driver Goods vide respondents letter dated 16.2.2004, on the basis of seniority list of Lucknow Division.

5. Learned counsel for respondent's contention that a provisional seniority list of Diesel Assistants in Lucknow Division issued in Feruary, 1997 had not been ojected to by the applicants within the stipulated period has gone un-rebutted. Obviously, the present objection for non-inclusion of their names in

the list of candidates to be called for selection to the post of Driver Goods circulated vide letter dated 16.2.2004 is nothing but a challenge to their seniority settled long ago in the garb of relief sought in the present O.A. It is certainly against the principle decided in the case of B.S. Bajwa (Supra) as the settled position in regard to seniority, promotion etc. cannot be unsettled at such a late stage. The applicant's claim can also not be accepted in view of decision in S.S. Rathore Vs. State of Madhya Pradesh reported in 1990 SCC (L&S) 50, R.L. Buxi Vs. Ministry of Defence reported in 1987 Volume V ATC and Hansa Berry Vs. State of Tamilnadu reported in 1994 SCC (L&S) 1277. As no satisfactory explanation has been furnished by the applicants for the long delay in making the present O.A., which is <sup>16</sup>for beyond the prescribed period of limitation.

6. If one has regard to the facts and circumstances of the case as also the case law as discussed above, this application is liable to be dismissed being barred by limitation as also being without merit. Dismissed accordingly.

  
(M.L. SAHNI)  
MEMBER (J)

  
(V.K. MAJOTRA)  
VICE CHAIRMAN.

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