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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

DA No. 210/89

R H Nihalaney

..Applicant

V/s.

Union of India & Ors.

..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.
Hon.Shri M.R. Kolhatkar, Member (A).

APPEARANCE:

Applicant in person

Mr. N K Srinivasan
Counsel for respondents

JUDGMENT:

(Per: M.R. Kolhatkar, Member (A))

DATED:

18-1-94

The admitted facts in this case are
as below:

The selection for Class II post of Assistant Mechanical Engineer/Assistant Works Manager in Western Railway was processed on 26.12.1974 according to para 203 of Indian Railway Establishment Manual according to which when the vacancies are assessed, the size of the panel is to be determined keeping in view that the number of candidates to be placed on the panel should not exceed the number of existing vacancies together with the number of vacancies anticipated during the course of succeeding 12 months. Accordingly vacancies were assessed for a period of 12 months upto 31.12.75 and an assessment of 14 vacancies was approved by the competent authority. It appears, however, that a precise calculation would have shown the number of vacancies as 16 and not as 14. The

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applicant has contended that he was at Sr.No.15 in the merit list and this has not been denied by the respondents. Since the applicant was not within the first 14 names he could not be promoted when the panel was initially drawn up on 17.5.75 and utilised. However, the applicant and a few others were promoted to the post of Assistant Works Manager on 22.9.1975 owing to unexpected and unforeseen vacancies. It appears that fresh selection was processed on 27.8.77. However, owing to a large number of representations received regarding seniority the selection could not materialise. Due to various Administrative reasons, such as imposition of ban by Railway Board for conducting Class II selections, change in principle for fixation of integrated seniority, revision of principle of assessment of vacancies, representations from trade unions for holding separate selections for Asstt. Mechanical Engineer(C&W), Asstt. Mechanical Engineer(Loco/Diesel) and Asstt. Works Manager, Selections processed for Class II posts could not materialise. Board under their letter dated 19.8.1981 decided to conduct selection separately for the above mentioned 3 streams. Accordingly fresh selection was processed. However, due to stay from Munsif Court, Gangapur City, the Selection could not be processed. Later, on getting the stay vacated from the District Court, Gangapur City, panels for 3 streams viz. Assistant Mechanical Engineer(C&W), Asstt. Mechanical Engr. (Loco/Diesel) & Asstt. Works Manager were notified on 30.4.85 effective from 16.4.85. The name of the applicant was borne on the panel of Asstt. Mechanical Engineer(C&W).

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2. But till the applicant was regularly promoted in 1985 he did not get the salary of the higher post but he was given charge allowance of Rs. 150 per month in addition to his Class II pay as admissible under the rules. The reliefs claimed by the applicant are as below:

- (a) to regularise my selection to Class II cadre on the basis of 1975 selection
- (b) to consider my promotion on regular basis from 21.9.75, the date of actual promotion to Class II and consider all such service thereafter as non-fortuitous for all purposes.
- (c) to consider my promotion to senior scale on regular basis from 14.8.80 date of actual promotion and fix the salary on senior scale of Rs.1100-1600(RP)
- (d) to fix my seniority in Class II and senior scale correctly on the basis of 1975 selection under the cadre of IRSME and given regular promotion to senior scale and junior administrative grade as per seniority.
- (e) To pay all the arrears arising out of fixation of pay in regular grade as prayed in the above prayer
- (f) To fix up pension after retirement on the basis of pay so fixed and pay arrears of the pension and other retirement benefits i.e., gratuity leave encashment etc., according to pay so fixed.

3. The applicant who appeared in person relied on the case of RDSO Office Lucknow - South Eastern Railway, Calcutta, the judgment of Gujarat Special High Court in Civil Application No. 3104/80 in the case of I.C. SOBTI V. U.O.I., [redacted] and the judgment of Nagpur Bench of Bombay High Court in RAMAVTAR, ASSISTANT ENGINEER, CENTRAL RAILWAY V. UNION OF INDIA (W.P. No.169/91) which was challenged before the Supreme Court but was dismissed.

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4. The respondents have contended that the judgments are not applicable to the case of the applicant for the following reasons:

"The High Court's judgement in the cases which occurred in RDSO's office, Lucknow and South-Eastern Railway, Calcutta, quoted by the applicant to bring legal support to his claim are not applicable to the case of the applicant. It is submitted that for the selection in RDSO's office and on South-Eastern Railway, the vacancies were not properly and correctly assessed as per the norms laid down, whereas in the case of the applicant, vacancies for selection to the post of Asstt. Mechanical Engineer/Asstt. Works Manager held in 1975 were correctly assessed under the provision contained in Para 203 of IREM.

"The judgment of the Hon. High Court of Gujarat dated 10.10.85 (and not 10.10.1985 as mentioned by the applicant) was merely based on the judgment of the Hon. High Court of Calcutta. The said judgment dated 1.10.1985 has not discussed the merits of the case of Asstt. Engineers which occurred on the Western Railway, nor has it examined the pros and cons of the case of the Asstt. Engineer's of the Western Railway. This judgment is, therefore, not applicable to the applicant, who belonged to Mechanical Department of the Western Railway.

"As regards the other case of Shri Ram Avtar, Asstt. Engineer of the Central Railway said to have been decided by the Hon. High Court at Bombay on 8.10.1984 and mentioned by the applicant in para 9 of the application, it is firstly stated that the Applicant has failed to produce a copy of the said judgment for verification of the aspects of that case. Further, it is stated that the Applicant's case is different from that of Shri Ram Avtar, in that Shri Ram Avtar was to be reverted from Class II post of Asstt. Engineer to the Class III post on his failure in the 2nd selection held for Asstt. Engineer, whereas in the case of the applicant, he was continued in the post of Asstt. Mechanical Engineer/Asstt. Works Manager on ad hoc basis, without reversion to Class III post and was subsequently empanelled on Class II panel of Asstt. Mechanical Engineer (C&W) under Notification dated 30.4.1985 effective from 16.4.85."

5. At the argument stage the respondents mainly emphasised the point of limitation. According to them although the applicant has impugned Railway Board's letter dated 20.9.1988 it is not an order but it is a reply given to the applicant with reference to his representations dated 15.4.87; 21.8.87; 15.12.87 and 29.6.88. According to the respondents the applicant has really questioned the panel of Assistant Mechanical Engineer/Assistant Works Manager notified on 17.5.1975 and his first representation against this was filed on 5.12.84 and therefore, the application is hopelessly time barred. It is contended that:

"The Hon'ble Central Administrative Tribunal, Jabalpur in its judgment in the case of Dev Raj V/s. Union of India (1987) and the Hon'ble Central Administrative Tribunal, Bombay in its judgement in the case of Ganpat Dasharath Sarde V/s. Union of India (1986) have observed that the period of limitation is not revived by making repeated representation. Further, the Hon. Central Administrative Tribunal, Madras, in its judgment in the case of V.S. Raghavan V/s. Secretary to the Ministry of Defence (1987) have observed that the departmental representation made 7 years after the accrual of the cause of action could not stop limitation".

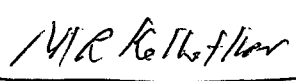
6. The respondents have also contended that even if it is assumed that the initial panel should have been 16-strong and not 14-strong, the applicant could not have been included in any panel of 16 names for the reason that as per Board's orders in each promotional grade reservation of vacancies for Scheduled Castes and Scheduled Tribes was to be provided as per 40 point roster. The 16 vacancies assessed for Asstt. Mechanical Engineer/Astt. Works Manager selection were falling against roster point numbers 1 to 16 and among these 16 vacancies 3 were admissible for SCs against point numbers 1, 8 and 14 and one was admissible for ST against point no.4, as

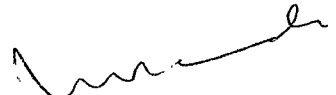
reserved vacancies. Therefore, although assuming that it is considered to place 2 more persons on the panel of Asstt. Mechanical Engineer/Asstt. Works Manager of 17.5.75, against assessed vacancies Nos. 15 to 16, those vacancies would be admissible to SC & ST as reserved vacancies against Roster Points and not the applicant who belongs to general community. These vacancies have not yet been ~~deserved~~ ^{applicant} and therefore, ^{applicant} does not stand to have any claim for getting place on the panel of Assistant Mechanical Engineer/Assistant Works Manager of 17.5.75, against reserved vacancies.

7. There is no doubt that the applicant cannot question the panel drawn up on 17.5.75 at this late stage. It is true that the delay by the applicant in questioning the panel was due to various circumstances, like the Railways not holding further selection owing to various administrative reasons. However, it is not possible at this late stage to give a direction for enlarging the panel of 1975 though the applicant was required to work in higher post on ad hoc basis in lower scale with a charge allowance of Rs.150 per month. We, therefore, dispose of this application by passing the following order:

ORDER

Application is dismissed as barred by limitation. There would be no order as to costs.


(M.R. Kolhatkar)
Member(A)


(M.S. Deshpande)
Vice Chairman