

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 451/94

Transfer Application No: --

DATE OF DECISION: 6.12.95

A.J.SHAIKH

Petitioner

Mr.Y.R.Singh

Advocate for the Petitioners

Versus

U.O.I. & Ors.

-----Respondent

Mr.S.C.Dhavan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri N.K.Verma, Member(A)

The Hon'ble Shri

1. To be referred to the Reporter or not ? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*

N.K.Verma
(N.K.VERMA)
Member(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 451/94

6th the day of Alambh 1995

Hon'ble Shri N.K.Verma, Member(A)

A.J.Shaikh,
R/o. 240 Modikhana,
Sholapur.

(By Advocate Shri Y.R.Singh) .. Applicant

-versus-

1. Union of India,
through
General Manager,
Central Railway,
Bombay - 400 001.
2. The Divisional Railway
Manager,
Office of D.R.M.(P.Branch)
Central Railway,
Sholapur.

(By advocate Shri S.C.Dhavan) .. Respondents

O R D E R

(Per N.K.Verma, Member(A))

In this O.A. the applicant
A.J.Shaikh who retired as Power Controller
on 10-6-1991 has assailed the order dt.
7-12-1992 by which his claim for settlement
of pensionary benefits were rejected by the
respondents with a prayer to fix his pay
in the substantive grade at the level of
Rs.2900/-p.m. He has also prayed that the
respondents be stopped and precluded from
ignoring order dt. 21-12-83 at Annexure 'E'
by which his lien on the running cadre was

assured to be kept. The applicant's case is that he was appointed as a Fireman Gr. 'A' on 21-7-1955 which is in the category of running cadre. Thereafter he was promoted as Driver Gr.C and in the year 1960 and as Driver Gr.B in September, 1974. In April, 1977 the applicant came to be selected as Power Controller and Assistant Loco Foreman on ad hoc basis in the grade of Rs.550-750 on Divisional level and in the grade of Rs.550-750 at Head Quarters level in December '79. However, immediately after the selection the applicant opted for reversion to the running cadre in 18-10-80. Thereafter he made several representations for being relieved to the parent running cadre. In April, 1983 the applicant came to be promoted as Loco Inspector and Fuel Inspector in the grade of Rs.700-900 on ad-hoc basis and his pay came to be fixed at Rs.795/- ^{and} after drawal of one increment his pay was fixed at Rs.830/-. Thereafter in July '84 the applicant was reverted to the merged cadre of Loco Inspector in the pay scale of Rs.550-750 and his pay was fixed at Rs.775/- consequent upon the down gradation. As per the IVth Pay Commission Report his pay was fixed at Rs.2300/- in the revised pay scale of Rs.2,000-3200. In September '87 the applicant was transferred from Sholapur to Wadi wherefrom he made an appeal for stepping up of his pay with reference to a junior. That representation however, was rejected by order dt. 4-6-91. The applicant retired on 10-6-91.

2. The applicant has based his claim for reversion to the running grade of Drivers in Gr. 'A'

on the basis of the letter dt. 21-12-1983 whereby he was clearly told by the respondents that as per his application dt. 18.10.89 followed by application dt. 21.11.80 and 3-12-80 for opting to the running cadre unconditionally and seeking promotion only on running cadre, his lien is being kept only in running cadre and confirmation will be accorded to him only in running cadre. He was further informed that his continuation as Loco Supervisor is only in the exigencies of service and he will neither be eligible for promotion on Loco Supervisory cadre nor for confirmation. He will be relieved from the post of Loco Supervisor as soon as a reliever is posted. This position was further fortified when the applicant was informed by letter dt. 4-6-91 that his case for stepping up of pay of Loco Supervisors with reference to a junior P.N.Kareer working in the Jabalpur Division could not be accepted because he was working in the grade of Rs.550-750(RS) as a Loco Supervisor only on adhoc basis and not on regular basis. As per the assurances given in the letter dt. 21-12-83 the applicant continued to work as Loco Supervisor in the various capacities till his date of retirement as no reliever came to relieve him and he as a disciplined worker continued to work in a dis-advantageous position with loss of running allowance. Even his prayer for stepping up of his pay with reference to a junior was rejected and as a last resort he took voluntary retirement.

He therefore has claimed that he should be granted the promotion in the cadre of Driver Gr.'A' w.e.f. his juniors were started working as Driver Gr.'A' in the running grade and his pay and pensionary benefits should be fixed according to the provisions of Rule 2544-R II, clause (g), (i)(ii) which reads as below:

"Rule No.2544(g)R II:CSR 486,(g)(ii)(ii)
Note (a) (b)

- a) The emoluments which would be taken into account under this Rule in respect of the appointment in which he officiates or of the temporary appointment as the case may be, or
- b) The emoluments which would have been taken into account under this Rule, had he remained in his substantive appointment, whichever are more favourable to him."

3. In the written reply the respondents have stated that the pension of the applicant has been fixed on the basis of last 10 months average pay drawn by him. They also brought to my notice that the applicant had himself made a request for empanelment as a Loco Supervisor on a permanent basis and accordingly he was selected and appointed as Power Controller w.e.f. 19-10-79. He continued to officiate in the post till his voluntary retirement w.e.f. 10-6-91. During this period of 12 years the applicant has never performed any running duties. The respondents have further denied the authenticity of the letter dt. 21-12-83(Annexure 'E') and have put the applicant

to strict proof of the same. The authenticity of the letter is doubted because of the apparent discrepancies in the factual matrix. If he had really applied for posting as Driver 1980 he did not pursue the matter of his option for running cadre between 1980-83. Even assuming that letter dt. 21-12-83 is a genuine letter, the applicant kept quiet till 10-6-1991 when he voluntarily retired while he was still officiating as Power Controller. If he was advised that he would be relieved from the post of Loco Supervisor as soon as reliever could be posted way back in 1983, the applicant never asked to be relieved, not made any enquiries in that regard nor also submitted any further representation. The applicant for the first time submitted a representation on 2-11-1992 i.e. about 6 months after his voluntary retirement asking for revision of his pension on the basis of Rule 2544(g) of the Indian Railway Establishment Code, Vol.II. The respondents further brought to my notice that the running cadre is safety cadre and obviously requires very high medical category. If the applicant was really serious about his alleged option, to revert to the running cadre, it was necessary for him to undergo medical test and qualify in the medical category of A.I. Since he did not pursue with this option for reverting and undergoing a medical test the question of his reversion to running cadre after 12 years cannot be raked up.

4. During the course of arguments Shri Y.R. Singh relied heavily on the contents of the letter dt. 21-12-83 of which he had the original with him. He dared the respondents to prove that the letter was not genuine or it was a fake. He had asked for the personal file of the applicant to find out the veracity of the reply made by the respondents and any other documentary proof that there was no ad-hoc promotion of the applicant to the non-running cadre. The respondents were not able to bring the personal file of the applicant for the period during which the letter dt. 21-12-83 and the earlier representations during 1980 were processed by the respondents. The personal file which was brought to the notice of the court only related to the period after 1986 in which not a single representation of the applicant was to be found. The service book entries relating to those periods also do not indicate that the posting of the applicant as Power Controller was a regular posting and not an ad-hoc posting. There is also no indication that his lien as Fireman Gr. 'A' was transferred to lien of Power Controller. Hence with the two documents in the custody of applicant it can be conclusively proved that the applicant was only working as ad-hoc Power Controller since 1979 and had the right to be reverted to his parent running cadre for which he was not relieved by his superior authorities therefore he has to suffer monetary loss in a recurring manner. This can be made good now

by giving him a notional promotion of Driver with reference to his junior promoted to that grade.

5. Shri S.C.Dhavan, learned counsel for the respondents, drew my attention to page 21, Annexure 'F' of the O.A. wherein the applicant himself had admitted that he was selected as Power Controller/LFC in 1977 on divisional panel, and in December 1979 on Zonal panel. Subsequently he also underwent two training courses for Loco Foreman in the running cadre. His posting was never an ad-hoc posting as no such orders are noted in the service book. It is unfortunate that the personal file for that period is not available now but the service book records ~~of~~ *all* the happenings in the career ~~an~~ *of* service in the Railway and whatever has been noted therein cannot be disputed after the applicant has served continuously for 12 years in the non running cadre after which he sought voluntary retirement. Shri Dhavan also admitted that the letter issued in 1991 in relation to his representation for stepping up of his pay was mistake inasmuch as it is indicated that appointment of the applicant in the revised scale of Rs.550-750 was adhoc. He reiterated that the appointment of applicant in non-running cadre was a regular appointment which cannot be contradicted now since the appointment orders are neither in the possession of applicant nor with the respondents. However, the service book entry had to be relied upon in this case in absence

of any other documents either corroborating or disputing this fact.

6. I have given very serious consideration to the averments, pleadings and arguments of learned counsel for both the sides. The entire claim of the applicant is based on letter dated 21.12.83 and supported to some extent by the letter dated 4.6.91. The main question is whether the letter dated 21.12.83 is a letter whose authenticity cannot be doubted. I have personally seen the letter which is addressed from the DRM Office (P) Branch to the applicant through his office. There are two endorsement to this letter without any endorsement to the Pay and Accounts Office which normally is vitally concerned with their entitlement of pay, lien etc. The letter is a typed one without any rubber stamp of the office where it was received. Since there is no corroboration of this letter, there are no initial or signatures of the official/Br. Head in token of receiving this letter and passing on the same to the applicant who is the addressee, from the personal file of the applicant, the applicant's claim cannot be founded and relief granted at this distant stage. The fact that the applicant worked continuously in a non running grade as Loco Foreman till he sought voluntary retirement and thereafter sent a representation only on 12.11.92 itself strikes as very un-natural and suspicious action on the part of the applicant

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The applicant had all along been agitating the case for stepping up his pay with reference to his junior, P.N. Kareer, who had also been appointed to a non running cadre at Loco Shed, Jabalpur. It seems that after he failed in that effort, he has now come up with the plea for notional promotion in the grade of Driver Grade-I as a follow up of the letter dated 21.12.1983. The applicant now cannot be allowed to agitate over this matter in the light of the Hon'ble Supreme Court's judgment in the case of Bhoop Singh Vs. Union of India reported at (1992 (21) ATC 675). While repelling the unexplained delay, the Hon'ble Supreme Court held:-

"If the petitioner's contention is upheld that laches of any length of time is of no consequence in the present case, it would mean that such Police Constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground that would be a startling proposition. In our opinion, this cannot be true import of Article 14 or the requirement of the principle of non-discrimination embodied therein which is the foundation of petitioner's case.

In the case of Ratan Chandra Samanta Vs. Union of India (1994) 26 ATC 228, the Hon'ble Supreme Court had held that in view that no explanation has been given as to why the petitioners did not approach till 1990 held that, "Delay in itself deprives a person of his remedy available


in law. In absence of any fresh cause of action or any legislation, a person who has lost his remedy by lapse of time he loses his right as well." Regarding the laches in filing writ petition under Article 226, Hon'ble the Supreme Court in the latest judgment in the case of High Court of M.P. Vs. Mahesh Parshad, 1990 SCC (L&S) 278 held that from June, 86 when the first representation of ~~junior~~^{senior} official was considered by the Full Court and rejected. Even though, the second representation filed 4 years thereafter was again considered by the Full Court and rejected. The ratio of the judgment is that merely because a subsequent representation is considered by the authority and rejected, limitation does not get extended if the claim is barred by limitation. In the instant case the cause of action arose in 1980 when the applicant had made a request for reversion to his parent running cadre which was not accepted by the competent authority. Even if we assume that the letter dated 21.12.83 was a genuine reply from the respondents, the implementation thereof had to be demanded within a reasonable period by the applicant which he did not do. Thereafter he made a representation regarding stepping up of the pay which was replied in 1991 where erroneously it was indicated that he was working on adhoc arrangement. In view of the clear ruling of the Apex Court, applicant has no case at this stage which is squarely barred by Law of Limitation.

7. Apart from this even on merits, the case does not deserve to be considered in view of the fact that the applicant took promotion in non running cadre in a higher scale of Rs. 700-900 and also acquiesced in a transfer to another station Kurudwadi whereafter he also undertook two professional courses. There was no compulsion on him to have subjected himself to a transfer on a higher posting which could have been very well refused by him without incurring anybody's displeasure or wrath. There is no punishment provided for refusal of promotion on adhoc basis and even the rule of debarment is applicable only in the case when an official is given a regular promotion. The long acquiescence of the applicant in having worked on non running cadre post invites the operation of estoppel and he is now precluded from canvassing that he continued to officiate on adhoc arrangement for such a long period against his wishes. Since the veracity of the letter dated 21.12.83 has not been confirmed with reference to his personal file of that period which is reported to be lost, the question of his claiming relief with effect from that date cannot be considered now. A personal file is not a permanent record to be kept with the respondents for all the periods during which the applicant has worked. They have ~~lost~~ ^{found} the volume of personal file which starts from 1986 and this does not contain any record of representations etc. However, the service book was produced for my perusal which

did not indicate any noting to the effect that the applicant's promotion on the non running cadre was on adhoc or temporary basis. Therefore, I am not persuaded to accept that the applicant was transferred to work as ALF in December, 1979 on adhoc/temporary basis. The post of Driver Grade-I is not available to each and every person working as a Driver Gr. 'B' on notional basis. Even though, it may be a non promotional post, appointment to this grade is subject to a suitability test which includes the medical category-I. Thus there is no case for automatic promotion of the applicant to the grade of Driver Gr. I.

8. In view of the observations above, and the respondents' categorical reply and the documentary proof thereof that the applicant worked all along as ALF non running cadre till his voluntary retirement, the O.A. fails and is, therefore, dismissed.

There will be no order as to costs.


(N.K. VERMA)
MEMBER (A)