

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

TR No. 33/88
~~TX XXXXX~~

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DATE OF DECISION 10.9.1991

Vithal Srinivas Bedadur Petitioner

Shri P.R.Namjoshi Advocate for the Petitioner (s)

Versus

The Union of India and ors. Respondent

Mr.P.R.Pai for Res.No.1 Advocate for the Respondent (s)
Mr.G.D.Samant for Res. No.2

CORAM

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER (A)

The Hon'ble Mr. T.C.REDDY, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? 79
2. To be referred to the Reporter or not ? X
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether in needs to be circulated to other Benches of the Tribunal ? X

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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TRANSFER APPLICATION NO.33/88

Vithal Srinivas Bedadur
Room No.4324, Building No.156
Pant Nagar, Ghatkopar,
Bombay - 400 075

.... Applicant

V

The Union of India
and others

.... Respondents

CORAM : HON'BLE SHRI M.Y.PRIOLKAR, MEMBER (A)

HON'BLE SHRI T.C.REDDY, MEMBER (J)

Appearance:

Mr.P.R.Namjoshi,
adv.for the applicant.

Mr.P.R.Pai, Adv
for the respondent No.1

Mr.G.D.Samant, Adv.
for the respondent No.2

ORAL JUDGEMENT

DATED : 10.9.1991

(PER : M.Y.PRIOLKAR, M/A)

This (S.C.S.) Civil Suit No.2588/1981 on the file of The City Civil Court Bombay is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act 1985 are re-numbered as T.A.No.33/88.

2. The applicant joined the Railway service on 4th March 1957 as an office clerk, after passing the examination held by the Railway Service Commission, Bombay. The applicant's grievance is that one Mr. Hilari D'Souza (Resp.No.2) who has not

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passed the examination of the Railway Service Commission has been shown as senior to him in the seniority list as on 31.7.1980 and on that basis Mr. Hilari D'Souza has also been promoted to a higher post in preference to and earlier than the applicant

3. Admittedly, under the Railway Rules, the date of passing the Railway Service Commission Examination is the relevant date for determination of seniority. According to the respondents Mr. Hilari D'Souza was initially appointed as substitute clerk in 1947. He was regularised only after he had passed the Railway Service Commission Examination in the year 1951 whereas the applicant had passed the Railway Service Commission Examination in the year 1957. Mr. D'Souza is therefore senior to the applicant. The respondents have also produced for our perusal, the completed application form of the applicant for appearing ⁱⁿ the Railway Service Commission examination ^{which} was received back from the Commission's office, showing that the candidate was selected in the examination held in 1951. The learned counsel for the applicant, however, stated that this form does not contain any attestation in token of having been received in the office of the respondents at any time, whereas similar form in respect of the applicant contains such attestation.

4. After going through the record and after hearing the learned counsel of both sides we are of the view that this case can be decided on the ground of limitation alone without going into the merits of the other rival contentions raised on behalf of the parties. This suit was filed in 1981.

According to the respondents the seniority list dated 1.7.1975 was published on 26.7.1975, in which the applicant was shown below Mr.Hilari D'Souza. Subsequently, another seniority list dated 31.7.1980 was circulated, which was based upon the seniority list published earlier as on 1.7.1975. This 1980 seniority list which was based on the seniority list dated 1.7.1975. The applicant had, however, not challenged the earlier seniority list of 1975, which he had failed to do. The applicant could, therefore, have challenged the seniority list as on 31.7.1980 on the basis only of 1975 seniority list, which in turn could be done within 3 years from 26.7.1975, as laid down in the Full Bench Judgement of this Tribunal decided on 14.10.1988 in the case of Meharban Khan and ors. V. Union of India and ors (Full Bench Judgement of CAT-1986-89 published by Bahri Brothers Delhi, page 1). It has been held therein that that the Tribunal shall deal with such cases in the same manner as the transferring Court. Since the suit was governed by the Limitation Act, evidently, the limitation prescribed in that Act will apply as stated above. Since the prescribed period of 3 years has expired on 26.7.1978 and the suit was filed only in 1981, the suit is clearly barred by the law of limitation applicable to this case.

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5. The learned counsel for the applicant argued that there is a continuing cause of limitation in this case and therefore the suit would still be covered or deemed to be still within limitation period. It may be seen, however, that even though in para 13 of the written reply filed on 1st FEB 1989, it was specifically pleaded that the claim was barred by the law of limitation as it was based on the seniority list published on 26.7.1975, the applicant had not chosen to file any rejoinder for disputing this statement at any time earlier. It is only now during the final hearing that the learned counsel has raised this plea for the first time on behalf of the applicant. It is well settled *that Courts should not unsettle settled* matter after an abnormally long delay. Since the seniority in this case was finally settled on 26.7.1975, it was not open to the applicant to question it after a lapse of 6 years in 1981 thereby unsettling the seniority or the promotions or other consequential action taken on the basis of the 1975 seniority list. We, therefore, see no merit in this contention advanced by the learned counsel for the applicant.

6. This suit, accordingly, dismissed with no order as to costs.

T. Chandrasekaran
(T.C.REDDY)
MEMBER (J)

M.Y. Priolkar
(M.Y.PRIOLKAR)
MEMBER (A)