

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI**

ORIGINAL APPLICATION NO: 1274/93

DATE OF DECISION:

28th Oct 1999

Shri Gurucharan Singh Panfer Applicant.

Shri G.K. Masand. Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri V.G.Rege. Advocate for
Respondent(s)

CORAM

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri Shri B.N.Bahadur, Member (A)

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

(R.G. Vaidyanatha)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:1274/93

the 28th day of OCTOBER 1999.

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

Hon'ble Shri B.N.Bahadur, Member (A)

Gurucharan Singh Panfer
Residing at
Railway quarter No. F.209/A,
Murbad Road,
Kalyan(West),Kalyan.

...Applicant.

By Advocate Shri G.K.Masand.

V/s

1. Union of India through
General Manager,
Central Railway,
Bombay VT,Bombay.
2. Chief Personnel Officer,
Central Railway,
Bombay VT,Bombay.
3. Chief Engineer,
Central Railway,
Bombay VT,Bombay. ... Respondents

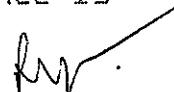
By Advocate Shri V.G.Rege.

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 Shri G.K.Masand counsel for the applicant and Shri V.G.Rege counsel for the respondents.

2. The applicant is working as Assistant Engineer (Track) in Central Railway. He had filed an earlier application OA 449/89 pertaining to seniority dispute. The application was allowed and the applicant was given proper seniority. Now his grievance is

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about retrospective promotion as Assistant Engineer from 1984, the day his juniors had been promoted. The applicant's case is that now he has been given the grade of Rs. 700 - 900 with effect from 1.1.1980. Then it is urged that in the selection to the post of Assistant Engineer, which selection took place in 1984, many of his juniors like Shri V.S.Sutar got selected and promoted in 1984. After the judgement in previous OA 449/89 dated 29.8.1991, the applicant made representations seeking retrospective promotion as Assistant Engineer from 1984. But the Administration had not considered his request. The applicant is entitled to be considered for the selection of Assistant Engineer from 1984 and given retrospective promotion and seniority in that cadre above his junior Shri V.S.Sutar. This is the sum and substance of the application.

3. The respondents have filed two replies and the substance of the defence is as follows:

It is stated that the present application is not maintainable in law and it is hit by principles of Res-judicata. It is stated that the applicant was not selected for the post of Assistant Engineer during the selection held in 1988 and hence he filed the previous application and now he cannot challenge the 1984 selection in the present OA. The applicant never approached this Tribunal when he was denied the selection in 1984. But he approached this Tribunal only in 1989, when he was denied the selection in 1988 and hence he cannot now re-open the 1984 selection. If the applicant had any grievance for the 1983 - 84 selection then he should have challenged at the

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* proper time or at least in the OA filed in 1989. But he cannot raise this grievance for the first time in the OA filed in 1993. It is also stated that the application is barred since necessary parties namely V.S.Sutar and Hanumahya are not made parties to this OA. In the previous case the Tribunal had not granted the specific relief prayed for by the applicant. Therefore such relief cannot be pressed in the present OA. There are some allegations made in the reply about the merits of the case.

4. The learned counsel for the applicant contended that once the applicant has been granted seniority from 1.1.1980 in the grade of Rs. 700 - 900 then he was entitled to be called for selection to the post of Assistant Engineer in 1984 and since it is not done he is now seeking to seek retrospective promotion and seniority in the cadre of Assistant Engineer from 1984. The learned counsel for the respondents contended that the application is barred by principles of Res-judicata and further it is barred by delay and laches and barred due to non-joinder of necessary paraties.

5. Since the applicant is relying on order passed by the Tribunal dated 29.8.1991 in OA 449/89, copy of the order is at page 18 of the paper book. We have secured copy of the paper book of OA 449/89 to find out what was the point of issue in the previous case.

In the previous OA the main challenge of the applicant was in respect of seniority in the scale of Rs. 700 - 900. Then he has complained in para 8 of the previous OA that for 1988 selection for the post of Assistant Engineer the list of eligible

candidate has been published and applicant's name is missing from the same. Therefore the main grievance in the previous OA was about 1988 selection for the post of Assistant Engineer and depriving him for appearing in the selection.

The applicant nowhere challenged the 1984 selection of Assistant Engineers. His challenge was only to 1988 selection of Assistant Engineers. The applicant could have also challenged 1984 selection on the ground that if seniority is taken into consideration properly, he would be eligible for selection to the post of Assistant Engineer in 1984 selection and again in 1988 selection. He made such allegation about 1988 selection in the previous OA but not about 1984 selection.

6. The question is when the applicant had first opportunity to challenge the seniority and challenge the selection of Assistant Engineers in 1988 and if he does not question the earlier 1984 selection of Assistant Engineers, can he now by filing a fresh application challenge the same. The answer to this question is under Order 2 Rule 2 CPC. A party who comes to Court must ask for all reliefs available to him in respect of a particular cause of action. He cannot ask only some relief in one suit and remaining reliefs in subsequent suit or proceedings. The principle underlying under Order 2 Rule 2 CPC is a principle of Public policy to avoid multiplicity of proceedings and deciding a particular dispute once and for all. There should be some finality to the dispute. Therefore the principle is when a matter has been decided once by a Competent Court or Tribunal, it cannot be agitated again as provided under Section 11 of CPC.

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Though all the provisions of CPC are not applicable to this Tribunal, the principles underlying the provisions are applicable even to cases before the Tribunal. Principle of Public policy underlying under Order 2 Rule 2 of CPC or Section-11 CPC are applicable to proceedings in the Tribunal.

7. Since the applicant confined to the prayer of seniority in the grade of Rs. 700 -900 and to the post of Assistant Engineers in 1988 selection and having succeeded in the previous litigation filed in 1989, he cannot turn round in the second litigation in 1993 to ask for relief in respect of 1984 selection of Assistant Engineers. There should be some finality to service matters. Now we are in 1999, if we now grant the request of the applicant by granting retrospective promotion from 1984 and grant him monetary benefits and grant him seniority in the cadre of Assistant Engineer from 1984, it will upset the seniority position of other officers of 1984 after a lapse of 15 years. In this context the learned counsel for the respondent contended that those employees of 1984 batch of Assistant Engineers are not before this Tribunal and some of them particularly Hanumhya and Sutar who are going to be adversely affected are not before the Tribunal. But the learned counsel for the applicant submitted that since he is asking retrospective promotion and retrospective seniority in the grade of Assistant Engineers on a principle he need not make those persons as parties. We need not decide that question in the present case, since we find that the applicant cannot be allowed to re-open the selection of Assistant Engineers of 1984 since he had not challenged the same in the

previous OA filed in 1989 and he cannot rake up the matter in subsequent OA namely the present OA filed in 1994.

8. In addition to above reasoning, we find that there was specific prayer in the previous OA, prayer (d) which reads as follows, which is also mentioned in the present OA in para IV (iv) :

"This Tribunal will be graciously pleased to direct the respondent to promote the applicant in class II. service as Assistant Engineer and place him senior to those persons who have been junior to him in the grade of Rs. 700- 900."

Though the applicant had not challenged the 1984 selection, he sought a specific prayer that he should be granted promotion as Assistant Engineer and he should be placed senior to those persons who were junior in the feeder cadre of Rs 700 -900. That means he made a spsecific request for his promotion as Assistant Engineer retrospectively from the date his junior in the feeder cader had been promoted. Thgought there were no sufficient pleadings in previous OA at least, the applicant knew that priorto 1988 many juniors had been promoted as Assistant Engineer and that is why he wanted specific prayer in the previous OA. In the order of the Tribunal this prayer is not granted. The prayer granted in the previous OA is that the applicant should get his seniority in the grtade of Rs. 700 -900 with effect from 1.1.1980 and he should get other consequential benefits. Though the applicant had made spcific request for promotion to Assistant Engineer retrospectively, the relief has not subsequently granted in the previous judgement.

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The learned counsel for the applicant contended that all consequential benefits includes retrospective promotion is too a general statement to be accepted. In fact on the basis of the judgement of the Tribunal the applicant has been granted promotion from 1988 selection. Now he cannot challenge the 1984 selection.

9. We have already pointed out how under Order 2 Rule 2 CPC the applicant has to ask all the reliefs available to him in respect of particular dispute.

Even under Section 11 CPC, Explanation IV provides that any matter which might and ought to have been ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

The applicant wanted promotion to the post of Assistant Engineer in 1988 on the basis of his seniority from 1.1.1998. On the same principle he should have asked for promotion as Assistant Engineer from 1984. Therefore this was a relief he could have asked by reading necessary facts and if he does not ask for it in the previous case he cannot ask for the same in view of Section 11 CPC read with Explanation IV.

10. In our view Explanation V of Section 11 CPC is attracted to this case. It says that any relief claimed in the plaint, which is not expressly granted by the Court must be deemed to have been refused. We have already pointed out how in the previous OA the relief asked for promotion to the post of Assistant Engineer from the date his junior came to be promoted which refers to 1984 selection. That subsequent prayer has

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not been granted by the Tribunal. Therefore in view of Explanation V of Section 11 CPC the inference is that relief has been refused by the Tribunal. Hence it cannot be agitated again. In substance taking any of the matter we feel that the present OA in which the applicant is seeking retrospective promotion as Assistant Engineer from 1984 is not maintainable since in the previous OA filed in 1989 the applicant was only concerned with his non-selection as Assistant Engineer in 1988. Therefore we hold that applicant is not entitled for retrospective promotion with consequential monetary benefit and seniority in the cadre of Assistant Engineer from 1984.

12. In the result OA fails and accordingly dismissed. No order as to costs.

B.N.Bahadur

(B.N.BAHADUR)
MEMBER(A)

R.G.Vaidyanatha
28.10.99

(R.G.VAIDDYANATHA)
VICE CHAIRMAN

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