

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

T.A.No.1310/86

Date of Order: Jan. 22, 1992.

RAJ SINGH YADAV

- Applicant.

Versus

Union of India

- Respondents.

Mr. C.C. Jain

- Proxy Counsel for
Mr. M.S. Singhvi,
Counsel for Respondents.

1. To be referred to the Reporter or not? N

2. Whether it needs to be circulated to
other Benches of the Tribunal? Y

CORAM :

Hon'ble Mr. B.B. Mahajan, Adm. Member

Hon'ble Mr. Maharaj Din, Judl. Member.

Hon'ble Mr. B.B. Mahajan, Adm. Member :

Raj Singh Yadav had filed a suit in the court of District Judge, Ajmer on 27.11.80 for declaration that the tentative seniority list of Class III Depot Staff of Store Department on the basis of seniority position as on 2.11.59 notified on 18.9.78 is wrong and illegal and that the seniority list dated 1.2.71 is in force or in the alternative that the plaintiff holds S.No.11 in the tentative seniority list dated 18.9.78 and



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that his reversion orders dated 31.10.75 from the post of Depot Store Keeper Gr.I to that of Depot Store Keeper Grade II are illegal. He had also prayed for declaring that he was entitled to be promoted as Assistant Controller of Stores from 26.10.75, when his junior Shri B.J. Joshi was promoted as such and consequently he was entitled to recover Rs.13140/- on account of arrears of pay and allowances etc. with interest. The suit had been transferred to the Tribunal under section 29 of the Administrative Tribunals Act, 1985.

2. The case of the applicant is that he had joined the services of the now defunct Bombay Baroda & Central India Railways (B.B.&CI) as a clerk on 9.4.1942. In the wake of reorganisation of the various Railways, B.B.&C.I. Railway was merged with various other Railways and with effect from 5.11.51 Western Railway came into existence. Each Stores Depot of the Zonal Railways became a separate unit of promotion and the staff working in these districts began to seek further promotions as per avenues provided to them in the District concerned upto and including level of Ward Keeper scale Rs. 425-600 (Revised Pay Scale). By the order dated 3.11.59 the Controller of Stores, Western Railways, Bombay sought to create two categories viz., Ministerial and Non-ministerial and gave option to the ~~same~~ serving staff. Certain staff of Mahalaxmi



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Store Depot challenged the order dated 3.11.59 by a writ petition in the Bombay High Court. The applicant was promoted as Officiating D.S.K. Grade-I from D.S.K. Grade-II with effect from 17.6.75. He was however, reverted as D.S.K. Grade-II vide order dated 31.10.75. A tentative seniority list of Class III depot staff of the Store Department was notified on 18.9.78. The applicant had submitted his representation on 13.10.78 within time of one month allowed for the purpose. No reply had been received by him. According to the applicant, his juniors were subsequently promoted to the post of D.S.K. Grade I and even to the higher post of Asstt. Controller of Stores. Sh.B.J. Joshi junior to him was promoted as Assistant Controller of Stores from 26.10.75. The applicant has since retired from Store Railway service on attaining the age of superannuation on 31.7.80.



3. The respondents in their written statement stated that in the writ petitions filed by the certain staff of Mahalaxmi Bombay Store Depot challenging the order dated 3.11.59 issued by the Controller of Stores Bombay, the Bombay High Court granted permission to Railway Administration to make adhoc promotions in the Stores Department. In accordance with that permission, promotions were made on adhoc basis on the basis of district-wise seniority as it stood on 2.11.59. The High Court

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disposed of the writ petition vide its order dated 21.4.69, setting aside the order dated 3.11.59 and consequential seniority lists published on 27.8.62 and 7.2.67. The respondents challenged judgment of the High Court in appeal but the appeal was dismissed by the Division Bench. Thereafter respondents were bound to implement & the judgment of the High Court. Shri B.J. Joshi, Sh. B.V. Yagnik who according to the applicant were junior became senior & in view of the judgment of the Bombay High Court and accordingly promotions were given to them in preference to the applicant. A writ petition in the matter had been filed in the Gujarat High Court also which passed an order dated 12.5.77 restraining the respondents from operating/implementing the orders of promotions passed on seniority list as on 2.11.59. Ultimately the Gujarat High Court directed on 7.7.77 that the seniority list as existing on 2.11.59 should be finalised after inviting objections from the persons mentioned therein. Accordingly, fresh seniority list which has been impugned was prepared. It has been stated that the combined seniority list has been prepared as per the position held on 2.11.59 by the employee and not on the basis of date of appointment in the Railways service. The challenge by the applicant to seniority of certain employees on the ground that they have been given higher seniority than him although they were appointed later in the Railway service, thus, does not hold. In regard to



the allegations in para 12 of the plaint that one Sh.B.H. Rana, who was junior to him in the tentative seniority list circulated on 18.9.78, confirmed to work as D.S.K. Grade I while the applicant had been reverted on 31.10.75, it has been explained that Sh.Rana was serving in a different district and since adhoc promotions have been given on district seniority, the ~~same~~ applicant cannot compare his case with that of Shri Rana. It has been stated that the applicant was junior as per the seniority of Ajmer District and was therefore rightly reverted. It has also been explained that prior to the judgment in the writ petition given by the Bombay High Court on 21.4.69 selection/suitability test were conducted in the Stores Department as per seniority position in the respective cadres viz., ministerial, non-ministerial and establishment cadre as per the bifurcation scheme and staff were also promoted as per panel position. However, when subsequent promotions were ordered on the basis of seniority as on 2.11.59 vide the order dated 16.12.78, certain officials who were already selected and promoted and filed the writ petition in the Gujarat High Court and they were given adhoc promotions in accordance with the order of Gujarat High Court. Since the applicant was working in Ajmer District, the decision of the Gujarat High Court was not applicable to him. In regard to the claim of the applicant for seniority on the basis of position in the panel of D.S.K. Grade I prepared



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on 1.2.71, the respondents have explained that in view of the judgment of the Bombay High Court, the seniority has been reckoned on the basis of position on 2.11.59 and subsequent panels which have been prepared on the basis of seniority list prepared after bifurcation of cadres on 3.11.59 had ceased to be operated. Further promotions had therefore been given on the basis of seniority position as on 2.11.59 and not on the basis of position in the subsequent panels.

4. We have heard applicant in person and counsel for respondents.

5. The respondents have raised preliminary objections that the plaint is barred by limitation and necessary parties had not been impleaded. So far as limitation is concerned, the suit had been filed in the district court on 27.11.80. It was therefore, beyond limitation, so far as the order of reversion of the applicant from the post of D.S.K. Grade-I to that of D.S.K. Grade-II issued on 31.10.75 and the promotions of Shri B.J. Joshi as Assistant Controller of Stores from 26.10.75 are concerned. It is however within limitation so far as the tentative seniority list of 18.9.78 is concerned. The applicant has neither in his suit before the Civil Court nor in the affidavit filed before the Tribunal in respect of claim in the suit and the rejoinder filed before the Tribunal shown



how the claim against the order of reversion dated 31-10-75 or promotion of his junior on 26.10.75 were within limitation. In the suit, he has stated that the starting point of limitation is 1.5.80 by which time his representation dated 13.10.78 and 10.4.80 should have been decided by the Railway Administration. These representations dated 13.10.78 and 10.4.80 were however, against the tentative seniority list and not against the order of his reversion dated 31.10.75 or promotion of junior dated 26.10.75. The applicant has referred to the judgment of the Hon'ble Supreme Court in State of M.P. v. Syed Qamarali 1967 S.L.R. 228. In that case, the order of dismissal was made in breach of a mandatory provision of the Rule and it was therefore held that the order of dismissal had no legal existence and the defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid was rejected. That ruling does not apply to the present case. It has not been shown that the order dated 31.10.75 regarding applicant's reversion ~~exists~~ and dated 26.10.75 regarding promotion of his juniors were made in breach of any mandatory statutory provisions. He has also referred to the judgment of the Hon'ble Supreme Court in Ramchandra Shankar Deodhar & ors. v. The State of Maharashtra & ors. 1974 (1) S.L.R. page 470, in which it was held that the rule which says that the court may not enquire into belated and stale

claims is not rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. That judgment was however, in the case of writ petition filed in the Hon'ble Supreme Court under article 16 read with article 32 of the Constitution and has no application to the present case of suit filed by the applicant. The applicant has also not filed an application for condonation of delay. In the circumstances preliminary objection is upheld so far as the order of reversion dated 31.10.75 and order of promotion dated 26.10.75 of his junior are concerned.

6. So far as the tentative seniority list dated 18.9.78 is concerned, the respondents have raised another preliminary objection that the persons against whom the applicant is claiming seniority have not been made parties. In the suit, while the applicant had specifically challenged tentative seniority list issued on 18.9.78 and asked for his being assigned S.No.11 in that seniority list, he has not impleaded any of the persons who would be adversely affected if he were to be assigned that seniority position. The applicant has referred to the judgment of the

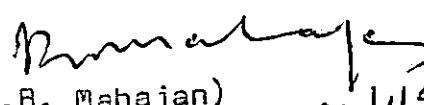
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Hon'ble Supreme Court in A.I.R. 1983 SC 765 A
Janardhan v. U.O.I. in which it was held that in a
case where general orders of seniority are challenged
and no relief is claimed against any individual,
the proceedings are analogous to those in which the
constitutionality of statutory rule regulating
seniority is assailed and in such proceedings
the individuals whose seniority may be affected
are not necessary party. That ruling is not
applicable to the present case as the applicant
had not sought quashing of any general orders
regulating the seniority but specific seniority
list and his position in the seniority list versus
certain other officials who according to him were
junior but had been assigned a higher seniority
have been challenged. The persons who would be
adversely affected by an order in favour of the
applicants in this suit were necessary parties and
their non-joinder is fatal to the suit.

7. In view of the above, it is not necessary
to examine the suit/T.A. on merits. The T.A. is
dismissed as it was barred by limitation, so far as
the order of reversion dated ~~31.10.75~~ 31.10.75 and
promotion of junior dated 26.10.75 are concerned
and is bad on account of non-impleading of necessary
parties, so far as the tentative seniority list
dated 18.9.78 is concerned. The T.A. is accordingly
dismissed with no order as to costs.


(Maharaj Din)
Judl. Member


(B.B. Mahajan)
Adm. Member.

22/11/91