

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.No.: 397 of 1996.

(Patna, this Tuesday, the 23rd Day of March, 2004).

C O R A M

HON'BLE MRS. SHYAMA DOGRA, MEMBER (JUDICIAL).

HON'BLE MR. MANTRESHWAR JHA, MEMBER (ADMINISTRATIVE).

Jamil Ahmad, son of Late Mehd. Dulli, senior Booking Clerk, N.E.Railway, Siwan, resident of Surahia Purbtola, P.O.: Barharia, District : Siwan (Bihar). .... APPLICANT.

BY ADVOCATE :- Shri Sudama Pandey.

Vs.

1. The Union of India, through the General Manager, N.E. Railway, Gorakhpur.
2. Divisional Railway Manager (P), N.E.Railway, Varanasi (U.P.).
3. Divisional Rail Manager (Commercial), N.E.Railway, Varanasi (U.P.). .... RESPONDENTS.

BY ADVOCATE :- Shri P.K.Verma.

O R D E R

Shyama Degra, M(J) :- This OA has been preferred by the applicant with the prayer for considering his case for promotion w.e.f. the date his juniors were promoted alongwith all consequential benefits while challenging the order dated, the 25th September, 1995 (Annexure-1), whereby, the respondents have promoted his juniors from the scale of Rs.1200-2040/- to Rs.1400-2300/- inspite of the fact that as per seniority list dated, the 1st April, 1994, the applicant was at sl.no.2.

2. Briefly, the facts of the case, as submitted by the applicant, are that while working as Booking Clerk w.e.f. 17th April, 1964, some juniors to the applicant were promoted as Sr. Booking Clerk in the year 1980 while superseding the applicant who was senior to these persons. The applicant has also given certain names of persons promoted to the said post in the scale of Rs.330-560/- (now, Rs.1200-2040/-).

3. On representation of the applicant he was <sup>✓ net w.e.f. 1980 ✓</sup> also promoted to the said post in the year 1983 though no departmental proceedings were pending or contemplated against

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the applicant in the relevant year i.e. 1980 when his juniors were promoted. Thereafter, also many juniors to the applicant were promoted as Sr. Booking Clerk, Coach Superintendent Gr. I & Gr.II without assigning any reasons for not considering the name of the applicant for these promotions.

4. Thereafter, vide Annexure-1, dated, the 25th September, 1995, all these juniors were further promoted to the post of Head Booking Clerk in the scale of Rs.1400-2300/- again superseding the applicant though he stood at sl.no.2 of the seniority list. In protest against that arbitrary action of the respondents the applicant preferred representation vide Annexures-3 series. The applicant was also intimated vide Annexure-4, dated, the 30th December, 1995, that necessary action will be taken after due enquiry into the matter.

5. The respondents have filed written statement and contested the claim of the applicant on the ground of delay and laches as cause of action whatsoever has arisen and in his favour in the year 1980/ he preferred this O.A. almost after lapse of 16 years, that too, without making his juniors as parties in the O.A.; therefore, the present O.A. also suffers from jo-joinder of necessary parties. It is submitted by the learned counsel for the respondents that in view of his own actions and omissions the applicant is estopped to raise this prayer for consideration for promotion vis-a-vis his juniors at this belated stage on the ground that once the things settled long time back cannot be unsettled at belated stage. In support of his contentions the learned counsel for the respondents has placed on record copy of the decisions passed by the Hon'ble Apex Court in AIR 1990 SC 10 (S.S.Rathore Vs. State of Madhya Pradesh); and 1998 (3) SLJ 28 (B.S.Bajwa & Anr. Vs. State of Punjab & Ors.).

6. So far as seniority position of the

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applicant is concerned, the same is not disputed by the respondents. However, it is submitted that since the applicant was facing some punishment of stoppage of increment from the period 01.01.1989 to 1996; therefore, his case was not considered for promotion vis-a-vis his juniors in the year 1980 onwards. After completion of said punishment period the applicant has now been given promotion on 26th April, 1996, to the grade of Rs.1400-2300/- and his seniority has also been fixed as per extant rules. Therefore, in view of this also the present OA has become infructuous.

7. Apart from this, it is further averred by the respondents that during this entire period the applicant has accepted his promotion from time to time and has taken all benefits arising thereof; therefore, principle of estoppel, waiver and acquiescence is applicable in his case. The respondents have also given details of period for which the applicant has got various punishments from time to time.

8. With regard to the promotion of the applicant to the next higher posts, since the said posts are selection grade post; therefore, the same can only be filled by a positive act of selection and the applicant was in fact called for selection for the grade of Rs.1600-2660/- at the relevant point of time, but the applicant has not taken part in the said selection test; therefore, he was not given promotion vis-a-vis his juniors.

9. The applicant has filed rejoinder and reiterated his claim with further submission that at the relevant point of time i.e. 1980, the applicant was not facing any departmental proceedings whatsoever and the subsequent punishments being imposed on the applicant were minor punishments not debarring the applicant from consideration of his name for the further promotions for which



also the applicant has been ignored and since the applicant remained senior to all these persons whose names have been given in the rejoinder, the respondents have ignored his case for various promotions from time to time. He has also denied that he was ever called for any selection test.

10. We have heard the learned counsel for the parties and gone through the record carefully. Before coming to the merits of the case, the first point to be determined is with regard to objection being raised by the respondents on delay and laches. Admittedly, cause of action in favour of the applicant has arisen in the year 1980 when his juniors were promoted as Sr. Booking Clerk in the scale of Rs. 330-560/- (now, Rs. 1200-2040/-), but he did not choose to come to the Court since he was also promoted as such in the year 1983. He has also not placed on record any representation claiming therein his consideration for such promotion vis-a-vis his juniors. Furthermore, thereafter also he kept on accepting his subsequent promotions without any protest and it is only in 1995 when impugned order (Annexure-1) was passed by the respondents, whereby, his juniors have been promoted to the post of Head Commercial Clerk in the scale of Rs. 1400-2300/-, he opted to challenge that order in the Court. Though, admittedly, he was senior to all these persons but taking into consideration that the applicant though challenged that order (Annexure-1), but he has not made those persons as parties who are going to be affected if the said order is quashed; therefore, the present OA is bad for non-joinder of necessary parties.

11. The applicant has not even filed any application for condonation of delay under Section 21 of the Administrative Tribunals Act which begins with non-obstante clause putting condition precedent to move the Court/Tribunal if there is a delay alongwith an application for condonation of delay giving details for such delay.

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12. Moreover, even if the plea of the applicant is accepted for the sake of argument that he has got recurring cause of action due to financial implications being involved in the matter even then his case suffers from principle of estoppel, waiver and acquiescence as the applicant has accepted all these promotions till date without any protest.

13. Though the ~~O~~ imposition of minor punishments could not have come in his way for his promotion vis-a-vis his juniors, but for the aforesaid reasons that he kept on accepting or taking benefits of subsequent promotions since 1983 onwards, the applicant cannot be allowed to seek remedy of unsettling the promotions already given to large number of employees from time to time, the cases thereof have already been settled long time back.

14. In para 6 of the decision given by the Hon'ble Apex Court in B.S.Bajwa's case, it is relevant to quote here the same as facts of this case is almost identical to the facts of the present case. Observations of the Hon'ble Apex Court in the said decision are as under :-

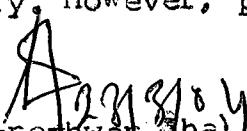
"6. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance ~~O~~ made by B.S.Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department ~~O~~ in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallised which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B.S.Bajwa and B.D.Gupta and this position was known to B.S.Bajwa and B.D. Gupta right from the beginning as found by the



Division Bench itself. It is well settled that in service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable ~~time~~ period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

15. In the present case also the applicant has allowed himself to be treated junior to the persons promoted time to time at every stage with clear knowledge thereof and also taking benefit of subsequent promotions at every stage till 1995. Therefore, we are of the considered opinion that the applicant has failed to substantiate his contentions driving us to the conclusion that he is not entitled for the relief as prayed for by him in the present O.A.

16. In view of these observations and analysis of the matter, we find no reason to interfere with the <sup>(Dt.25.09.95)</sup> ~~order~~ passed by the respondents vide Annexure-1<sup>and</sup>, therefore, the same is hereby upheld and the present O.A. being devoid of merits is hereby rejected and disposed of accordingly. However, parties are left to bear their own costs.

  
(Mantreshwar Gha)  
Member (A)

  
(Shyam Dogra)  
Member (J)

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