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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 99/95

25.2.2000
Date of Decision:

H.B.Desai

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.D.Vadhavkar

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) Liaison ✓

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 99/95

Dated this the 25th day of February 2000.

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

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

Hemant Balvant Desai,
Enquiry-cum-Reservation Clerk,
Bombay Central,
Bombay.

... Applicant

By Advocate Shri G.S.Walia

v/s.

1. Union of India through
General Manager,
Western Railway,
Churchgate, Bombay.
2. The Chief Commercial Manager,
Western Railway,
Churchgate, Bombay.
3. The Divisional Railway Manager,
Divisional Office,
Western Railway,
Bombay Division,
Bombay Central, Bombay.
4. The Senior Divisional Personnel
Officer, Western Railway,
Bombay Division,
Bombay Central, Bombay.

... Respondents

By Advocate Shri V.D.Vadhavkar

O R D E R

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

The applicant was engaged as substitute
Enquiry cum Reservation Clerk (ECRC) in Western
Railway on 3.5.1980 in the scale of Rs.330-560(Rs.).

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The applicant was regularised from 7.12.1983 on the post of Office Clerk in the scale of Rs.260-400 (RS). Thereafter, on the request made by the applicant, he was allowed change in category as Assistant Couching Clerk (ACC) in the same scale of Rs.260-400. In 1989, the applicant was selected and promoted to the post of ECRC scale Rs.330-560 (RS). In 1993, he got the next promotion in the scale of Rs.1400-2300 (RP) as Reservation Supervisor. The case of the applicant is that the substitute ECRCs namely, Smt.L.G.Jani, Miss Madhuri Bhosle and Miss Jasvanti Makwana who were also regularised along with applicant as office clerk from 7.12.1983 have been subsequently absorbed as ECRC in the scale of Rs.330-560. The applicant had not been allowed this benefit and as a result the erst-while above named juniors have become seniors as ECRCs. The applicant made representation against the same and his representations dated 24.1.1992 and 3.3.1992 were forwarded by the Divisional Railway Manager (Respondent No. 2) to Respondent No. 1 as per letter dated 6.5.1992. But there was no reply to the applicant. The matter was also taken through the recognised Union as a Permanent Negotiating Machinery (PNM) item. Union was replied as per letter dated 12.3.1993 rejecting his claim for regularisation of the applicant as ECRC from the dates his juniors have been allowed. The applicant represented again and finally his representation was again rejected as per order dated 17.2.1994. Thereafter, the applicant sought the legal remedy through this DA. on 29.12.1994.

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2. The applicant has sought the following reliefs with the above background :-

- (a) To quash the order dated 17.2.1994 and to direct respondents to regularise the appointment of the applicant as ECRC from 7.12.1983 when his counter parts, namely, Smt. Ilajani, Madhuri Bhosle and Jasvanti Makwana have been appointed as ECRCs.
- (b) To direct respondents to allot seniority from the date his counterparts viz. Shri Stephen and Shri Simali were absorbed and promoted as ECRC.
- (c) Direct respondents to pay the arrears of difference of pay the applicant would have drawn as a consequence of his being absorbed as ECRC with interest of 18% per annum.

3. The applicant has constructed his case on the following grounds :-

- (a) Applicant has been subjected to invidious discrimination vis-a-vis Smt. Ila Jani, Madhuri Bhosle and Jasvanti Makwana who were similarly placed like the applicant but were regularised as ECRC.
- (b) The applicant is entitled for the benefit of the judgement of the Hon'ble High Court in the case of Arun Pandharinath in W.P.No. 413 of 1980 along with W.P.Nos.414,415 and 416 of 1980 decided on 24.1.1984 as the applicant is similarly placed. The applicant contends that he had been overlooked for regularisation as ECRC as lady substitutes were given preference and this action of the respondents has been struck down by the Hon'ble High Court.

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- (c) The applicant should have been absorbed in the category of commercial clerk instead of office clerk in view of the directions laid down in Railway Board's letter dated 30.11.1989.

4. The respondents have filed the written statement. The respondents have stated that the applicant who was initially engaged as substitute ECRC was regularised as Office Clerk along with other substitutes in terms of Railway Board's letter dated 21.10.1982 as per order dated 17.10.1983. On 16.3.1984, the applicant requested for change of category as Assistant Coaching Clerk. Based on the approval from Railway Board as per letter dated 17.12.1985, the change of category was allowed. On 25.3.1987, he applied for the post of ECRC and the same was replied as per the letter dated 21.9.1987. In the normal channel of promotion, the applicant was selected for the post of ECRC in the scale of Rs.1200-2040 and was promoted as per order dated 9.8.1989. The representations made by the applicant in 1992 for giving the regularisation as ECRC directly instead of Office Clerk were replied as per letter dated 7.10.1993. Earlier, on the matter being taken up by the recognised Union, the matter was examined and reply sent on 12.3.1993. With this background, the respondents' stand is that OA. is hopelessly time barred and deserves to be dismissed on this account only.

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On merits, the respondents submit that the employees mentioned by him are not similarly situated as the applicant and therefore the applicant is not entitled for the same benefits.

5. The applicant has not filed any rejoinder reply.

6. We have heard the arguments of Shri G.S.Walia and Shri V.D.Vadhavkar, learned counsel for the applicant and respondents respectively.

7. The applicant has cited the following judgements of the Hon'ble Supreme Court to support his contention :-

- (a) 1994 SCC (L&S) 290
- (b) 1985 SCC (L&S) 290
- (c) 1986 SCC (L&S) 429
- (d) 1993 SCC (L&S) 544
- (e) (1993) 23 ATC 225

8. The respondents have strongly opposed the OA. mainly on the point of limitation stating that it is hopelessly time barred. The applicant has not controverted this stand taken in the written statement by filing a rejoinder reply. The applicant in para 3 of the OA. has stated that the OA. has been filed within the limitation period prescribed in Section 21 of A.T.Act, 1985. The counsel for the applicant reacted to the plea of limitation of the respondents stating that the applicant has been representing on the matter and that his representation was rejected only by the

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impugned order dated 17.2.1994 (Annexure-A) and the OA. has been filed on 29.12.1994, i.e. within a period of one year laid down in Section 21 of A.T. Act. After careful consideration of the rival contentions and the facts of the case, we are of the view that the stand of the applicant is not tenable as the limitation stares at the face when looked from any angle. This conclusion is obvious from the facts brought out hereafter :-

- (a) The applicant has sought the relief of his regularisation as ECRC from 7.12.1983, i.e. from the date he was absorbed as Office Clerk on the plea that he was also entitled for the same treatment as allowed to others similarly placed lady employees. The applicant had been regularised and posted as Office Clerk as per order dated 17.10.1983 in pursuance of the sanction of the Railway Board as per order dated 21.10.1982 for regularisation of the substitutes. If the applicant was aggrieved by his non regularisation as ECRC, then the first cause of action arose on 17.10.1983.
- (b) The applicant claims the relief on the plea of discrimination stating that three employees, namely, Smt. I.G.Jani, Miss Madhuri Bhosle and Jasvanti Makwana who were also substitute ECRCs and were absorbed as Office Clerk like the applicant were subsequently appointed as ECRC. The applicant has not disclosed the dates of their promotion in the OA. But from the documents brought on the record through a Misc. Application, it is noted from the letter dated 16.1.1984 that the said employees were appointed as ECRC on adhoc basis. If the applicant felt that he was also

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entitled for the same benefit, then this letter gave another cause of action but again the applicant kept quiet as there is no averment to the effect that he made representation for the same at any time.

- (c) The applicant has advanced another plea that he is entitled for the benefit of the judgement of the Hon'ble High Court in the Writ Petition No.413/80 (supra) as he is similarly situated. This is the judgement dated 24.1.1984. Except making this statement, the applicant has not made even a whisper of averment that he made representation for extending the same benefit after the judgement on 24.1.1984. This judgement if applicant claims that he is similarly situated as the petitioners provided another cause of action but the applicant did not avail the same and slept over the same.
- (d) The applicant had sought change in his category from office clerk to Assistant Commercial Clerk in 1984 and this request was accepted with reference to Railway Board's order dated 17.12.1985. The applicant joined on the post of Assistant Commercial Clerk. If the applicant was aggrieved by his non absorption as ECRC, then he could have agitated the matter according^{ly} at the proper time. Seeking change in category in 1984, signifies that applicant had no grievance against his absorption as Office Clerk.

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- (e) The applicant appeared in the selection for the post of ECRC in 1988 on his own and was selected in the same. After joining the post of ECRC on promotion in 1989, there was again a cause of action for seeking seniority from the original date of regularisation as ECRC if the applicant continued to feel aggrieved. However, the applicant again kept quiet.

9. The applicant has sought the relief of regularisation as ECRC from 7.12.1983. This means that after being promoted as ECRC as per order dated 9.8.1989, he seeks seniority as ECRC from 7.12.1983 and also the payment of arrears of pay. Therefore, the cause of action relates back to 7.12.1983 based on the reliefs prayed for. As brought out earlier in para 8 above, there were ^{also} several other occasions subsequently to 7.12.1983, when the applicant could have agitated the matter. However, it is noted that applicant kept quiet as there is no averment to this effect that he represented on the matter at any time. First time he represented only in 1992 and his representations were disposed of as per the letter dated 25.8.1993. He again represented on 14.12.1993 which was replied by letter dated 17.2.1994 reiterating that the reply has been earlier sent on 25.8.1993. The applicant in the OA. has stated that the same is within the limitation period as per Section 21 of the A.T.Act, 1985. The counsel for the applicant during the hearing contended that the OA. has been filed with reference to rejection of his representation on 17.2.1994 and is therefore

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within limitation period. This presumption of the applicant is not tenable. The delay has to be explained with reference to when the first cause of action arose. If an employee keeps quiet for several years and then makes a representation for his grievance and the same is replied then such a reply by the Department cannot be the reference point for running of limitation and explanation for delay and laches. The applicant has not made any explanation for the inordinate delay. There is no application for condonation of delay. Even after the respondents made strong opposition to the OA, in the written statement on account of limitation and delay and laches, the applicant has not reacted. .

10. Now we refer to the judgements cited by the counsel for the respondents in support of their plea of limitation and delay and laches :-

(a) B.S.Bajwa & another vs. State of Punjab
1998 (1) SCC SLJ 168

In this case the appellants joined in service in 1971-1972 and filed Writ Petition in 1994 for their grievance relating to the seniority. The High Court allowed the Writ Petition. However, the Apex Court has not approved the decision of the Hon'ble High Court and set aside the order holding that delay itself was sufficient to decline interference under Article 226. It is further observed in para 4 that in service matters, the question of seniority should not be opened after a lapse of reasonable period because that results in disturbing the settled position

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which is not justifiable. In the present case, the facts are the same as the applicant is seeking absorption and seniority as ECRC from 1983 by filing the present OA. in 1994. Therefore, on the ratio of what is held in this judgement, the OA. suffers from delay and laches and ^{is} barred by limitation.

(b) Ramesh Chand Sharma vs. Udham Singh Kamal & Ors.
1999 (2) SC SLJ 294

In this case, the OA. was allowed by the Tribunal on merits although it was hit by limitation and the respondents had taken the plea of limitation. The Hon'ble Supreme Court while setting aside the order of the Tribunal has held that since OA. against the order of non promotion was time barred and no application for condonation of delay had been filed, the Tribunal was not right in deciding the OA. on merits overlooking the statutory provisions contained in Section 21(1) & (3) of A.T.Act. In the present case also the applicant has not filed any application for condonation of delay inspite of the objection of limitation being raised by the respondents. The OA. is barred by limitation as per the facts brought out in para 8 & 9 above and therefore, this judgement squarely applies.

(c) Bhoop Singh vs. Union of India & Ors.
(1992) 21 ATC 675

In this case, some of the employees whose services were terminated promptly filed petition before the Court/Tribunal and obtaining orders of quashing their termination and consequential relief of reinstatement.

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The appellant filed petition before Tribunal after 22 years claiming the relief of reinstatement on the ground of discriminatory treatment in granting the same relief to his co-employees. Relief was refused by the Tribunal on the ground of laches. Hon'ble Supreme Court has upheld this decision observing that ground of discrimination consequent on refusal to grant the relief cannot stand when the claimant himself is indolent unlike his co-employee and therefore cannot be classified with the co-employees since non discrimination under Article 14 is based on equitable principle. In the present case, situation obtainable is identical. The applicant claims the benefit of the judgement dated 24.1.1984 being similarly situated by filing the present OA. on 29.12.1994. The applicant chose to remain silent for long till he was promoted to the post of ECRC after change of category as Assistant Commercial Clerk. The applicant prays for relief which will disturb the seniority position which has been in existence for more than 10 years. There is no explanation leave aside the satisfied explanation for the delay. In view of the law laid down by the Hon'ble Supreme Court in this judgement, the inordinate and unexplained delay is itself a ground to refuse the relief and the plea of discrimination is not tenable.

11. Based on the facts brought out in the paras 8 and 9 and the law laid down in the judgements of the Apex Court as relied upon by the respondents and reviewed in para 10, we come to the conclusion without any hesitation that the present OA. is hit by limitation and delay

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and laches and the OA. deserves to be dismissed on this ground itself.

12. The counsel for the applicant strongly contended during the hearing that Administration was expected to extend the benefit of the High Court judgement dated 24.1.1984 in Writ Petition No. 413/1980 (supra) to all similarly situated persons like the applicant. The counsel for the applicant has relied upon the following judgements of Hon'ble Supreme Court/order of the Tribunal:-

- (a) Gopal Krishna Sharma & Ors. vs. State of Rajasthan & Ors., 1993 SCC (L&S) 544.
- (b) Inder Paul Yadav & Ors. vs. Union of India 1985 SCC (L&S) 526.
- (c) H.K.Anand & Ors. vs. Delhi Administration & Anr. (1993) 23 ATC 225.

On going through the judgement, first we note that the applicant is not similarly placed. The applicant was engaged as substitute ECRC and Railway Board approved regularisation in the entry grade of Rs.260-430 as Office Clerk. The petitioners in the Writ Petitions No. 413/80 & Ors. (supra) were regular employees and working as ECRC on promotion on adhoc basis but were not regularly promoted as the administration decided to fill up the posts of ECRCs by lady employees only. Secondly, the judgement does not lay down that it will apply to all those who are similarly placed. Therefore, if the applicant felt that he was similarly situated, then he should have made representation for the same. In the event of refusal of extending

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the benefit, the applicant could have sought the legal remedy at the proper time. However, the applicant did not make any representation as is obvious from the averments in the OA. and material brought on the record. In the light of these observation, we are unable to endorse that what is held in the cited judgements apply to the case of the applicant. As discussed earlier, the judgement of the Hon'ble Supreme Court in the case of Bhoop Singh applies on all fours to the present OA.

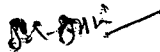
13. During the hearing, the counsel for the applicant made another submission that since the Hon'ble High Court held in its judgement dated 24.1.1984 (supra) that confining the filling of the posts by lady employee is in violation of Articles 14 & 16 of the Constitution of India, his absorption as Office Clerk was illegal and void ab-initio. Therefore, the counsel for the applicant submits that the order dated 7.12.1983 cannot legally survive and the applicant is required to be taken regularised as ECRC from 7.12.1983. Such a plea has neither been taken in the OA. nor any relief prayed to this effect. However, we are of the view that this plea has no merit. In any way, as brought out in para 12, we are of the opinion that the judgement dated 24.1.1984 does not apply to the case of the applicant. However, even for a moment, the contention of the applicant is accepted, then the applicant should have challenged the order dated 7.12.1983 and got it declared as void. A void order legally stands as long as it is not declared so.

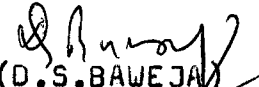
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The challenge of the void order is also governed by the law of limitation. In this connection, we find authority in the judgement of Hon'ble Supreme Court in the case of State of Kerala vs. M.K.Kunhikanan Nambier Manjeri, 1996 SCC (L&S) 435.

14. Since we have held that the OA. is not maintainable on the grounds of being barred by limitation and suffering from delay & laches, we decline to go into the merits of the reliefs prayed for. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of B.S.Bajwa (supra). After holding that Writ Petition deserved to be dismissed on the ground of inordinate delay, their Lordships in the para 7 have stated "In view of the above conclusion, it is not necessary for us to express any opinion on the merits."

15. In the light of the above deliberation, the OA. deserves to be dismissed and is accordingly dismissed. No order as to costs.


(S.L.JAIN)
MEMBER (J)


(D.S.BAWEJA)
MEMBER (A)

mrj.