

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY

(3)

O.A.No.389/90

Mr. Abdus Samad

..... Applicant

Vs.

Union of India
and others

..... Respondents

CORAM : 1. Hon'ble Member Shri D.Surya Rao, M(J)
2. Hon'ble Member Shri M.Y.Priolkar, M(A)

Appearance :

Mr. Shaikh Hussain
Advocate for the
Applicant

Mr. J.G. Sawant,
Advocate for the
Respondents.

ORAL JUDGEMENT

DATED: 28.9.93

The applicant herein is now working as Highly Skilled Fitter Gr. II in Central Railway under the control of Divisional Railway Manager, Central Railway, Bhusaval, He has filed this application praying that his services should be reckoned from 9.11.1976 in the grade of Gr. III H.S.F., that he was entitled to subsequent promotion on the basis of this date as H.S.F. Gr. I and that he should be given seniority over certain juniors. He also claims consequential benefits ^{and} difference in Pay in the event of the reliefs mentioned above, being granted to him. The grievance of the applicant is that he has joined Railways on 9.11.1976. After initial appointment he was sent for I.T.I. training, that during training his services were actually utilised and

..2...

(W)

he was granted regular yearly increments. The Railways, however, ignored his initial appointment on 9.11.1976 and amended the date of appointment as 13.9.1978 in his service record. He alleges that as a result of alteration of his date of appointment from 9.11.76 to 13.9.1978, he lost chances of higher promotions and consequential ^{of P} loss _L higher scale of pay and increments etc. He states that he has made several representations to the Railway Administration but to no effect. His last representation was on 19.1.90 and it was followed by a notice under Section 80 C.P.C. dated 16.3.1990. He had also sent a reply paid telegram dated 14.5.90 but received no reply. For these reasons he alleges that respondents are liable to treat him as regularly appointed as Gr. III H.S.F w.e.f. 9.11.76 and he is entitled to consequential ^{of P} benefits of seniority, promotion and difference in pay in Gr. I H.S.F. on the basis of his seniority in Gr. III.

2. On the previous occasion when this matter came up before the Tribunal for admission hearing, it was directed that notice be issued to the respondents. Notice has been served. We have heard Mr. T. Hussain, counsel for the applicant and Mr. J.G. Savant Additional standing counsel for the Railways on behalf of the respondents. The question ^{that is} arises in this case is whether the application is filed within the time prescribed in the Section 21 of the Administrative Tribunals Act. The applicant in this case was initially aggrieved by an order of the DRM(P)'s letter No. BSL.P.M.DE.19, dated 16.2.1978 whereby his seniority was reckoned along with the employees recruited from the open market in March, 1978 ignoring his earlier appointment made on 9.11.1976. This is clear from the representation dated 15.7.1987,

(5)

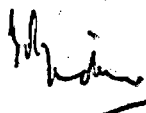
made by the applicant and enclosed to the present application. Thus the cause of action for the application has arisen with the publication of the letter dated 16.2.1978. No explanation is given by the applicant as to why he has not approached the appropriate court for redressal of his grievance at that time. All that he states here, in the present application is that he has made several appeals dated 22.1.87, 15.7.87, 6.9.89 and 19.1.1990 and that he has also sent a notice under Section 80 C.P.C. on 16.3.1990. He contends that his case is not time barred since last representation was on 19.1.1990. It has been held on more than one occasion by several Benches of the Central Administrative Tribunal that filing of representations will not save limitation. ^{repeated &} This has been confirmed by the ^{recent judgment of &} ~~latest issue by~~ the Supreme Court in S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 S.C.10 wherein it was held that the cause of action for a service dispute would first arise six months from the date of ^p ~~preparing~~ an appeal or making a representation but this principle will not apply if repeated representations not provided by law are made.

3. Section 21 (2) of the Administrative Tribunals Act provides that an employee may make an application in respect of a grievance which had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under the Central Administrative Tribunal Act, 1985, but

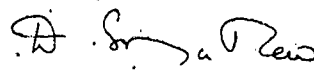
[Handwritten mark]

(6)

such an application must be made within 6 months of the constitution of Tribunal. Thus, if the cause of action had arisen on any date between the period 31.10.1982 and 1.11.85 time is available to an employee up to 30.4.1986 to file an application. In the instant case since it is established that the cause of action had arisen in the year 1976 it would follow that this Tribunal has no jurisdiction to entertain an application in the year 1990 on the plea that his seniority was illegally altered. Accordingly, we hold that the application is hopelessly barred by the limitation prescribed in Section 21(2) of the Act. The application is accordingly dismissed. No costs.



(M.Y. Priolkar)
Member(A)



(D. Surya Rao)
Member (J)