

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 516/94

16.11.95
Date of Decision:

Eknath Dagdoo

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty

Advocate for
Respondent(s)

CORAM:

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

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

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

D.S.B.
(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.516/94

Dated this the 16th day of November 1999.

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

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

Eknath Dagdoo,
retired Junior Clerk,
residing at and Post
Konhi, Taluka: Bhusawal,
Dist. Jalgaon.

...Applicant

By Advocate Shri D.V.Gangal

V/S.

1. Union of India through
the General Manager,
Central Railway,
Bombay V.T.

2. The D.R.M., Central
Railway, Bhusawal.

... Respondents

By Advocate Shri R.R.Shetty

O R D E R

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

The applicant was engaged as casual Khalasi on Central Railway in May, 1958. He was regularised as Khalasi on 9.4.1962. The applicant was granted the work of Junior Clerk from 1965 continuously till August, 1977 although he was paid the salary of Khalasi. Against a regular vacancy of Junior Clerk occurring in Sept. 1977 the applicant was appointed against the same from 1.9.1977 and continued so till 31.7.1990 without any interruption. The applicant submits that his promotion on adhoc basis had been

(Signature)

..2/-

approved as per order dated 28.2.1983 of Divisional Railway Manager. During this period, a regular selection to the post of Junior Clerk was notified in 1985 and the applicant appeared in the written test and also qualified in the same. Viva-voce test was scheduled on 23.10.1986 but the applicant could not attend the same as the applicant was hospitalised from 18.10.1986 to 4.11.1986 for which the medical certificate was issued. The supervisor incharge of the applicant Loco Foreman as per his letter dated 20.11.1988 also informed the Divisional Railway Manager about the reason for not attending the viva-voce test by the applicant. However, the applicant was not called for the viva-voce test. When the matter was still pending, all of a sudden as per the impugned order dated 26.7.1990, the applicant was reverted to the post of Khalasi but continued to do the work of Junior Clerk till retirement on 28.2.1994. The applicant represented against the same through his Union which sent a letter dated 17.6.1990. His supervisor vide letter dated ^{also} 22.7.1991 requested the concerned authority in the Divisional Office to call the applicant for viva-voce test. The applicant was under the bonafide impression that the applicant will be called for the vivavoce test and his promotion will be regularised with his batch mates of 1985 selection but the respondents did not take any action. The applicant adds further that he was even due for promotion as Senior Clerk in 1985 when his batchmates and juniors had been promoted. Feeling aggrieved by thisaction of the respondents, the applicant has filed the present OA. on 29.3.1994.

2. In the background of the above facts, the applicant has sought the following reliefs :-

(a) to direct respondents to treat the applicant as regular Junior Clerk from 1977.

(b) to set aside the order dated 26.7.1990 through which the payment and not the work of Junior Clerk has been denied.

(c) to declare that applicant is entitled to promotion as Senior Clerk when his juniors were promoted on the basis that the applicant has worked as Junior Clerk regularly from 1.9.1977.

(d) to hold that the applicant is deemed to have retired as Senior Clerk with grant of arrears of salary being difference in the salary of Senior Clerk and Junior Clerk from 1988 to 1990 and Senior Clerk to Khalasi from 1.8.1990 to 28.2.1994.

3. The respondents have opposed the OA. through the written statement. At the outset, the respondents submit that challenge of reversion order dated 26.7.1990 through OA. filed on 29.3.1994 is barred by limitation and the applicant has not even filed any application for condonation of delay. Even taking that the

applicant had represented against reversion through his Union, the delay of three years has not been explained as the Union was given final reply on 2.4.1991. As regards the relief of treating the applicant regular as Junior Clerk from 1.9.1977 onwards, the respondents deny that he was appointed on regular basis. The respondents submit that applicant worked on adhoc basis in broken spells as Junior Clerk from 1977 till 1990 and not continuously as claimed by the applicant. In view of this, the applicant is not entitled of this relief. For the claim of promotion as Senior Clerk, the respondents add that the same is not only misconceived but is barred by limitation as this claim is raised for the first time in the present OA. filed in 1994. Regarding calling for viva-voce test for regular selection to the post of Junior Clerk, the respondents submit that the panel was notified on 4.2.1987 and the applicant did not make any representation against the same. Further, after the decision with regard to viva-voce test was conveyed to the Union on 2.4.1991, the applicant kept quiet till the filing of the present OA. in 1994. In the background of these averments, the respondents plead that the applicant is not entitled to any of the reliefs sought ^{for} and the OA. deserves to be dismissed.

4. The applicant has not filed any rejoinder reply.

5. We have heard Shri D.V.Gangal and Shri R.R.Shetty, learned counsel of the applicant and the respondents respectively.

6. From the reliefs prayed for and detailed in para 2 above, we note that there is two set of reliefs prayed for. One set concerns with reversion as Khalasi as per the impugned order and other set covers the claims of regular promotion as *chwards* Junior Clerk from 1.9.1977 and consequently entitlement for promotion as Senior Clerk from 1988.

7. Taking the first set, we note that the respondents have opposed this relief stating that the same is barred by limitation. We have carefully considered facts of the case and the material brought on the record and find merit in the stand of the respondents. The applicant was reverted as per the impugned order dated 26.7.1990. We do not find any averment in the OA. that the applicant represented against the same. The only reference he has made is taking of the issue of non calling of the applicant for viva-voce test for regular selection held in 1985 by the Union as per letter dated 17.6.1990 at Annexure-'A-6'. This letter is prior to reversion order dated 26.7.1990. Even the decision on this issue had been conveyed by the respondents as per letter dated 2.4.1991 as brought out in the written statement which is not controverted by the applicant. Thus, firstly the cause of action arose on 26.7.1990 and secondly on 2.4.1991. The applicant has neither made any pleading to explain the delay nor made any application for condonation of delay. In the light of these facts, we have no hesitation to hold that the relief of setting aside the impugned order dated 26.7.1990 through which the applicant had been reverted deserves to be dismissed as being barred by limitation.

8. In the 2nd set of reliefs, the applicant claims regular promotion as Junior Clerk from 1977 and thereafter consequent promotion as Senior Clerk. Considering the facts of the case, we are of the view that these reliefs also deserve~~s~~ to be rejected. Firstly, the relief of promotion from 1977 is not maintainable due to lack of jurisdiction. As per Section 21 (2)(a) of Administrative Tribunals Act,1985, the power and authority of the Tribunal becomes exercisable under the Act only for a cause of action arising 3 years immediately preceding the date of the setting up of the Tribunal, i.e. November,1982. Secondly, even on merits the applicant has no case. The applicant has not brought on the record any order by which the applicant was promoted as Junior Clerk in 1977 on regular basis. On the other hand, the applicant himself has stated that the competent authority had approved his adhoc promotion only as per order dated 28.2.1983 (Annexure-'A-3'). Further, the applicant had appeared in the selection notified in 1985 for regular promotion as Junior Clerk. In the face of these facts, the claim of the applicant cannot survive. Since the claim of regular promotion as Junior Clerk from 1.9.1977 does not have any merit, then the reliefs of promotion as Senior Clerk thereafter and payment of arrears till retirement also are not tenable and the same are also not maintainable.

9. The applicant has raised the issue of non calling for viva-voce after being successful in the written test for regular selection to the post of Junior Clerk notified in 1985. The applicant has submitted that on 23.10.1986 when viva-voce test was to be held, the applicant could not be present due to being hospitalised from 18.10.1986 to 4.11.1986. It is the case of the applicant that as per the rules (refering to the Railway Board's letter dated 27.6.1988 at Annexure-'A-5'), the applicant should have been called subsequently in the supplementary viva-voce test but the respondents have failed to do so. The applicant during the hearing also strenuously argued on this point. However, on going through the reliefs prayed for under para 8 of the OA. and extracted in para 2 above, we note that the applicant has not sought any relief for the same. This relief even does not flow from any of the other reliefs as the main relief of the applicant is that he is entitled to be regularly promoted as Junior Clerk from 9.1.1977. In the absence of any specific relief prayed for, we are not going into the merits of the same. Even otherwise, the claim of this relief is barred by limitation. As brought out by the respondents, the panel was notified on 4.2.1987 when the cause of action arose first time. The applicant has brought on the record the letter dated 17.6.1990 from the Union at Annexure-'A-6', where this issue had been raised. The respondents had conveyed their decision on 2.4.1991 rejecting his claim as brought out in the written statement. Even thereafter

the applicant kept quiet for 3 years till his retirement in February, 1994 and filed OA. only in March 1994. Here also the applicant has neither explained the delay nor filed any application for condonation of delay. Thus even on the consideration of limitation, this relief is not maintainable. As held by Hon'ble Supreme Court in the case of Ramchandra Samatha & Ors. vs. Union of India, 1993 (2) SLR 811 (SC), the delay deprives a person of remedy available in law. A person who has lost remedy by lapse of time, loses his right as well.

10. In the result, the OA. is barred by limitation and is also devoid of merits and is accordingly dismissed with no order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

D.S.BAWEJA
(D.S.BAWEJA)
MEMBER (A)

mrj.