

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1180/93

27.6.2007
Date of Decision :

S.H.Suri **Applicant.**

Shri G.S.Walia **Advocate for the
Applicant.**

VERSUS

Union of India & Others. **Respondents.**

Shri A.L.Kasture **Advocate for the
Respondents.**

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

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

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

D.S.Baweja
(D.S.Baweja)
MEMBER (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1180/93

Dated this the 27th day of June 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

S.H.Suri,
Sr.Clerk,
O/o Chief Commercial Manager,
Western Railway,
Churchgate, Bombay.

... Applicant

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
General Manager,
Western Railway,
Churchgate, Bombay.
2. Chief Commercial Manager,
Western Railway,
Churchgate, Bombay.

... Respondents

By Advocate Shri A.L.Kasture

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

When the applicant was working as Junior Clerk on Western Railway, a criminal case was filed against him in 1978 under the Prevention of Corruption Act. The applicant was also placed under suspension from 1.6.1976 to 31.5.1980. He was convicted as per order dated 23.6.1983. Thereafter he filed an appeal before the Hon'ble High Court and as per order dated 11.4.1991, he was

(1)

..2/-

acquitted. In the meantime, as per order dated 21.7.1989 the applicant was dismissed from service. However, on acquittal, the applicant was not taken on duty. He, therefore, filed OA.NO.147/1992. This OA. was decided as per the order dated 6.6.1992 with the directions in para 4 as under :-

"We direct the Respondents to reinstate the petitioner to his original post on the footing that he had not been convicted of any offence at any stage. We also direct the respondents to pay to the petitioner the entire back wages from the date of the order of dismissal on the footing that he remained in continuous service without any break. The petitioner shall also be entitled to all the increments, which he would have earned but for the order of dismissal."

The respondents did not implement the order dated 6.6.1992 and the applicant therefore filed contempt application No. 18/1993. This was disposed of as per order dated 2.7.1993 on the submission of the respondents that the applicant has been promoted as per order dated 17.6.1993 with the following observations :-

"In view of this order, the direction of this Tribunal seems to be partially complied with. If the applicant has any grievance with regard to the option that he has been asked to give and entitlement to the arrears, he will be at liberty to file a fresh OA. if felt necessary. With this liberty C.P. is disposed of."

(V)

2. The present OA. has been filed by the applicant on 20.10.1993 in pursuance of the direction in order dated 2.7.1993 with the stand that order dated 6.6.1992 has not been fully implemented. It is the case of the applicant that his junior Shri S.g.Devalekar who was appointed on 15.3.1958 was promoted as Senior Clerk on 21.10.1976, Head Clerk on 1.1.1984, Chief Clerk on 9.8.1988 and Office Superintendent from 15.4.1993 and accordingly the applicant being senior to him is entitled for the same promotions from the same dates the junior has been promoted with all consequential benefits with interest of 18% per annum on the payment of the arrears. The main ground of the applicant is that once the order of dismissal was set aside, the applicant was entitled for all consequential benefits of promotions and arrears thereof as if he was in service but the respondents have failed to take the action.

3. The respondents have challenged the maintainability of the OA.through the written statement on the following two counts :-

- (a) OA. is barred by the principles of 'resjudicata' as the facts and reliefs prayed for in the present OA. are the same as in the earlier OA.No.147/1992.
- (b) Applicant has claimed promotion and seniority to the various posts with reference to his alleged juniors without making such juniors as a party respondents as they are necessary parties. OA. therefore suffers from the vice of non joinder of the parties.

5. The present OA. has been filed by the applicant on 20.10.1993 in pursuance of the direction in order dated 27.3.1993 with the stand part order dated 6.6.1993 has not been fully implemented. If it is the case of the applicant that this junior Shri S. G. Desai Jekar who was appointed on 16.3.1988 was promoted as senior Clerk on 21.10.1986, Head Clerk on 1.1.1984, Chief Clerk on 8.4.1988 and Office Superintendent from 15.4.1993 and according to the applicant seniority of him is entitled for the same promotions from the same dates the junior has been promoted with all considerations with respect of 18% per annum on the basis of the service. The main ground of the applicant is that once the order of dismissal was set aside, the applicant was entitled for all considerations of promotions and grants therefore as it was in service but the respondents have failed to take the action.

6. The respondents have challenged the maintainability of the OA. through the written statement on the following two counts :-

(a) OA. is barred by the principles of 'res judicata', as the facts and relief prayed for in the present OA. are the same as in the earlier OA. No. 14/1993.

(b) Applicant has claimed promotion and seniority to the various posts with reference to his service junior without making such junior as a party respondent as per the necessary parties. OA. therefore stands to the order of non-jurisdiction of the parties.

On merits, the respondents submit that in the order dated 6.6.1992 in OA.NO.147/1992, the only direction was to reinstate the applicant, to grant him increments and make payment of back wages considering his service as continuous as if he had not been dismissed from service. The applicant was reinstated on 13.5.1992 and promoted as Senior Clerk on adhoc basis from 18.3.1993. Thereafter, after passing the written suitability test, he has been regularly promoted from 17.8.1993 with proforma promotion w.e.f. 1.5.1990 when his junior was promoted as senior Clerk. Respondents strongly contest the claim of the applicant for promotions with respect to Shri S.G.Devlekar being junior to the applicant. The respondents submit that Shri Devlekar was promoted as Senior Clerk as per select list on 21.9.1976 but applicant did not come within eligibility zone in this selection and therefore question of promotion from 21.10.1976 does not arise. It is further stated that the applicant absconded from duty from 27.8.1980 onwards till dismissal from service from 21.7.1989. Therefore, the applicant's case for promotion in the selection held in 1982 was not considered. Next selection was conducted in 1990 and the applicant has been allowed proforma promotion with reference to this selection. In view of these submissions, the respondents plead that the applicant has been given all the benefits as if the applicant was not dismissed from the service and therefore reliefs prayed for in the present OA. are not sustainable.

4. The applicant has not filed any rejoinder reply.
5. We have heard the arguments of Shri G.S.Walia and Shri A.L.Kasture, the learned counsel for the applicant and the respondents respectively.
6. The applicant has filed the present OA. alleging that the directions in order dated 6.6.1992 in OA.NO.147/92 have not been fully implemented referring to the order dated 17.6.1993 in the contempt application No. 18/93 according to which liberty is granted to agitate the matter if he is still aggrieved by the action taken by the respondents to implement order dated 6.6.1992. It is noted that the applicant was dismissed from service from 21.7.1989 based on the conviction in a criminal case. However, in the appeal the applicant was acquitted. As per order dated 6.6.1992, the applicant is entitled to be reinstated on the original post with all the back wages and increments from the date of dismissal as if remained in continuous service. Thus for the direction in order dated 6.6.1992 the reference point for granting benefits on reinstatement is date of dismissal, i.e. 21.7.1989. Therefore the liberty granted to the applicant in the order dated 2.7.1993 in the contempt application if the applicant is aggrieved by the action taken by the respondents in compliance with the order dated 6.6.1992 has to be read in reference to dismissal order dated 21.7.1989. Further, on carefully going through the order dated 6.6.1992, we note that there is no direction with regard to

consequential promotions on reinstatement in service. Direction in this order only for payment of back wages since 21.7.1989 and grant of increments which would have been earned till the date reinstatement. In view of this fact situation, we are unable to comprehend the contention of the applicant that present OA. has been filed since the respondents have failed to fully implement the order dated 6.6.1992. Just a look at the reliefs claimed through OA. will reveal that the same do not flow out of the order dated 6.6.1992 as deliberated subsequently. Therefore, the present OA. is not maintainable if filed on alleging non compliance of the order dated 6.6.1992 in OA.NO.147/92.

7. The first relief and which is the base for the consequential reliefs is promotion as Senior Clerk from 21.10.1976 when his junior Shri S.G.Devlekar was promoted. The respondents have contested this stating that the applicant was not within the zone of eligibility in this selection while Shri S.G.Devalekar being senior was considered for the selection and was selected. This is not controverted by the applicant. In any way, if the applicant claims that he was entitled for promotion from the date his junior was promoted, then the first cause of action arose on 21.10.1976. This promotion claim has also no relevance to dismissal from service on account of conviction as per order dated 21.7.1989. The applicant was in service till this date. The applicant was under suspension from 31.5.1976 to 1.5.1980. He joined duty on 29.5.1980 on revocation of the suspension and therefore if the applicant was aggrieved by non

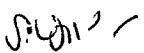
consequential promotion on retirement in service. Direction in this order only for payment of pay since 31.3.1983 and range of increments which would have been earned till the date of retirement. In view of this fact situation, we are unable to comprehend the consequence of the appointment that present OA. has been till date since the responsible authority has issued order dated 6.6.1983. Just a look at the letter through OA. will reveal that the same do not follow out of the order dated 6.6.1983 as de jure suspended suspension. Therefore, the order dated 6.6.1983 is not valid till date of OA. present OA. consequence of the order dated 6.6.1983.

2. The first letter and which is the base for the consequential letters is promotion as senior Clerk from 31.10.1976 when Mr. J. N. S. G. Devalkar was promoted. The responsible authority has confided this section that the appointee was not within the zone of eligibility in this selection while Mr. S. G. Devalkar being senior was considered for the selection and was selected. This is not controversial by the appointee. In such way, if the appointee claims that he was entitled for promotion from the date he junior was promoted, then the first cause of action arose on 31.10.1976. This promotion claim has also no relevance to claim for service on account of conviction as per order dated 31.3.1983. The appointee was in service till 31.3.1980. The appointee was under suspension from 31.3.1980. He joined duty on 29.5.1980 on recovery of the suspension and therefore if the appointee was deferred by his

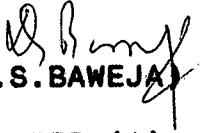
promotion in 1976, then he could have represented for the same and if required could have agitated the matter for seeking legal remedy. However, there is not even a whisper of averment in the OA. as to why the applicant kept quiet for his non promotion as Senior Clerk in 1976 when his alleged junior was promoted. The present OA. with reference to this relief therefore suffers from delay and laches as well as is barred by limitation. Further, in terms of provisions in Section 21 (2) (a) of Administrative Tribunals Act, 1985, the cause of action arising in 1976 and seeking promotion as Senior Clerk from 21.10.1976 is beyond the jurisdiction of the Tribunal. Since the other promotions as Head Clerk onwards are dependent on allowing the promotion as Senior Clerk from 21.10.1976, the same are also not sustainable in the present OA.

8. The legal objections raised by the respondents in opposing the OA. have no merit in view of the deliberations above. The applicant has filed the present OA. in pursuance of the liberty granted in the order dated 2.7.1993 in the contempt application in case the applicant is not satisfied with the action of the respondents to comply with the directions in the order dated 6.6.1992. Therefore, the present OA. is not barred by the principles of res judicata. As regards the ground of non joinder of the necessary parties, i.e. against whom the applicant is claiming promotion, we are of the opinion that the same has no force. The applicant is only claiming that he was entitled for promotions on reinstatement after being acquitted in the criminal case and is therefore not challenging the promotion of any body.

9. In the result, the OA. deserves to be dismissed and is accordingly dismissed as being barred by limitation, hit by delay and laches and being beyond the jurisdiction of the Tribunal. No order as to costs.


(S.L.JAIN)

MEMBER (J)


(D.S.BAWEJA)

MEMBER (A)

mrj.