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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No.1107 of 1993.

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

Date: August 22, 1996.

Between:

S.R.Shenoy. Applicant.

And

1. The General Manager, South Central Railway, Secunderabad.
2. The Chief Electrical Engineer, South Central Railway, Secunderabad.
3. Senior Divisional Electrical Engineer (Broad Guage), South Central Railway, Secunderabad.
4. Chief Personnel Officer, South Central Railway, Secunderabad. RESPONDENTS.

Counsel for the Applicant: Sri K.K.Chakravarthy.

Counsel for the Respondents: Sri C.V.Malla Reddy, Standing counsel for the Respondents.

CORAM:

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

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

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O R D E R.

The applicant seeks a direction to the Respondents to promote him to the post of Electrical Chargeman in the grade of Rs.205-280 along with one J.Yadagiri, Electrical Maistry and other eligible category from 1969 and to give him further promotions on that basis. He further prays that the Respondents

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be directed to fix his pay in the appropriate scale after granting further promotions and fix his pension in the revised grade with arrears due.

2. The applicant entered the Railway service as Khalasi in the Central Railway on 25-2-1959. In due course he was promoted as Assistant Progress Supervisor in November, 1964 in the Central Railway. That post was an Ex-cadre post in the Technical cadre. The applicant appeared at the examination for selection to the next higher post of Electrical Chargeman but he was not appointed. That was in the year, 1967. In the subsequent selections from the year, 1969 onwards the name of the applicant was not included in the selected candidates. However, J.Yadagiri and others were selected. The applicant represented against his non-selection. But he was replied by the South Central Railway to which he had in the meantime been transferred after the formation of South Central Zone that he was not eligible for the said promotion.

The applicant continued to make representations intermittently thereafter and a categorical reply with reasons rejecting his claim was given to him on 14-4-1978. He thereafter filed O.A.981/92 in this Tribunal. By the Order dated 16-12-1992 in that O.A., the respondents were directed to pass

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final orders on the representation of the applicant dated 10-6-1991. Pursuant to that direction, the Headquarters Office, Personnel Branch, South Central Railway considered the representation and rejected the same on 9-7-1993. Purporting to challenge the aforesaid Order dated 9-7-1993, the applicant has presented the instant O.A. on 19-8-1993 praying for the relief set out earlier.

3. The respondents resist the application. They reiterate the grounds that were stated in the letter of the respondents dated 14-2-1978 and 9-7-1993 and submit that there is no cause of action disclosed by the applicant since he was never eligible for the promotion as Electrical Chargeman.

4. The applicant was intimated as far back as on 14-2-1978 as follows:

While working as a skilled wireman in the grade of Rs.110-180(AS) at MTN(W/S) he was selected to the Ex-cadre post of Assistant Progress Supervisor in Gr. Rs.150-240 in the channel of promotion of the Technical staff of Central Railway. He was transferred to South Central Division and promoted to that category against an existing vacancy available at that time when that Division was under the control of Central Railway. The South Central Division was merged with South Central Railway from 2-10-1966 and he became an employee of South Central Railway. The post

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of Assistant Progress Supervisor ~~for treating~~ was ~~ed~~ as an ex-cadre post in the channel of promotion of clerical staff on South Central Railway. His further avenues of promotion in his parent cadre to the post of Electrical Inspector/Charge-man was through the category of highly skilled Artisan Grade II and I respectively in the channel of promotion of technical staff on South Central Railway. Promotions to those channels were finalised in consultation with the organised labour. He was therefore governed by those channels of promotion on South Central Railway and ~~he~~ cannot compare his position with reference to the channel of promotion or procedure followed on Central Railway. The matter was referred to the Central Railway and they also confirmed that on that Railway Assistant Progress Supervisor is considered for promotion according to his proforma position in his parent group only. As soon as he became due for promotion to the post of HSK II and I according to his turn and in the order of seniority in his parent cadre, he ~~would be~~ was called to appear for the trade test but he did not appear for the same. Consequently, his juniors who appeared for the trade test and passed the same in HSK II and I categories became senior to him. He was therefore advised in his own interest to appear for the test of HSK II and I immediately which was proposed to be conducted and he was informed that on his passing in the test he will be given proforma seniority in HSK II and I from the ^{due} date i.e., from the ^{due} date ~~the~~ when his Junior had been promoted. Thus he had not

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till then became due for promotion to the post of Electrical Charge-man in the parent cadre and therefore he was not called to appear for the selection to that post and grade. It was also clarified that promotional prospects from Railway to Railway differ and he could not compare the seniority position of one employee of Central Railway on date for the purpose of promotion on the South Central Railway.

5. The detailed reasons given to inform the applicant that he was not eligible for promotion to the post of Electrical Charge-man which is the relief now sought, clearly afforded cause of action to the applicant to make a grievance against the same within a reasonable time after 14--2--1978. It was after a long lapse of time i.e., of nearly 14 years, the applicant filed the earlier O.A., on the ground that his representation filed as late as on 10--6--1991 was not decided. Once the respondents had given detailed reasons to deny him the promotion in 1978, indeed there was no question of the respondents again and again inform the same thing to him merely because he chose to file representations at his convenience time and again. However even so, the earlier Bench had directed that the representation dated 10-6-1991 may be disposed of on merits. That is how the applicant had tried to file the ~~xxx~~ ^a instant O.A., at this belated stage.

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6. In reply dated 9-7-1993 the respondents have ~~said~~ ^{to} ~~the respondents stated~~ stated to the applicant that his representation d/10-6-1991 was carefully considered in compliance with the directions of this Tribunal and ~~said~~ that primarily the claim made in the representation dated 10-6-1991 ~~is~~ ^{was} nothing but renewing his representations dated 16-8-1973 and 9-12-1977 followed by interview with the General Manager on 20-8-77 and that his claim and that his claim reiterated in the representation dated 10-6-1991 had already been amply examined and disposed of in the year 1978 itself and after the disposal he had been silent all along and moved the Tribunal as late as on 10-6-1991 giving an impression wrongly that his grievance has not been settled and ~~this~~ ^{that} was noting ^{else} but a plea raised to overcome the law of limitation for filing the case. This is the purport and substance of ^{the} ~~said~~ reply. However, since the respondents had to comply with the direction of this Tribunal, they have re-examined the case and have stated that ~~xxxxxx~~ there was nothing new at this distant date to re-examine the case and there being no fresh issues involved, the points raised in ^{his} letter ~~were being disposed of reiterating what had already~~ dated 14-2-1978 for disposing ~~his~~ the representation dated 16-8-1977 of the applicant by reiterating what had been already stated in their letter dated 14-2-1978. It is only after making the stand clear that the respondents have also indicated as to/what reasons he had for not been found eligible for promotion as was stated in the letter dated 14-2-1978. In the end they have

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stated that the applicant had filed the appeal dated 10.6.1991

and the O.A., only few months before his superannuation and

that he had not been qualified in the trade test for the

post of highly skilled Grade II ^{and} I_A there was absolutely

no scope for his claim for advancement in the higher grade

and that too after his superannuation. A reading of the

reply dated 9-7-1993 shows that the claim of the applicant

had been finally rejected in the year, 1978 and that ~~as~~ ^{fact-} it was

merely reiterated in this reply. Thus there can

hardly be any doubt that the cause of action had arisen

on 14-2-1978 and that cannot be construed to have occurred

either in 1991 or 1993. The applicant is, therefore, however

~~wants~~ ^{warranted} to re-open the issue which was closed in the

year, 1978 after a very long lapse of time. This action attempt-

of the applicant suffers from laches which cannot be

condoned simply because the applicant keeps on harping

time and again that he should have been promoted in the

year, 1969. In this connection, it will be apt to refer

to the observations of the Hon'ble Supreme Court in the

decision in the case of BHOOP SINGH Vs. UNION OF INDIA

(1992 (21)ATC: 675):

"while repelling the unexplained delay,
the Hon'ble Supreme Court held:

"If the petitioner's contention is upheld
that laches of any length of time is of no
consequence in the present case, it would
mean that such Police Constable can choose
to wait even till he attains the age of

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superannuation and then assail the termination
the entire period on the same ground and that
would be a startling proposition. In our
opinion, this cannot be true import of Article 14
or the requirement of the principle of non-discrimi-
nation embodied therein which is the foundation
of petitioner's case."

7. Mr. K.K.Chakravarthy, learned counsel for the

by the Tribunal and the representation of the applicant was finally disposed of on 10-7-1993, that also after contempt petition had been filed, the laches must ~~be~~ be deemed to have been condoned and the application being in time, the applicant is entitled to have his case considered on merits. In this connection, the distinction between "Bar of limitation" and "laches" has to be borne in mind.

Whereas, "bar of limitation" is the creation of the Law

"laches" relate to the conduct of a person and even on

equitable grounds ~~he cannot be held, as equity does not~~ baches cannot be condoned

help ^{the} idolent. Moreover as the reply dated 10-7-1993 is

merely reiterating what was decided in 1978, the applicant

cannot hope to ~~know~~ ^{raise} overcome the ~~condonation~~ on his part

in not approaching the Court or Tribunal after the accrual

of the cause of action. Even though we cannot throw out

the application on the ground of bar of limitation, as

it may be construed to have been filed within the limitation



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✓ ⁹ yet -
from the reply dated 10-7-1993 it is liable to be
rejected on the ground of laches on the part of the
applicant in not seeking the remedy within a reasonable
time after the accrual of the cause of action. Merely
filing repeated representations for the same purpose
neither would extend the limitation in a given case
nor be sufficient to overcome the laches unless the
respondents had reopened the case and given a fresh
decision. That is not the case here. It has also
✓ to be borne in mind that a settled position over a ^{period of time} ~~proposed~~
actions cannot be unsettled and that situation arises where
the action suffers from laches. The application is,
therefore, liable to be dismissed on this ground.
Apart from the aforesaid conclusion, even on merits,
the reasons that were given by the respondents in their
letter dated 14-2-1978 after making due enquiries
with the Central Railway which are reiterated in the
✓ reply dated 9-7-1993 are cogent and based ^{upon} on the
applicable rules and therefore we see no reason not to
accept the reasons as sufficient to negative the claim
of the applicant. Merely because the applicant is a
retired person questions which have acquired finality
long ago cannot be reopened merely on the ground of
sympathy.

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8. We, therefore, hold that there is no merit
whatsoever in this O.A. ^{and} the same is liable to be dismissed.

The O.A., is dismissed. No order as to costs.



H. RAJENDRA PRASAD.
MEMBER (A)



M.G. CHAUDHARI, J
VICE-CHAIRMAN.

Date: August 22, 1996.

Pronounced in open Court.

Prashant
26/8/96
Deputy Registrar (D)ce

sss.

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 22-8-1996

~~ORDER~~ / JUDGMENT

M.A/R.A./C.A. No.

in
O.A.No. 1107/93

T.A.No. (w.p.)

Admitted and Interim Directions

Issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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