

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 332/2001
This, the 19th Day of February, 2002

CORAM: HON'BLE SHRI JUSTICE ASHOK AGARWAL. CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY MEMBER (A)

P.G. Bawaadam,
presently working as Electrical Fitter Gr.III
under Assistant Electrical Engineer (TL),
Mumbai Central,
Mumbai-400 008. ... Applicant

By Advocate Shri Sai Kumar.

Versus

1. Union of India,
through the General Manager,
Western Railway,
Churchgate,
Mumbai-400 020.
2. The Divisional Railway Manager,
Western Railway,
Mumbai Central,
Mumbai-400 008.
3. The Senior Divisional Electrical
Engineer (Power), Western Railway,
Mumbai Central,
Mumbai-400 008.
4. Asstt. Electrical Engineer (TL),
Western Railway,
Mumbai Central,
Mumbai-400 008. ... Respondents

By Advocate Shri Suresh Kumar.

O R D E R (OTAL)

Hon'ble Smt. Shanta Shas try. Member (A)

Before approaching this Tribunal by the present OA,
the applicant had filed Writ Petition No.1911/83 in the
High Court of Bombay. The Writ Petition was transferred
and re-numbered as TA No.527/87 wherein directions were given

vide order dated 02.5.1991. Thereafter, there was a review and finally the matter was re-heard in R.P. No.07/92 and R.A. No.58/93. Orders were passed on 21.10.1994. The Tribunal directed the respondents to fix the applicant in the grade of Electrical Fitter in Class III post together with continuity in service and seniority, but without back wages as had been directed by the Tribunal earlier. The period for implementation was specified as three months. Thereafter, the respondents passed the orders in compliance of the Tribunal's direction and reinstated the applicant as Electrical Fitter Class III by order dated 27.3.95. The intervening period from 1982 till the date of judgment was treated as leave of the kind due and it was stated that he will get the benefit of continuity in service for the entire purpose of seniority and regularisation of service. It was further stated that his pay and seniority will be assigned with that of his juniors who were promoted to higher grade subject to passing the trade test as per extant rules.

2. The applicant was asked to appear for the trade test on 22.12.1995, this was repeated. However, the applicant, till now has not appeared for the test.

3. By this OA the applicant contends that he was entitled to promotion in 1978, 1984 and 1993. These were by way of upgradation and there was no need for passing the trade test. He should have been promoted on the basis of evaluation of service record. In this connection, the applicant has produced copy of the Railway Board's letter dated 27.01.1993 on restructuring of certain Group 'C' & 'D' cadres. Para 4 of this letter states that the existing

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classification of the posts covered by this restructuring orders as selection and non-selection, as the case may be, remain unchanged. However, for the purpose of implementation of these orders if an individual railway servant becomes due for promotion, the classification as selection post the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service record and Confidential Reports without holding any written or viva voce test. Similarly for the post classified as non-selection at the time of restructuring the same procedure as above will be followed. The applicant is therefore, praying that he should be promoted without undergoing any trade test. According to him the respondents have not implemented the directions of this Tribunal in Transfer Application No.527/87 and review petitions thereof properly.

4. The respondents submit that it is mandatory that the applicant undergo the trade test before he can be considered for promotion. As per the recruitment rules, for every post there is a trade test prescribed. The respondents have fully complied with the directions of this Tribunal in TA No.527/87. Further, the learned counsel for the respondents submits that the applicant is approaching this Tribunal after six years of the passing of the order in TA No.527/87. He was asked to appear in the trade test immediately after reinstating him in service as Fitter class III and he is raising objection now, his application is therefore, barred by limitation and suffers from delay and laches. The Supreme Court has held in ¹catena of judgments that if a person sleeps over his rights and does not approach the courts in time he loses his right. (1) State of M.P. Vs. S.S. Rathore

(11 ATC 913-SC), (2) Bhup Singh Vs. Union of India & Ors. (21 ATC 675-SC) (3) Uddam Singh Vs. Union of India (1999 (8) SCC 804). The applicant has not filed any application for condonation of delay in approaching this Tribunal. The respondents therefore, prayed for dismissal of the OA.

5. We have heard the learned counsel for both the sides and have given our careful consideration to the pleadings. The only direction this Tribunal had given in the TA 527/87 and the subsequent review petitions was to reinstate the applicant in the grade of Fitter Class-III. While giving direction the Tribunal had taken note of the fact that the applicant's juniors had been promoted to a higher scale and that being so the Tribunal observed that it was but natural that he should be given Class-III post i.e. Electrical Fitter of which he has requisite experience. No direction was given about granting him any promotions with retrospective effect. According to us, the respondents have complied with the directions of the Tribunal. We are told that CP No.34/92 is still pending.

6. Be that as it may, as far as the present OA is concerned the only question for consideration is whether it is necessary for the applicant to appear in the trade test to get promotions to the higher scales to which his juniors have been promoted. The applicant has relied on the Railway Board letter dated 27.01.1993 in support of his stand that only service record is to be scrutinised and there is no need for a written test or viva voce test. We do not agree. A perusal of this letter of the Railway Board shows that this is with regard to restructuring of certain Group 'C' & 'D' cadres and the reference is to the restructuring from 01.3.1993 with reference to sanctioned cadre strength of 01.3.1993. This cannot be

applied retrospectively. This is not with reference to any restructuring or upgradation pertaining to previous years of 1978, 1984 when upgradations took place. Therefore, the applicant cannot get the benefit of this letter. However, if as a result of the restructuring in 1993 any promotion was due, perhaps, the applicant's case could have been considered with reference to that. We are not aware whether the Railway Board's letter is still valid in 2002.

7. The OA is filed belatedly. We agree with the respondents that it is beyond the period of limitation. We are, therefore, not inclined to condone the delay. The OA deserves to be dismissed on this ground itself. Even on merits, in our considered view the applicant has no case. If he wants his promotion, he must appear in the trade test. It will be open for the applicant to take the trade test.

8. In view of the reasons recorded above, the application is devoid of merit and is accordingly dismissed. No costs.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER (A)

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN

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dt. 19.2.2002.
Order/Judgement despatched
to Applicant/Respondent (s)
on 4.3.2002.

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14/3.