

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 308/97

Date of Decision : 21st Feb., 2003

D.V.Kulkarni	Applicant
Shri G.S.Walia	Advocate for the Applicant.

VERSUS

Union of India & Ors.	Respondents
Shri V.S.Masurkar	Advocate for the Respondents

CORAM :

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

The Hon'ble Smt. Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *no*
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.308/97

Dated this the 21st day of Feb., 2003.

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

Hon'ble Smt.Shanta Shastri, Member (A)

D.V.Kulkarni,
Male Nurse,
Central Railway Dispensary
Traction Machine Workshop,
Nasik Road.

...Applicant

By Advocate Shri G.S.Walia

vs.

1. Union of India
through General Manager,
Central Railway,
Mumbai CST, Mumbai.
2. Chief Personnel Officer,
Central Railway,
Mumbai CST,
Mumbai.
3. Divisional Railway Manager,
Bhusawal Division,
Bhusawal.

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri S.L.Jain, Member (J)}

The applicant seeks declaration that he is entitled to promotion to the post of Male Nurse (Rs.455-700) (Rs.1640-3200) w.e.f. July,1987 on the retirement of Shri C.K.Chavan, with all consequential benefits of arrears of pay, increments, seniority and interest on delayed payment @ 18% p.a., on completion of two

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years service after promotion to the lower scale of Rs.1640-2900 or immediately after completion of training as contemplated under Railway Board letter dated 7.1.1969 with all consequential benefits of pay, increments, seniority etc. with interest @ 18% p.a., declaration to the effect that in the year 1987 the decentralization had not taken place in so far as the Male Nurses are concerned.

2. The applicant was appointed as a Male Nurse on or about 27.11.1979 in the then Scale of Rs.425-640 (Ex.B). The seniority and promotion at that time was controlled by the Head Quarters office of Central Railway. The name of the applicant is at Sr.No.4 in the seniority list of Male Nurses Grade Rs.425-640. The next promotional post is in the scale of Rs.455-700 which was to be granted to him on the basis of seniority-cum-suitability. In July,1987 a post in the promotional scale fell vacant. The applicant being seniormost person to be promoted, however he was ignored. The seniority list of Male Nurses was not circulated at Bhusawal and he was not aware of the inter se seniority list of the Male Nurses. The applicant by his representation dated 8.7.1987 requested for the interpolation of his name in the list of Staff Nurses (Ex.C). By his letter dated 27.4.1991 he made a further request for considering and according him higher promotion.

3. By Circular dated 7.6.1969 it was decided by the Railway Board in respect of channel of promotion for Male Nurses that Male Nurses Gr.Rs.210-380 may be considered for promotion to the post of Matron, Gr.III, scale Rs.250-380, if they fulfill the

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requisite qualification (Ex.E). The respondents did not implement the said Railway Board Order dated 7.6.1969 upto the year 1993. Total cadre being of 9 posts of Male Nurses in whole of Central Railway, the question of decentralisation of these posts did not arise and if the seniority and promotions were decentralised, there should have been proper allocation of promotion posts to the respective divisions. However, by order dated 29.5.1981 the respondents sought to decentralise the cadre of Male and Female Nurses.

4. Bhusawal Division was never advised about the decentralisation of the cadre of Male Nurses. The seniority list of Female Nurses was published on 1.10.1993 (Ex.I). The name of the applicant is not included in this seniority list.

5. The applicant was promoted on 23.12.1994 as a Nursing Sister in the Grade of Rs.1640-2900 (Ex.J). The applicant represented by letter dated 29.12.1994 regarding his non promotion in December, 1987 and later in Grade Rs.2000-3200 (Ex.K). He has also preferred an appeal (Ex.L). By letter dated 12.1.1994 and 3.1.1995 the National Railway Mazdoor Unions represented the case of the applicant and by letter dated 18.1.1995 (Ex.N) Assistant Personnel Officer, Bhusawal replied the same. By impugned order dated 1/3.4.1996 the respondents have replied to the Union rejecting the claim of the applicant. Hence, this OA. for the aforesaid relief.

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6. The claim of the applicant is being resisted by the respondents. Firstly, on the ground that OA. is barred by time as it is delayed by 11 years. We shall first deal the ground of limitation raised by the respondents and thereafter the other grounds raised, if necessary, after deciding this issue.

7. The applicant has filed this OA. on 14.1.1997 claiming the cause of action to be on 1.4.1996 (Ex.A) reply to the General Secretary, National Railway Mazdoor Union, Central Railway, CCC Society Building, Byculla, Mumbai.

8. The learned counsel for the respondents relied on letter dated 29.12.1994 (Ex.K) of the applicant raising grievance about his non promotion after he was promoted, on the basis of the said letter, he argued that it may or may not be a fact that regarding decentralisation of the cadre, the official respondents were aware but at least the applicant was aware of the same since 29.12.1994. Thereafter, the applicant represented the matter but even after receipt of the reply, he failed to agitate the matter within the time prescribed under Section 21 of the Administrative Tribunals Act, 1985. As such, the OA. is barred by time.

9. The grievance raised by the Union and reply to the same vide 'Ex.A' dated 1/3.4.1996 can not be a ground to entertain the OA. As the cause of action has already accrued to the applicant much prior to the matter being represented by the Union dated 14.5.1995. We have given our considered thought on the question

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involved. The grievance raised by the Union and reply to the same to the Union by the respondents can not be a cause of action for the applicant to agitate the matter claiming the OA. to be well in time.

10. As stated above, vide 'Ex.K' letter dated 29.12.1994 the applicant has raised his grievance. As such, the cause of action accrues to the applicant if no reply is received, after six months commencing w.e.f.29.12.1994 and thereafter he can agitate the matter within one year. Thus, total period within which he can agitate is one year and six months commencing w.e.f. 29.12.1994. As such, OA. is barred by time as it is filed on 14.1.1997.

11. We are in agreement with the learned counsel for the respondents that the OA. is barred by time in view of Section 21 of the Administrative Tribunals Act, 1985.

12. As the OA. deserves to be dismissed solely on this ground, the matter on merits need not to be considered 2000 SCC (L&S) 53 - Ramesh Chandra Sharma vs. Udham Singh. The OA. is dismissed with no order as to costs.

Shanta Shastri

(SMT.SHANTA SHASTRY)

MEMBER (A)

S.L. Jain

(S.L.JAIN)

MEMBER (J)

mrj.