

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 1229/93

Date of Decision: 21/7/99

Shri Ashok Chandappa Applicant.

Shri G.D.Samant. Advocate for  
Applicant.

Versus

Union of India and others. Respondent(s)

Shri S.C.Dhawan. Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

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

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *W*

*R.G. Vaidyanatha*  
(R.G. Vaidyanatha)  
Vice Chairman

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH 'GULESTAN' BUILDING NO:6  
PRESCOT ROAD, MUMBAI:1

Original Application No. 1229/93.

Thursday the 22<sup>nd</sup> day of July 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S. Baweja, Member(A)

Ashok Chandappa  
Residing at  
Ward No.12  
Room No. 347,  
Goa Galli,  
Near Tejusi Tara Building  
Daund.

... Applicant.

By Advocate Shri G.D. Samant.

V/s.

1. Union of India through  
General Manager  
Central Railway  
Bombay V.T.
2. Divisional Railway Manager  
Central Railway  
Solapur.

... Respondents.

By Advocate Shri S.C.Dhawan.

O R D E R

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. We have heard the learned counsel for both sides.

2. Applicant's grievance is two fold. He was working as Diesel Cleaner in Central Railway at the relevant time. His first grievance is that he had applied to the post of Fireman II in 1983, again in 1984 and again in 1988, but he was not selected ,

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his juniors were selected. The second grievance is that he had again applied for the post of Fireman II in 1991 and again he was not selected. He has made number of representation but he has not received any reply from the respondents. He is entitled to be promoted to the post of II Fireman at least from 1988. He has therefore filed the application praying for a direction to the respondents to promote the applicant to the post of IInd Fireman forthwith.

3. The respondents' stand that the claim of the applicant for promotion in respect of selection process of 1983, 1984 and 1988 is hopelessly barred by limitation, delay and laches. As far as the applicant's claim regarding 1991 selection it is stated that no juniors to applicants were appointed as IInd Fireman. It is further stated that before applicant's turn came, post of IInd Fireman came to be abolished and hence the applicant could not be considered for selection.

4. The present application is filed in 1993. Now the applicant wants to challenge non-selection for the year 1983, 1984 and 1988 in an O.A. filed in 1993. According to Section 21 of the Administrative Tribunals Act, an application has to be filed within one year from the cause of action. The applicant's first cause of action was in 1983, the second cause of action was in 1984 and third cause of action was in 1988, but the application is filed after 5 years

after the third cause of action, on the basis of which, the applicant is not only barred by limitation but also hit by the principles of delay and laches. Hence now we cannot re-open the selection process of 1983, 1984 and 1988.

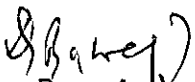
5. Now coming to the latest selection of 1991, By the selection order dated 18.8.1992 six persons came to be selected. The order is at page 13 of the paper book. To our specific question Shri G.D. Samant, the learned counsel for the applicant, fairly submitted that these six persons are not juniors to the applicant. Therefore admittedly in 1991 selection no juniors to the applicant have been selected.

If may be that when the applicant's turn came, the administration took a policy decision to abolish the post of IInd Fireman. That is how the applicant could not be promoted subsequently. It is for the administration to create or abolish a post. It is purely a policy matter in which the Tribunal cannot give a direction. Therefore the applicant's prayer for a direction to be given to the respondents to promote him to the post of IInd Fireman cannot be granted when the post itself has been abolished. Though some of the earlier promotees are still holding the post of Fireman I and II, the respondents have explained in para 6 of the reply that these



posts have been declared as supernumerary i.e. whenever the incumbent retires/promoted, the post gets surrendered or promoted to the higher post in such an event the posts get abolished. Hence there is no question of making any further promotion to the post of Fireman II. Hence in our view no relief can be granted to the applicant in the facts and circumstances of the case.

6. In the result the application is dismissed.  
No costs.

  
(D.S. Baweja)  
Member (A)

  
22/7/99  
(R.G. Vaidyanatha)  
Vice Chairman

NS