

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 Gauge), 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 ~~in~~ 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 <sup>was</sup> ~~for~~ <sup>-ed</sup> treating as an ex-cadre post in the channel of promotion of clerical staff on South Central Railway and his further avenues of promotion in his parent cadre to the post of Electrical Inspector/Chargeman 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~~ <sup>was</sup> 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 <sup>due</sup> ~~date~~ <sup>the</sup> ~~date~~ <sup>date</sup> i.e., from the date <sup>the date</sup> 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 Chareman 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<sup>ing</sup> 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~~ ~~xxx~~ instant O.A., at this belated stage.

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6. In reply dated 9-7-1993 the respondents have <sup>to</sup> ~~sent~~ <sup>the respondents stated</sup> stated to the applicant that his representation d/10-6-1991 was carefully considered in compliance with the directions of this Tribunal and stated that primarily the claim made in the representation dated 10-6-1991 <sup>was</sup> is 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 <sup>that</sup> this was not <sup>else</sup> ~~ing~~ but a plea raised to overcome the law of limitation for filing the case. This is the purport and substance of <sup>the</sup> ~~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 <sup>his</sup> ~~their~~ letter dated 14-2-1978 <sup>were being disposed of reiterating what had already</sup> ~~for disposing of 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 <sup>for</sup> as to what reasons he had 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 <sup>and</sup> I<sub>A</sub>, 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 <sup>fact</sup> ~~it~~ was ~~had~~ 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, <sup>would</sup> ~~has~~ 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-discrimination embodied therein which is the foundation of petitioner's case."

7. Mr. K.K.Chakravathy, learned counsel for the by the Tribunal and the representation of the applicant was finally disposed of on <sup>9</sup>10-7-1993, that also after contempt petition had been filed, the laches must ~~xxx~~ 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 <sup>laches cannot be condoned</sup> he cannot be held, as equity does not help <sup>the</sup> ~~idolent~~. Moreover as the reply dated <sup>9</sup>10-7-1993 is merely reiterating what was decided in 1978, the applicant cannot hope to ~~xxx~~ <sup>lapse</sup> overcome the ~~condonation~~ on his part in not approaching the Court or Tribunal after the accrual of the cause of action <sup>within a reasonable time</sup>. 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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✓ from the reply dated <sup>9</sup> 10-7-1993 <sup>yet</sup> 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 <sup>period of time</sup> ~~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

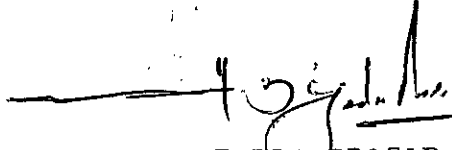
✓ reply dated 9--7--1993 are cogent and based <sup>upon</sup> on the  
applicable rules and therefore we see no reason not to  
accept the reasons as sufficient to negative the claim  
of the applicant. Merely because the applicant is a  
retired person questions which have acquired finality  
long ago 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. <sup>and</sup> the same is liable to be dismissed.

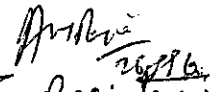
The O.A., is dismissed. No order as to costs.

  
H. RAJENDRA PRASAD.  
MEMBER (A)

  
M.G. CHAUDHARY, J  
VICE-CHAIRMAN.

Date: August 22, 1996.

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Pronounced in open Court.

  
Deputy Registrar (D) ce

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TYPED BY

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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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