

144

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH

AT HYDERABAD.

..

O.A.No.754/1992 with M.A.934/92.

with M.A.39/93

Date: October 7, 1996.

Between:

- 1. A. Baburao.
- 2. M. Satyanandam.
- 3. Y. Ramanarao.
- 4. G. Kalidas.
- 5. Amreeka Singh.
- 6. B. Ananda Rao.
- 7. Ch-Satyam.

.. Applicants.

And

- 1. Union of India represented by the General Manager, S.E.Railway, 11 Garden Reach, Calcutta 700 043.
- 2. The Chief Personnel Officer, S.E.Railway, 11 Garden Reach, Calcutta 700 043.
- 3. The Chief Electrical Engineer, S.E.Railway, 11 Garden Reach, Calcutta 700 043.
- 4. The Divisional Railway Manager, S.E. Railway, Waltair, Visakhapatnam 530 004.
- 5. The Senior Divisional Electrical Engineer (TRS), South Eastern Railway, Electric Loco Shed, Marripalem, Visakhapatnam 530 018.
- 6. The Divisional Personnel Officer, S.E.Railway, Waltair, Visakhapatnam 530 004.

Respondents.

Counsel for the Applicant: Mr. G. Ramachandra Rao.

Counsel for the Respondents: Mr. D. Francis Paul.

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER (A).

--

O R D E R.

(PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.)

..

Mr. Seetaramaswamy for the applicants.

Mr. D. Francis Paul for the respondents. The O.A.

was filed on 4-8-1992 declaring that the Application

*full*

: 2 :

~~was filed on 4-8-1992 declaring that the application~~  
was within the period of limitation prescribed under  
Sec.21 of the Administrative Tribunals Act and in that  
connection it was stated that representations filed by  
the applicants were not finally disposed of that the  
last of which ~~was~~ filed ~~was~~ on 27-3-1992. However  
even after that statement having been made, M.A.934/92  
was filed praying for condonation of delay of 444 days.

No orders on that M.A., have so far been passed. The  
Proceedings sheet shows that O.A., was admitted on  
29-6-1993 subject to the objection as to limitation.  
We are therefore required to examine the question of  
limitation in the first instance and if ~~only~~ the delay  
is condoned <sup>then only</sup> the other questions on merits can be examined.

We are however not satisfied that the delay in this  
case can be condoned.

2. The relief claimed by the applicants  
inter alia is as follows:

i) The minutes of the meeting held between  
the Railway Authorities and the S.E.Railways  
Men's Union dated 10-7-1985 on the point  
of assignment of seniority is illegal,  
arbitrary and void ab initio and may be  
set aside

ii) The respondents may be directed to restore  
the original combined seniority list of the  
applicants as in 1985 before the separation  
of the seniority lists and promote them

*hsl*

to the highly skilled Grade-I from the date of their juniors were promoted i.e., 4-5-1991 and give them consequential benefits.

3. Apparently the second prayer was depending on the challenge made in the first prayer which related to the decision taken in the joint meeting held on 10-7-1985.

4. It may be mentioned that the counter filed by the respondents shows that the policy decision on 10-7-1985 was taken after due consideration of all aspects of different cadres in consultation with the two recognised Unions as per rules and procedure by the Division to remove the anomalies and injustices crept into the combined seniority list. A copy of the decision taken is at Annexure A-7 dated 10-7-1985. It shows that there were two panels published one on 6-8-1981 and the other on 12-3-1981. One panel consisted of 24 candidates as Fitters, Electricians and allied trades and the other panel consisting of 34 candidates for ancillary trades like Welders, Carpenters, Masons etc. It is mentioned that the panel drawn on 11-6-1982 was for isolated categories. After a discussion decision was taken that isolated categories should be segregated from the general group of fitters and a separate seniority list will be maintained for the isolated categories and Khalasis willing to come into the isolated categories <sup>who</sup> may be given proper training and promotion in the isolated categories.

hcc

It was also decided that isolated category group should be given highly skilled posts on proportionate basis for which purpose highly skilled posts should be kept floating so that if the senior happens to be in a trade different from the one which is provided with highly skilled Grade II or I, the post can be pin-pointed in the different trade.

The applicants fall in the category ~~prescribed~~ as isolated category as per the decision taken. As stated earlier this decision was taken in consultation with the two recognised Unions. The additional counter of the respondents shows that copies of the decision were forwarded for information to the Secretaries of the respective Unions. It is not the case of the applicants that they were not members of the Unions ~~or~~ <sup>are</sup> not bound by the decision agreed to by the Trade Unions.

In pursuance of the decision taken on 10-7-1985 the seniority list was published consistently on 25-5-1987 and it is ~~ascertained~~ <sup>known</sup> in the additional counter of the respondents that the applicants had individually noted the same. It is stated that ~~excluded~~ two posts ~~thereof~~ were exclusively ancillary posts. The said list is at Annexure A-12. The names of applicants 1 to 7 are contained in that list. In addition to them there were four other persons shown in that list. That list was issued by

hsl

: 5 :

DRM(P)WAT. The subject mentioned in that is -  
Provisional Seniority list of ancillary skilled Grade.II  
Artisan staff of Elect.(RSM) Branch/Waltair Division  
as on 25-5-1987. In the note below to this list, it is  
mentioned that, 'This seniority list is provisional  
and should be given wide publicity amongst the staff  
and representation if any should be submitted within a  
month from the date of publication of this seniority  
list failing which it will be treated as final and no  
representation will be entertained in this regard.'  
As per the normal procedure, the list should have been  
published and it is not expected to be served individually  
on all the workers. It was therefore necessary for  
the applicants to file a representation within a period  
of one month if they were aggrieved by the said seniority  
list which they did not do.

The applicants filed a representation for the  
first time Annexure A-3 on 17--11--1989. Applicant  
No. 5, Amreek Singh was however ~~was~~ not a party to the  
said representation even so he has joined in this O.A.  
In that representation there were some other workers also  
and the total No. was 14. In the second para, it is  
stated that 'the DPO/S.E.Rly. WAT published seniority list  
vide letter No. WPV/RSM/Gr.III/ANC dated 28.11.1988 <sup>(and)</sup> has  
separated their seniority with other fitters of this shed'  
which was wrong. In para 3 it is stated thus:

*Sub*

: 6 :

"We came to know that this type of separate seniority does not exist in other Elec. Loco Sheds of this Railway....."

There is not even one word to say as to when they actually came to know about the <sup>Seniority</sup> list that was issued on 25-5-1987 or of the letter dated 28-11-1988 much less about the decision now sought to be impugned of the joint meeting dated 10-7-1985. Even otherwise, the applicants had to approach within one year from the expiry of six months from the date of that representation i.e., 17-11-1989. Thus the limitation expired on 17-5-1990. This is so because as the applicants have stated <sup>that</sup> there was no reply to their representation. The O.A., however having been filed on 4-8-1992 is clearly barred by limitation. Had there been any explanation offered in the first representation dated 17-11-1989 we could have considered the question as to whether it should be condoned. Moreover, it cannot be believed that the applicants would be unaware of the decision taken when the Trade Unions representing their interests along with the other workers had been furnished with the copies of the decision and it is also unbelievable that the seniority list dated 25-5-1987 could not be within their knowledge and they could not have filed representations against it.

It is sought to be explained that the applicants had filed a further representation on 12-6-1992 a copy thereof

*hmc*

is at Annexure A-14. That does not refer to any earlier representation in clear terms but the averments made were relating to trade testing which ~~has been~~ <sup>questioned</sup> arisen at that point of time consequent upon the letter issued by the DPO/SE Rly. dated 28-5-1992. Earlier to that it appears that on 27-3-1992 a representation had been filed i.e., at Annexure A-5. There is absolutely no explanation as to why the applicants did not challenge the seniority list issued on 25-5-1987 based on a challenge to the decision taken in the joint meeting on 10-7-1985 although it was contended that the decision taken on 10-7-1985 was not followed. What is however more ~~discouraging~~ <sup>damaging</sup> to the applicants on the point of time is that they themselves referred to the joint meeting dated 10-7-1985 <sup>have</sup> ~~signed~~ <sup>attended</sup> jointly by Senior DEE(TRS) Senior DPO, ~~as~~ representatives of the two recognised Unions of S.E.Rly and further more they are thinking to approach the Central Administrative Tribunal seeking remedies but had preferred to exhaust remedial measures and therefore they were submitting the representation. This representation therefore may not be read as in continuation of 1985 representation. It was a step taken for the first time in 1992 independently of the earlier representation although reference ~~having filed~~ <sup>having been filed</sup> to that representation has been made in this representation. The explanations sought to be offered in the O.A.

as to limitation would start from the last representation  
<sup>therefore</sup>  
filed in 1992 on 12-5-1992 cannot be accepted.

In the application for condonation of delay  
it is stated that the joint decision dated 10-7-1985; nor  
the decision of 1985; nor the separate seniority list  
published on 25-8-1987 was circulated to the applicants  
nor the same was noted by them; nor the minutes were  
circulated to the affected parties nor consent of the  
applicants was obtained for implementing the minutes.

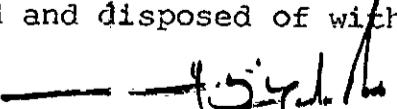
The applicants came to know of the separation of the  
seniority list long after the publication of seniority  
list sometime in September, 1989 and thereafter they  
sent their representation/17-11-1989. All these  
contentions are contrary to the prevailing norms and  
cannot be accepted. The time of knowledge i.e.,  
September, 1989 was not mentioned in the ~~very~~ representation  
dated 17-11-1989. That apart even if September, 1989 is  
taken as the date of knowledge and even if the period of  
<sup>18</sup>  
six months is counted from the date of filing of the  
representation of 17-11-1989, the application was clearly  
not barred by limitation and 1992 representation would/extend  
that limitation.

The learned counsel for the applicants referred  
to several rulings including that of the Supreme Court  
on the point of condonation of delay. In our view, it  
is unnecessary to discuss those rulings as the question of  
limitation depends on the facts of each case and cannot be

: 9 :

put in a straight jacket. We are conscious of the fact that under <sup>Service</sup> Juris Prudence, the Tribunal ~~should~~ <sup>ought</sup> not take <sup>a</sup> the very narrow or a technical view on the point of limitation and it may ~~extend~~ <sup>exercise its</sup> the discretion to condone the delay, but that can be done <sup>only</sup> where there is likelihood of failure of justice unless the limitation is not condoned and <sup>if</sup> the case is not heard on merits. On going through the explanation offered by the respondents in their counter, we are not satisfied that this is a case where if we do not condone the delay serious prejudice is likely to occur to the ~~respondents~~ (applicants) or failure of justice is likely to result. We do not discuss those aspects on merits because we do not think that would be permissible since we are not inclined to condone the delay. In the result we reject the application for condonation of delay and hold that the O.A., is not maintainable as it is barred by limitation. Consequently M.A.934/92 is dismissed and the O.A., stands rejected.

It appears from the record that M.A.39/93 for directions has not been disposed of. The same is heard and disposed of with no orders thereon.

  
H. RAJENDRA PRASAD  
MEMBER (A)

  
M.G. CHAUDHARI, J  
VICE-CHAIRMAN.

sss.

Date: October 7, 1996.

-----  
Pronounced in open Court.

Deputy Registrar (J) 7-11-96.