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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.463/88.

Shri H.N.Patle.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri,
Hon'ble Member(J), Shri T.C.Reddy.

Appearances:-

Applicant by Mr.A.S.Bagat.
Respondents by Mr.P.S.Lambat.

JUDGMENT:-

① Per Shri P.S.Chaudhuri, Member(A)①)

13.9.1991

This application under section 19 of the Administrative Tribunals Act, 1985 was filed on 21.6.1988. In it the applicant who is working as a Guard on Central Railway is seeking a direction to fix his seniority as Trains Clerk w.e.f. 16.7.1956, consequential benefits in the matter of promotion as a Guard, counting officiating service in the Guard's cadre towards increments in that cadre and refixation of his pay at the stage of Rs.2040/- ^① Back wages, consequential benefits and costs have also been asked for.

2. The applicant was initially appointed as Pointsman on Central Railway w.e.f. 8.8.1952. He was promoted as Trains Clerk by order dt. 8.11.1955 but reverted on 23.9.1957. He was once again promoted as Trains Clerk on 5.8.1958 w.e.f. that date. It is contended that by letter dt. 25.7.1985 the respondents have ordered his promotion as Trains Clerk w.e.f. 16.7.1956. It is also contended that while he was working as Shunting Master at Ajni he had been put out to work as Guard on some days for a total of 992 days between 30.11.1966 and 28.2.1972. It is the applicant's contention that he is entitled to

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consequential earlier promotion as Guard based on earlier promotion as Trains Clerk w.e.f. 16.7.1956 and for increments in the category of Guard on the basis of this earlier date. Being aggrieved at the respondents' failure to grant these reliefs, he has filed this application.

3. The respondents have opposed the application by filing their written statement. We have heard Mr.A.S.Bhagat, learned counsel for the applicant and Mr.P.S.Lambat, learned counsel for the respondents.

4. As far as the first prayer regarding seniority as a Trains Clerk is concerned, it is contended by the respondents that it is barred by both limitation and res judicata. It is further contended that the respondents' letter does not make any mention of granting seniority. The applicant is claiming seniority as a Trains Clerk w.e.f. 16.7.1956 on the ground that he was so promoted on or about that time, had passed the examination and had completed 3 years of service. Thus, there can be no doubt that the cause of action arose on that date or, at the very latest, on 23.9.1957 when he was reverted from the post. Such being the case it is not a question of limitation, but a situation in which we have no jurisdiction as the grievance arose more than 3 years before the setting up of the Tribunal on 1.11.1985 - See V.K.Mehra v. Secretary, Ministry of Information and Broadcasting ATR 1986 CAT 203.

5. Coming to the question of res judicata, we find that the applicant had filed OA 32/87 ^{before the New Bombay Bench of the Tribunal} praying that he should be given his legitimate promotion and seniority as Trains Clerk from 8.11.1955. After examining the issues involved, this application was rejected summarily on 8.2.1987. The relief claimed is the same as that now claimed in respect of seniority as Trains Clerk. So, it is barred by res judicata. Even if it is contended that it is not the same relief, there is no doubt that it is a relief which

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could have been asked in that application but was not so asked. So, it is barred by constructive res judicata. Thus, in no view of the matter ~~is~~ it not barred by res judicata.

6. Against this background we have no hesitation in rejecting the first relief claimed by the applicant on the grounds of lack of jurisdiction and res judicata.

7. If the first relief claimed for fails, then the second relief which is consequential promotion as Guard must necessarily also fail.

8. Coming to the third relief claimed by the applicant viz. counting officiating service in the Guard's cadre for advance increments, the service in question pertains to the period 1966 to 1972. The applicant was promoted as a Guard by order dt. 3.12.1974 and actually took charge of the post on 1.1.1975. Based on the claim that he is now making his pay should even then have been fixed at a higher stage. Even if this was not done, when his first increment fell due and was given in 1976 he should have asked for refixation. Thus there is no way in which this relief can be deemed to be due from a date later than 1976. For a grievance of that date we have no jurisdiction for the reasons that we have stated earlier. So, this prayer too, must fail on the grounds of lack of jurisdiction.

9. In this view of the matter we are of the opinion that this application must fail on grounds of lack of jurisdiction and res judicata.

10. We accordingly dismiss the application. In the circumstances of the case there will be no order as to costs.

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

P. S. Chaudhuri
(P.S.CHAUDHURI)
MEMBER (A).

13-9-1991