

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:335/1996

Dated this the 15th day of October, 2001

HON'BLE SMT.LAKSHMI SWAMINATHAN, - VICE CHAIRMAN
HON'BLE SMT.SHANTA SHASTRY - MEMBER(A)

Shri B.D.Raikar,
Ex Chief Clerk, Commercial Branch(RPG),
residing at Chedda Estate, Bldg.No.'D',
Near Jain Temple, Virar(West),
Pin 401 303.

... Applicant

By Advocate Shri H.A.Sawant

V/s.

1. Union of India through
General Manager,
Western Railway,
Mumbai - 400 020.
2. The General Manager,
Western Railway Headquarter Office,
Churchgate,
Mumbai - 400 020
3. The Chief Commercial Superintendent,(estt),
Western Railway,
Headquarter Office,
Churchgate,
Mumbai - 400 020
4. The Presiding Officer,
Central Government Labour Court,
No.2, City Ice Building,
Mumbai - 400 001.

... Respondents

By Advocate Shri Suresh Kumar

ORAL ORDER

Per Smt.Shanta Shastri, Member(A)

The applicant has approached this Tribunal after a few rounds of litigation in the Labour Courts as well in this Tribunal. The relief sought in this OA are to confirm the applicant in the post of Senior Typist Grade Rs.130-300 (AS) from

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the date of his joining i.e. 25/7/1961 and to fix his seniority in clerical cadre in the equivalent grade on the basis of the said confirmation. Further, to grant promotion due and admissible with effect from the date his junior immediately below him in the revised seniority in terms of prayer (b) clause of para 8 of the OA and to fix his pay in the promotional post and pay the arrears of pay and allowances due and admissible in terms of prayer clause (c) of para-8..

2. The applicant was appointed initially as typist on 9/8/1955 in the grade of Rs.110-180 (AS) and was confirmed in this grade on 7/8/1956. Subsequently, he was promoted as senior typist with effect from 16/4/1963 and was treated to have officiated in that post with retrospective effect from 25/7/1961. He was due for confirmation in that post from that date in terms of the cases of Shri P.M.Sahasrabudhe and Smt.Lily James who were posted in clerical cadre on 4/3/1964 and 13/12/1963 respectively and were confirmed with effect from 13/2/1962 and 9/10/1963 respectively. The applicant submits that he had questioned confirmation of his juniors earlier to his own confirmation. However, on his making a representation, the same was rejected. Being aggrieved by the action of the respondents in fixing him in the lower payscale instead of in the higher payscale, he approached the Central Government Labour Court vide his application No.LC-2/732 of 1988 under section 33(c)(ii)/Industrial Disputes Act 1967. The Labour Court allowed the application on 21/11/90 observing that he was entitled to claim the difference in wages from the date he was absorbed as a clerk till he was promoted to a higher post above that of Senior clerk.

3. Thereafter, the applicant has again approached the Labour Court vide LC-2/3 of 1993 second time and the same was disposed of on 6/7/1995 by rejecting the same. In the said judgement, the Labour Court ^{considered} the prayer of the applicant and observed that the Court had no jurisdiction to try the application as the applicant wanted to fix his seniority first and to include the amount due which was not permissible under the Industrial Disputes Act 1947. The applicant has therefore now approached this Tribunal again.

4. The learned counsel for the applicant submits that the applicant has been given all the payments as ordered by Labour Court. However, the question of his seniority from 23/7/1961 has not been determined so far and therefore he is still aggrieved. The learned counsel also pleads that the application is not barred by limitation as the issue has remained undecided from the earlier OA as the earlier application was dismissed only on the ground of limitation. According to him limitation does not apply. He relies on the judgement of A.Sagayanathan and Ors V/s. Divisional Personnel Officer, SBC Division, Southern Railway, Bangalore decided on 26/10/90 reported in (1992) 21 ATC 126. In this judgement, the Hon'ble Supreme Court has stated that whatever might be the reason, superseded appellants have genuine grievance, the Tribunal ^{refusing} to dispose of the disputes on merits solely on the ground of delay was not justified and therefore the Supreme Court held that despite delay the matter required investigation and disposal on merits afresh. Being a genuine case of merit the delay needs to be condoned, pleads the learned counsel as already noted.

5. The learned counsel for the respondents however has stated that the applicant is claiming seniority from 1961. It is totally time barred and it also amounts to resjudicata as the applicant is claiming the same relief as he had claimed earlier after such an inordinate delay. The learned counsel for the respondents submits that the applicant had approached this Tribunal earlier also by way of OA No.397/1986 as is evident from the following observation made at page-3 of the judgement of the Labour Court dated 21/11/90:-

"The applicant further states that he had filed a similar application before Central Administrative Tribunal. However, it was rejected on the ground of limitation. As no limitation has been prescribed for filing an application before this Court, the applicant has filed this application."

6. The learned counsel for the respondents has produced a copy of the judgement in OA - 397/1986 referred to in the judgement of the Labour Court. The OA was dismissed on 5/1/87 i.e. even before the applicant had approached the Labour Court. It was dismissed on the ground of limitation. The prayer in the OA was that the applicant should be treated as Senior Clerk in the grade of Rs.130-560 from 15/7/1965 onwards instead of Junior clerk in the grade of Rs.110-410 in terms of the two cases mentioned in the application. While observing on the delay, the Tribunal also remarked that even assuming that there was some force in the submissions of the learned counsel for the applicant, they did not find that there was any valid or legal ground for condoning the delay. The learned counsel for the respondents submits that the

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judgements cited by the applicant cannot be made applicable in this case since the applicant was superseded in 1961. He was given seniority from 1965 and he cannot therefore re-agitate the issue of seniority at this belated stage and also it would disturb the seniority of several others. For this purpose, the learned counsel for the respondents is relying on the judgement in the case of Rajvir Singh HFS-II V/s. The State of Haryana in JT 1996(1) SCC 222.

7. We have heard the learned counsel for both the parties and have given careful consideration to the pleadings. We find that the applicant had approached this Tribunal earlier also in 1986 and had failed to get any relief. No doubt it was on the ground of delay. However, the applicant has not gone in appeal against that order of the Tribunal dated 5/1/87 in OA 397/86. Considering this, according to us, the applicant's approaching this Tribunal later in 1995 after a lapse of nearly 9 years amounts to only re-agitating the issue on the same grounds which is not maintainable at all both on the grounds of repeating the reliefs and on the ground of further delay and laches by the applicant. The learned counsel for applicant's argument that the Labour Court granted him the monetary relief and therefore the seniority also should have been granted accordingly to the applicant does not hold good as the question of seniority has been decided separately by this Tribunal. The learned counsel presses for notional seniority from 1961 onwards to be granted to the applicant just for his satisfaction.

8. In our considered view even the notional seniority cannot be considered at this belated stage when the applicant had

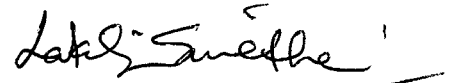
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already retired in 1990 and did not bother to go in appeal against the Tribunal's earlier order dated 5/1/87. It is very clear that the application not only suffers from bar of principles of res judicata but also by the bar of limitation, delay and laches. Section 21 of the AT Act is very clear on the point of limitation. The applicant should have approached the Tribunal within one year of the cause of action which he failed to do and this Tribunal does not have jurisdiction to look into issue which have arisen three years prior to setting up of the Tribunal. This point has already been made clear in the judgement dated 5/1/87 in the earlier OA.

9. In view of the above, we find the application devoid of any merit and therefore it fails. OA is dismissed. No costs.



(SMT. SHANTA SHASTRY)
MEMBER(A)



(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN(J)

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