

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 183 of 2006

with

M.A. No. 190/2006

Date of Order : *3rd March 2010*

C O R A M

Hon'ble Mr. Justice Anwar Ahmad , Member [J]

Hon'ble Mr. Shankar Prasad, Member [A]

Kedar Nath Prasad, Son of Late Kanhaiya Lal, Resident of Mohalla- Fatehpur Near Durga Mandir, P.O./P.S./District- Siwan, Ex- O.S. - II, E.C. Railway, Sonpur Division.

...Applicant

By Advocate : Shri M.P. Dixit

- Versus -

1. The Union of India through the General Manager, East Central Railway, Hazipur.
2. The Chief Personnel Officer, E.C. Railway, Hazipur.
3. The Divisional Railway Manager, E.C. Railway, Sonpur.
4. The Sr. D.P.O., EC Railway, Sonpur.
5. The Sr. Divl. Mechanical Engineer (C&W), E.C. Railway, Sonpur.

...Respondents.

By Advocates : Shri S.K. Griyaghey

ORDER

Shankar Prasad, Member [A]:- By this OA, the applicant seeks a direction to the respondents to give him the benefit of promotion to O.S. Gr. II w.e.f. 30.12.1994 in stead of 1996 and to grant him further promotion ^{as he} in OS Gr. I *As*

from the date of promotion of his junior Shri Chandrika Prasad Singh. He seeks consequential benefits of arrears of salary, increment etc: and revision of terminal benefits.

2. The facts lie in a narrow compass:-

[a] The applicant has been proceeded against on the ground of unauthorised absence and the punishment of reduction to one stage lower in the same scale for 3 years without cumulative effect and without adversely affecting the pension was imposed vide order dated 12.01.1993.

[b] The respondents notified a selection for the post of O.S. - II in 1994. Annexure A/1 is the list of 21 persons who have been successful in the said test. After the result of Viva-voce, 12 persons were promoted including one Shri Chandrika Prasad Singh and Shri Iqbal Ahmad. As regards the applicant a comment has been recorded that he is under punishment. Annexure A/3 is the order dated 05.02.1997 promoting the said Chandrika Prasad Singh and Iqbal Ahmad as O.S. Gr. I. The respondents issued an order dated 24.12.2001 promoting the applicant as O.S. Gr. II and fixing his pay. Annexure A/5 is his representation seeking promotion from the date of promotion of his junior. The applicant superannuated from service on 31.01.2002.

3. The grievance of the applicant as made out in the OA is that on conclusion of the penalty the applicant was required to be promoted from the date of his junior and granted subsequent promotion as O.S. Gr. I along with his

junior. It is stated in para 4.08 of the OA that the applicant fell ill on 15.04.2002 and was advised bed rest. The applicant submitted representations (Copies not on record) and became fit only on 25.01.2006.

4. M.A. No. 190/2006 is filed for condonation of delay in filing of the OA.

5. Rejoinder is filed. It is contended that the OA is based on recurring cause of action as the applicant is facing monetary loss every month even in his pension. Statements made in the written statement are denied. It is asserted that if the person is promoted after penalty he will not lose his seniority in the grade in which he was not empaneled.

6. The respondents have defended their action. It is contended that when the juniors were promoted in 1994 they became senior and hence the grant of non promotion to O.S. Gr. I is totally justified. A contention has been raised regarding the OA being barred by limitation, delay and laches.

7. We have heard the learned counsels.

8. The three Judge of the Apex Court in para-8 of its decision in Union of India etc. etc. Vs. K.V. Janakiraman etc. etc.. ; AIR 1991 SC 2010 has held as under:-

“ It cannot be said that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the

penalty short of dismissal will vary from reduction in rank to censure. The officer cannot be rewarded by promotion as a matter of course even if penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty, but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration

the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion."

9. The Railway Board has issued an order dated 27.07.1995 pursuant to the above decision. This order is prospective in effect. Para 3.6 of this letter prescribes that if a person ^{is} ~~is inflicted only a minor penalty~~ in the selection panel/
^{is inflicted only a minor penalty} suitability list provided it is within two years in the case of selection post and at any point of time in case of non selection posts, ^{and} he may be promoted in his turn. If his junior has been promoted, the applicant will be promoted reverting the junior most person. If a major penalty is imposed the issue has to be referred to the higher authority to approve the original selection for consideration whether he is suitable for promotion. Note 1 below para 3.1. provides that where penalty of withholding of increment by reduction to lower time scale etc., withholding of promotion is imposed, The person concerned will be promoted only after the expiry of the penalty.

10. Para 12 of the decision of the Full Bench in Jacob Abraham Vs. Union of India; 1994 Vol. 28 ATC page 177 is as under:-

" During the course of the argument, respondents stated that the claim of the applicants was barred by limitation. The ^{is}

burden of proof to show that they satisfy Section 21 of the Administrative Tribunals Act, is on the applicants. The pleadings do not give any material in this behalf apart from a bald statement that the application is within time. In this case, the claim relates to 1984. In this case, the claim relates to 1984. There are laches on the part of the applicants. The applicants would have it that because of the various decisions of the Tribunal spread over a number of years, the law of limitation should not be applied against them. But other decisions in similar cases cannot give a fresh cause of action and the period must be counted from 1984 for purpose of limitation. A large number of decisions were cited. We would notice in this connection, Bhoop Singh V. Union of India it is stated at page 1416:

“ It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on

other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination.....

There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept”

(emphasis supplied)

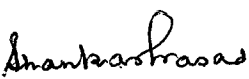
The claim of the applicants is liable to be dismissed on this ground also.””

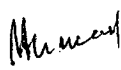
11. The decision of the Apex Court in the case of K.V. Janakiraman (Supra) makes it abundantly clear that the persons on whom punishment has been inflicted have to be treated differently from other persons. The ^{As instructions of the} Department of Personnel and Training, of Govt. of India, ~~instructions~~ issued after the decision in K.V. Janakiraman makes it abundantly clear that in case the persons concerned has been inflicted even with a minor penalty the sealed cover shall not be opened and that the applicant will have to be assessed afresh having regard to the punishment imposed. The Railway Board Circular makes a departure in as much as in the case of minor penalty it permits promotion on the basis of position in the panel. There is

nothing in this O.M. to indicate that the seniority will be restored. No other circular of Railway Board has been brought on record by the learned counsel for the applicant. Even if such a circular has been issued the same will have to be in conformity with the law laid down in the case of K.V. Janakiraman and the question of giving seniority from the retrospective effect will not arise. The contention that the seniority is automatically restored has, therefore, to be rejected.

12. As far as the question of non grant of promotion from an earlier date is concerned, the limitation to the order promoting him as O.S. Gr. II will run from the date of the order. This order has to be challenged to the extent that it promotes the applicant prospectively. Such a relief had not been specifically sought. The decision in Dehri Rohtas Light Railway Vs. District Board, AIR 1993 SC 803 has held that true test of limitation is that rights of third party have not crystalised. In the instant case the rights have already crystalised. The M.A. For condonation of delay is dismissed. The O.A. is hit by delay and laches.

13. In view of the foregoing discussions, there is no merit in the OA and the same deserves to be dismissed. It is barred by limitation and hit by delay and laches. There shall be no order as to costs.


(SHANKAR PRASAD)
MEMBER (A)
/srk/karthikg


(ANWAR AHMAD)
MEMBER (J)