

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 78/2001

Date of Decision : 29th November 2001.

Umakant Pal Applicant

Shri S.V. Marne Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri Suresh Kumar Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt. Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other ~~all~~
Benches of the Tribunal ?
- (iii) Library *yes*

S.L.J.
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.78/2001

Dated this the 29th day of November 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Umakant Pal,
Staff Car Driver,
Central Railway,
Mumbai C.S.T.

...Applicant

By Advocate Shri S.V.Marne

vs.

1. Union of India through
the General Manager,
Central Railway,
H.Qs. Office,
Mumbai C.S.T.,
Mumbai.

2. The Chief Personnel Officer,
Central Railway,
H.Qs. Office,
Mumbai C.S.T.,
Mumbai.

3. Shri V.B.Chauhan,
Driver Gr.I,
O/O the Chief Commercial
Manager,
Central Railway,
H.Qs. Office,
Mumbai C.S.T.,
Mumbai.

...Respondents

By Advocate Shri Suresh Kumar

..2/-

By -

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order dated 29.6.1999 with declaration that the applicant is senior than the Respondent No. 3, the direction to the respondents to rectify the seniority list of Driver Grade III (Rs.950-1500), to promote the applicant as Driver Grade-II (Rs.1200-1800) and Grade-I (Rs.1320-2040) w.e.f. 1.3.1993 & 6.2.1996 respectively with consequential benefits.

2. The applicant who belongs to Scheduled ^{caste} Category was appointed as Khalasi in Central Railway on 9.8.1981, subsequently promoted as Diesel Cleaner on 1.8.1991. He was possessing Driving Licence and was eligible for promotion to the post of Motor Driver in the pay scale of Rs.950-1500 which is a skilled post and 50% of the vacancies are to be filled by promotion. As per para 187 of the Indian Railway Establishment Manual, a Railway Servant has to pass a Trade Test for promotion to the skilled post. The applicant being eligible was subjected to Trade Test in the year 1989 declared passed vide result of the Trade Test dated 13.4.1989 (Annexure-'A-2'). He was promoted as Ad-hoc Driver Gr.Rs.950-1500 w.e.f. 1.8.1991 vide order dated 23.8.1991. Thereafter, promoted as Driver Gr.Rs.950-1500 on regular basis.

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3. Respondents^{No 1 & 2} promoted the Respondent No.3 who also belongs to Scheduled Category who has not passed the Trade Test as Driver Gr.Rs.950-1500 on 6.1.1988 without subjecting him to the requisite Trade Test. As such, the promotion of respondent No. 3 is illegal being against the provisions of para 187 of I.R.E.M.

4. The seniority amongst the skilled employees has to be decided on the basis of the date of passing the Trade Test and as per the merit in the Trade Test. The respondents, however, granted seniority to the Respondent No. 3 in the grade of Driver III (Rs.950-1500) w.e.f. 6.1.1988. As such, Respondent No.3 was declared senior than the applicant.

5. The applicant preferred a representation dated 17.7.1995 (Annexure-'A-4') to Respondent No.2 which was replied vide letter dated 28.11.1995. The applicant further addressed the representation dated 28.2.1996 (Annexure-'A-7') to the respondents. The respondents failed to take any action on the representation of the applicant. Hence, he approached the National railway Mazdoor Union for taking up the matter in the Permanent Negotiating Machinery. The Union accordingly addressed a letter dated 21.10.1996 to the respondents regarding the grievance of the applicant (Annexure-'A-8') to which respondents replied vide letter dated 29.1.1997 (Annexure-'A-9'). The matter was discussed in the P.N.M. meeting on 17.7.1997, wherein the railway

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Administration stated that the Drivers senior to the applicant have passed the Trade Test and therefore the case should be closed to which the Union agreed subject to the condition that the Union's representative should be permitted to inspect the service record in presence of SPO (C). Accordingly, the service record of the three employees including the Respondent No.3 were inspected and it is noticed that Respondent No.3 has not passed the Trade test. Thereafter, an assurance was given by the Deputy CPO(C) on 3.4.1998 that the seniority of the applicant would be changed but no action was taken. The applicant also represented to the Vigilance Department and an enquiry was conducted by them and it was found that the Respondent No.3 has not passed the Trade Test. The Vigilance Department also gave its report to rectify the seniority list. However, the respondents failed to take any action on the report of the Vigilance Department also. The Union therefore addressed the letter dated 7.8.1998 demanding rectification of seniority list (Annexure-'A-10') which is replied vide letter dated 7.12.1998 (Annexure-'A-11'). The case of the applicant was however still in the P.N.M. and the respondents again rejected the case of the applicant by their final reply dated 29.6.1999 (Annexure-'A-1').

6. The respondents are likely to promote Respondent No.3. Hence, this OA. for the above said reliefs.

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7. The applicant filed this OA. on 9.1.2001 along with the Delay Condonation Application No.97/2001. Perusal of the same makes it clear that "he has got excellent case on merit and he has genuine hope to succeed in the case. If the short delay of six months is not condoned, it will amount to throwing away a meritorious case on technical point and it will cause great hardship to the applicant". According to the applicant, the period of limitation commences to run w.e.f. 29.6.1999.

8. The respondents filed the reply disputing the delay condonation application.

9. The learned counsel for the applicant relied on AIR 1987 SC 1353 - Collector, Land Acquisition, Anantnag & Anr. vs. Mst.Katiji & Ors. and argued that while deciding the delay condonation application, a liberal approach has to be adopted and relied on para 3 which is as under :-

" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a case would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

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4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

10. He has further relied on decision of CAT, Hyderabad in case of Har Binder Lall vs. Comptroller & Auditor General of India & Anr. reported in 1988 (7) ATC 567 which lays down the proposition that fresh limitation period starts from the date applicant's latest representation is considered and rejected on merits. However, expired limitation period is not revived if application rejected merely as time barred without going into its merits.

11. On perusal of the ground mentioned in delay condonation application, it appears that the applicant claims that his case is covered in para 2 of the authority reported in Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors.

12. The learned counsel for the respondents relied on an order passed by this Bench in OA.NO.457/2000 on 1.6.2001 in case of Sanjay Kashinath Kawle vs. Divisional Railway Manager, Western Railway, Mumbai & Ors.

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13. The grievance of the applicant starts from 1988. He has for the first time represented to the respondents on 17.7.1995. In view of Har Binder Lall vs. Comptroller & Auditor General of India & Anr. reported in 1988 (7) ATC 567, the period of limitation starts from the date applicant's latest representation is considered and rejected on merits. Keeping the said decision in mind, the applicant's representation was rejected vide reply dated 29.6.1999 (Annexure-'A-1'). Even thereafter the applicant slept over his right.

14. It is true that the principles laid down in case of Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors. are to be followed while deciding the delay condonation application. Regarding the point to be considered, it is worth mentioning that the Apex Court was considering the application of the Government. Regarding point No.2 mentioned in the said judgement, it would mean to consider the case on merits first, decide whether the applicant has meritorious matter or not, and then to consider the delay condonation. In case of Udham Singh Kamal & Ors., the Apex Court has held that when application appears to be barred by time, the matter need not to be examined on merits.

15. In the present case, the applicant has not given any cause for condoning the delay, what to say, of sufficient cause. The applicant has to make out sufficient cause and for consideration of sufficient cause, liberal approach is to be

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adopted but when there is no cause, question of adopting of liberal approach does not arise. As such, case of Collector, Land Acquisition, Anantnag & Anr. referred above even do not help the applicant.

16. Matter relating to seniority which exists since 1988, the applicant intends to get the settled position unsettled while his case suffers from delay and laches and also barred by time.

(JT 2000 (8) SC 77; 2000 (2) SC SLJ 131)

17. In our considered view the OA. deserves to be dismissed as it suffers from delay and laches and barred by time. As such, the OA. is dismissed. No order as to costs.

Shanta F
(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain
(S.L. JAIN)
MEMBER (J)

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