

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.No.445/2006

Dated this 7.1.09 12.2008

CORAM:

HON'BLE MR. SHANKAR PRASAD, MEMBER(A)
HON'BLE MS. SADHNA SRIVASTAVA, MEMBER(J)Nagen Chandra Mandal, S/o Late Bhola Nath Mandal,
resident of Village- Saguna, P.S.- Danapur, District-Patna.

... Applicant

By Advocate : Sri J.K.Karn

vs.

1. The Union of India, through the General Manager(P), East Central Railway, Hajipur.
2. The General Manager(P), Eastern Railway, 17, N.S.Road, Fairlie Place, Kolkata-700001.
3. The Divisional Railway Manager, E.C.Railway, Danapur.
4. The Sr. Divisional Personnel Officer, E.C.Railway, Danapur. ... Respondents

By Advocate : None

ORDER

HON'BLE SRI SHANKAR PRASAD, MEMBER(A): By this O.A. the applicant seeks the relief that he was required to be regularised in the scale of 840-1040 with effect from 27.7.78 or in the alternative required to be granted the scale of 840-1040 with effect from 1.1.84 when his juniors were granted such benefit under the restructuring orders.

2. The facts lie in a narrow compass. It appears that the applicant while working in the pay scale of 700-900 was asked to officiate in the higher pay scale of 840-1040.

and thereafter the officiating arrangement was discontinued (none of the orders are on record.). It further appears that the applicant was served with a charge-sheet on 26.10.1981 and the same concluded with a penalty of 'Censure' in 1986. During the pendency of the aforesaid proceeding, the respondents- Railway Administration introduced the restructuring scheme. The case of the applicant is that he was the senior-most employee and was required to be promoted. On the other hand the respondents have stated that the said post at the relevant point of time was a Headquarter controlled post and that the post was required to be filled up on the basis of a selection and in the said selection, the applicant was found unfit.

3. The applicant superannuated from service on 31.10.88. It appears that the applicant started re-agitating the issue of his non-promotion in 2004. He was placing reliance on a Railway Board circular of 1988 regarding anomaly in the fixation of pay of Loco supervisory staff. It appears that his representation was also referred to the Chief Personnel Officer, Eastern Railway.

4. The matter was again raised in the Pension Adalat vide Case No.21. The following decision has been recorded in the Pension Adalat:-

"The case was examined thoroughly by CPO/ER/KKK and after scrutiny of all the records of the relevant period following decision has been communicated by CPO(Ad)/ER. Sri N.C.Mondal was senior to Sri S.N.Bhattacharjee and B.B.Dutta in the category of LI/EI/PCNL in scale Rs.700-900 /Rs.2000-3200 and against the post of restructuring of SLI/SFI/CPCNI, in scale Rs.810-1040/- (Rs.2375-3500/-) w.e.f. 01.01.84, the SR/CRS of Sri Mondal were called along with that of 29 others eligible candidates for scrutiny by the Selection committee for formation of Panel vide CPO/ER/s letter E 839/TP/Review dt. 11.01.85. Accordingly, the panel was formed and posting order also issued on 14

24.04.85 wherein the name of Sri Mondal did not appear as he was not declared suitable by the Selection committee, hence was not promoted(the then Dy. CME/Dt/HQ, Dy. CME/Fnel and SPO/G/HQ). In this connection it is further stated that the examination for the first regular promotion of SLI/SFI / CPCNL was held in the year 1987 and Sri Mondal was selected and promoted vide office Order No.E.1025/I.P/Non-selection/Insp./Pt. I dt. 31.12.87 (photocopy attached) on a regular measure alongwith 07 others. Hence the case is not tenable. This case is disposed accordingly."

5. We have heard the learned counsels. It is stated in para-3 of the O.A. that the O.A. is within the period of limitation. The order dated 8.8.06 indicates that when the Tribunal wanted to know as to what actions were taken by the applicant once he was denied promotion, the applicant has filed a supplementary application, that paras 4.11 and 4.14 of the O.A. explain the actions taken by the applicant. Para 4.11 refers to various representations given by the applicant, the last of them being the letter dated 22.9.2004. Thus the said representation has been filed 20 years after the applicant was superseded at the time of restructuring and 16 years after his superannuation.

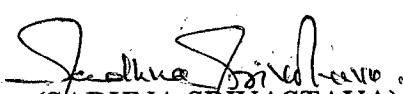
6. Rule 8(4) of the C.A.T.(Procedure) Rules makes it clear that an M.A. for condonation of delay has to be moved separately. The Apex Court in Rabindra Nath Bose vs. Union of India;AIR 1970 SC 470 has held that once a final decision is taken, representations to review that decision cannot result in condoning the delay. The act of supersession does not provide a continuing cause of action. The O.A. is accordingly to be held as time-barred.

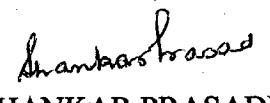
7. The Apex Court in R.C.Sharma vs. U.S. Kamal, 2000 SCC (L&S) 53 has held that if an M.A. for condonation of delay is not moved, then the Tribunal shall not enter

into the merits of the case. The said decision applies with full force to the facts of this case.

8. Even otherwise, the applicant has not brought on record the rules governing restructuring in 1984 and the Railway Board's circulars regarding sealed cover proceedings and the Railway Board's policy when the applicant is found guilty in the departmental proceedings. The position as to what happens when the proceeding ends with minor punishment which are lesser in penalty than stoppage of promotion has not been also brought on record. In their absence it would not have been possible to adjudicate this matter.

9. The O.A. is dismissed as time-barred. No costs.


 (SADHNA SRIVASTAVA)
 MEMBER(J)


 (SHANKAR PRASAD)
 MEMBER(A)

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