

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 206 of 2010

Reserved on 15.9.2015

Pronounced on 21st September, 2015

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

R.P. Yadav, aged about 51 years, S/o late Dhani Ram, R/o Village
& Post Itaura, District Barabanki, U.P.

.....Applicant

By Advocate : Sri Praveen Kumar

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Delhi Division, New Delhi.
3. The Chief Works Manager, Carriage & Wagon Workshop, Alambagh, Lucknow.

.....Respondents.

By Advocate : Sri S. Verma

ORDER

By Ms. Jayati Chandra, Member-A

The applicant has filed this O.A. under Section 19 of Administrative Tribunal Act, 1985 seeking the following relief(s):-

- (a) *to accord the applicant seniority on the basis of panel dated 1984 with all consequential benefits.*
- (b) *to grant the applicant with continuity in service, seniority, promotion and all other attending benefits viz. monetary benefits etc. fixation of pay in the light of the fact that the erstwhile juniors figured below to the applicant have achieved higher position as Grade II and Grade-1*
- (c) *Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.*
- (d) *cost of the present case. "*

2. The facts of the case are that in terms of a policy decision of the Railways to give preference in employment to the son and wards of the serving/retired employees, a panel was formed on 20.5.1984. The applicant's name was included in the said panel. The panel was cancelled by order dated 3.1.1985 without any

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notice. Certain persons filed O.A. and thereafter they approached the Hon'ble Supreme Court by filing SLP. The respondents disregarding the judgment and order of Hon'ble Supreme Court prepared a new panel. The applicant alongwith other persons approached before this Tribunal and thereafter the Hon'ble Supreme Court by filing SLP no. 12979-80 of 1991. By means of judgment dated 14.2.1992 (Annexure no.1) the respondents were directed to include the name of the petitioners in a fresh panel. However, the respondents adopted delaying tactics in the matter of giving employment to the applicant and other similarly situated persons. The applicant and others filed a number of O.As, which were decided by means of order dated 15.2.2000 (Annexure-2) by which the respondents were directed to issue order of appointment to all the applicants, who had pressed their claim on the post of Khalasi in their turn on the basis of their seniority position as per panel dated 22.5.1984.

3. Although, the applicant was initially selected for the post of Khalasi in Carriage & Wagon Workshop, Alambagh, Lucknow, but the respondents issued appointment letter on the post of Gangman in Meerut Section under respondent no.2 taking a plea that no post of Khalasi existed in Carriage & Wagon Workshop, Alambagh, Lucknow. The applicant accepted the appointment under protest and joined on the post of Gangman in Delhi Division (Meerut Section). He had specifically mentioned in the protest that as and when the post of Khalasi in Lucknow Division, he should be accommodated on the said post. The applicant was appointed as Gangman on 26.9.2001 and he was transferred to Lucknow Division in the year 2005 and was finally accommodated on the post of Helper-II Khalasi on 22.10.2009 at Carriage & Wagon Workshop, Alambagh, Lucknow.

4. During all these years, various panels were formed relating to the post of Khalasi and various persons were appointed directly or otherwise, who have been ranked senior to the applicant. All these delay, which has been deliberately caused by the respondents, have resulted in loss valuable years of service and now he cannot be denied his appropriate place in the seniority panel of 1984 and all benefits of consequential promotion etc. The applicant had filed O.A. no. 843 of 2005 before Principal Bench of

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the Tribunal, which was disposed of vide order dated 19.4.2005 giving liberty to the applicant to first agitate his claim before the administrative authorities. The applicant submitted various representations. Thereafter, finally he was posted back on the post of Khalasi on which he was originally selected in the year 1984. He gave his representation dated 3.11.2009 (Annexure no.3) for grant of benefit of seniority w.e.f. 1984.

5. The respondents have filed their Counter Reply through which they have denied the averments made by the applicant in his O.A. They have further raised objection as to the maintainability of the case to the effect that the applicant seeks relief w.e.f. 1984 after considerable delay by filing the present O.A. in the year 2010. This period of delay has not been explained through any delay condonation application nor any such prayer for condonation has been made. They have also objected to the current relief as being barred under the principles of res-judicata as earlier by means of various other cases, the applicant had sought the similar relief. The applicant filed O.A. no. 843/05 R.P. Yadav Vs. General Manager, Northern Railway, New Delhi and Others claiming relief to the effect that (i) the respondents be directed to give appointment to the applicant to the post of Khalasi from the year 1984 with all consequential benefits; (ii) the respondents be directed to give appointment as Khalasi in the department in which he was selected in the year 1984 with all consequential benefits including seniority and relaxation in age for appearing in the LDCE and other promotional examination. This O.A. was permitted to be withdrawn to pursue his administrative remedies, if available.

6. Coming to the merits of the case, the respondents have given the background of this O.A. They had prepared a panel of casual labour Khalasi, which was published by letter dated 22.5.1984. This panel was cancelled by order dated 3.1.1985. Some persons, not included the applicant, filed O.A. no. 206 of 1987 before the Tribunal, which was dismissed on 26.11.1987. This order was challenged before Hon'ble Supreme Court through SLP no. 1213-14 of 1988 by the applicants of O.A. no. 206 of 1987. The SLP was decided on 8.9.1998 and a direction was issued that bar of age should not be raised against any of the

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applicant in respect of two consecutive advertisements for employment. Subsequently, a panel was constituted pursuant to advertisement dated 8.9.1989 and several affected persons (not the applicant) filed O.A. no. 79 of 1990 before this Tribunal, which was dismissed on 20.5.1991. The applicant also filed O.A. no. 84 of 1989, which was disposed of in terms of directions contained in SLP no. 1213-14/88. However, though, the applicant had applied for empanelment in the subsequent advertisement, was not called

to appear in the screening being not-eligible. The persons aggrieved by order of the Tribunal dated 20.5.1991 passed in O.A. no. 30/89 and 69/90 had approached the Hon'ble Supreme Court by way of filing SLP no. 12979-80 of 1990, which was allowed vide order dated 14.2.1991 (Annexure-1) directing the railway authorities to treat the appellants (25 in number) as claimed by them and then consider them alongwith other appellants, if any, belonging to the same category as the appellants and having similar preferential claim and pass appropriate orders of appointment to the existing vacancies within two months. O.A. no. 468 of 1993 filed by Vijay Kumar Pal & Others (including the applicant) was finally disposed of vide order dated 15.2.2000. Since the order of Hon'ble Supreme Court passed in SLP No. 12979-80/91 had to be implemented in a time bound manner and as there were no vacancy available in Class IV Group 'D' category in C&W shop, Northern Railway, Alambagh, Lucknow, therefore, the applicant alongwith other similar persons covered by various judicial pronouncement were appointed/posted at Meerut Section of Delhi division of Northern Railway after seeking their categorical and unequivocal options. Thus, in the backdrop of the litigation, the applicant's appointment as Gangman in Delhi Division in the year 1992 negates any claim for keeping the claim of the applicant w.e.f. 1984 alive. There was no assurance either sought or given to the effect that as and when the post of Khalasi becomes available, the applicant would be accommodated in the said post at Lucknow Division. While working as Gangman in Delhi Division (Meerut Section), the applicant sought his transfer on his own request and was transferred and posted as Trackman under Senior Section Engineer (P.Way), Northern Railway, Barabanki under Lucknow Division of Northern Railway for being posted as Khalasi in the pay scale of Rs. 2610-2540/- @ basic pay Rs.

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3105/- per month on his own request. The applicant again sought his transfer to C&W Shop, Northern Railway, Lucknow for being posted as Khalasi accepting bottom seniority was accepted by the competent authority and after due formalities, he was transferred and posted as Khalasi in pay Band of Rs. 5200-20200 with Grade Pay of Rs. 1800/- where he submitted his joining report on 22.10.2009. The applicant's request for transfer and his unconditional acceptance are annexed as Annexure nos. CA-1 and CA-2 to the Counter Reply.

7. The applicant has filed Rejoinder Reply refuting the contentions of the respondents made in their Counter Reply and reiterating the averments made in the Original Application.

8. We have heard the learned counsel for the parties and have also perused the pleadings on record.

9. As technical plea of delay and constructive res-judicata being raised by the respondents, hence the same are being examined first. The applicant has sought seniority on the basis of panel of 1984 with all consequential benefits. Prima-facie such a prayer arising out of the same is being made in the year 2010 without filing any application for condonation of delay. It appears to be barred by Section 21 of A.T. Act, 1985. Even if the period is examined within the context of the history of the litigation as disclosed by the applicant and the respondents of the judgments, the applicant was given appointment as Khalasi in Delhi Division at Meerut Section on 26.9.2001. Even if the periods prior to 2001 is thus explained being the period under litigation, the applicant has waited for nine years from 2001 prior to file this O.A. The Hon'ble Supreme Court in the case of **S.S. Rathore Vs. Union of India & Ors, AIR 1990 SC 10** has held that the repeated representations do not extend the period of limitation. In **Karnataka Power Corporation Ltd through its CMD and Another Vs. K. Thangappan and Another 2006 (4) SCC 322** also, the Hon'ble Supreme Court has held that mere making of representations cannot justify delay. In **Shri Bhoop Singh Vs. Union of India & Others, 1992 (3) SCC 136 (Para 8)** decided by three Judges Bench it has been held that inordinate & unexplained delay or laches is by itself a ground to

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refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. In **Union of India & Ors Vs. M.K.Sarkar 2010(2) SCC 58 (Para 14)** after considering the judgment *State of Bihar Vs. Kamleshwar Prasad Singh*, it has been clarified by the Hon'ble Supreme Court that the limitation has to be counted from the date of original cause of action and stale matters should not be entertained. In the case of **P.K. Ramachandran Vs. State of Kerala & Another JT 1997 (8) SC 189** the Hon'ble Supreme Court has held as under:-

"The law of limitation may harshly affect a particular party but it has to be applied with all its rigor when the statute so prescribe and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the Hon'ble High Court was, thus, neither proper nor judicious. The order condoning the delay, therefore, cannot be sustained."

Similarly in, **State of Karnataka Vs. S M Kotraya 1996 (7) Scale 179** the Hon'ble Supreme Court has held as under:-

"It is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) and (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the tribunal should be required to satisfy itself whether the explanation offered was proper explanation as prescribed under Section 21 of the Administrative Tribunal Act 1985. In view of above, it is the duty of the court to see whether the delay has been properly explained by the person who is approaching the court after inordinate delay. Accordingly filing of an application does not entitle the person to claim condonation of delay."

Therefore, the OA is liable to be dismissed on the ground of delay and laches.

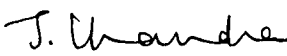
10. Secondly, the applicant has not annexed copies of all cases which were filed by him. However, from the submissions made in the Counter Reply, the applicant had filed O.A. no. 843/2005 alongwith one Sri R.P. Yadav before Principal Bench of this Tribunal seeking relief (i) the respondents be directed to give appointment to the applicant to the post of Khalasi from the year 1984 with all consequential benefits; (ii) the respondents be

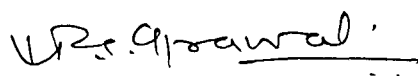
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directed to give appointment as Khalasi in the department in which he was selected in the year 1984 with all consequential benefits including seniority and relaxation in age for appearing in the LDCE and other promotional examination. This O.A. was dismissed as withdrawn in favour of pursuing administrative remedies.

11. Coming to the merits of the case, the applicant was given appointment by order dated 26.9.2001 as Group 'D' Gangman in Meerut Section at Delhi Division of Northern Railway. No copy of the appointment order or joining report has been provided by the applicant. He has stated that he had accepted such appointment under protest, but he has not produced any such protest letter in this O.A. More-over he was transferred to Lucknow Division on his own request and subsequently to C&W Shop, Northern Railway, Alambagh, Lucknow as Khalasi as per his request submitted before the competent authority on 30.12.2008 (Annexure C-1). He had also accepted bottom seniority while transferring to C&W Shop, Northern Railway, Alambagh, Lucknow (Annexure CR-2). More-over, any claim for seniority after considerable lapse of time cannot be considered in view of settled preposition of law that settled seniority cannot be unsettled after a long lapse of time. The decisions of the Hon'ble Supreme Court rendered in the case of **M. Satheesh Kumar Vs. Travancore Devaswom Boarf, Rabindra Nath Bose and others v. Union of India and others** (AIR 1970 SC 470), Charls K. Skaria and others v. Dr.C. Mathew and others (AIR 1980 SC 1230) .

12. In view of the discussions made above and also the legal proposition on the subject, we do not find any merit in the O.A. and the same is liable to be dismissed and is accordingly dismissed. No costs.


(Ms. Jayati Chandra)
Member-A
 Girish/-


(Navneet Kumar)
Member-J