

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.61/94

Date of order: 26/12/2000

M.P.Chaturvedi, S/o Shri Sukkhi Ram Chaturvedi, R/o C-79, Ranjit Nagar, Bharatpur, presently posted as IOW (Spl), W.Railway, Bharatpur.

...Applicant.

Vs.

1. Union of India through General Manager, Western Rly, Churchgate, Bombay.
2. Chief Engineer (Headquarter) W.Rly, Churchgate, Bombay.
3. Divisional Railway Manager, W.Rly, Kota.

...Respondents.

Mr.P.P.Mathur - Counsel for the applicant.

Mr.Manish Bhandari - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer:

(i) to declare that the applicant is holding the post of IOW in substantive capacity from the date he qualified the selection test in the year 1974;

i) to direct the respondents to include the name of the applicant in the seniority list of IOWs.

iii) to direct the respondents to give benefit to the applicant of seniority and promotion on the basis of seniority assigned to him in the cadre of IOW from the year 1974

iv) Allow all the consequential benefits.

2. Case of the applicant is that the applicant is entitled to promotion on the post of IOW Gr.III from the date on which he qualified the selection test in the year 1974. It is stated



that the applicant was having his lien in the Division from the date he was promoted on the post of AIOW and this Bench of the Tribunal in O.A. No.140/92 Deoki Tiwari Vs. UOI & Ors decided on 18.11.93, allowed the O.A, following the judgment of Gujarat High Court and in view of the judgment the applicant was given promotion in the rehabilitation Programme and promoted in substantive capacity after qualifying selection test, hence the applicant is entitled to hold the same status when the project came to an end and ^{he was} sent ~~him~~ to the Division. It is stated that the applicant cannot be treated as ad hoc employee as the persons cannot hold ^{on a post} on ad hoc basis for so many years. It is also stated that if a person is holding the post for 20 years or more, he is holding the post on substantive basis and ⁱⁿ such a situation even if an employee does not qualify the selection test, then also he has a right to hold the post on substantive basis from the date of his promotion. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is stated that the applicant was initially appointed as 'Wash out man' in the Mechanical department and was later on promoted on the post of Boiler Maker. Thereafter on the post of Tally Clerk in the year 1972. The applicant was given ad hoc posting on the post of SOSR Mistry at the request of the applicant on 14.3.73. It is denied that the applicant has qualified any selection test for the post of AIOW. It is further stated that the present OA has been filed with great delay. It is also denied that the Railway Board has never issued any circular that loyal workers who had worked during the course of strike would be given an additional promotion to the higher post and the matter regarding the applicant's promotion has already been settled by this Tribunal. It is also denied that the applicant was

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(16)

promoted to the post of AIOW on the ground that he was a loyal worker. No service record to this effect was produced. It is stated that the applicant while working under Rehabilitation Organisation at Bayana was declared surplus and he was repatriated to open line w.e.f. 3.12.74 and as the applicant was a Tally Clerk, therefore, he was posted on his substantive post under DME, Bayana later on the applicant was considered for posting as AIOW in Survey & Construction Deptt, purely on ad hoc basis with a clear condition that the promotion is purely on ad hoc basis and it will not confer any right to the applicant to claim retention in Survey & Construction as well as his parent department on the post of AIOW. Later on the applicant was transferred to Ratlam but he did not join. The applicant was again considered for ad hoc promotion on the post of AIOW for the Flood Organisation at Sawaimadhopur but the post of AIOW was not available, therefore, he was posted as Junior Clerk. Thereafter the applicant was considered for promotion in Flood Organisation and was given promotion on the post of SOM w.e.f. 26.6.82. The applicant thereafter ^{was} promoted to the post of IOW Gr.III on ad hoc basis w.e.f. 14.5.84 and the applicant continued till the finalisation of selection on the said post. The applicant failed in the selection, therefore, he could not be empanelled for the post of IOW Gr.3. The applicant challenged the same by way of Civil Suit before the Munsif Bayana and the case was transferred to Jodhpur Bench of the Tribunal and the Tribunal decided/ disposed of the same holding the claim of the applicant as baseless. It is admitted that the applicant sent his representation through his counsel on 26.9.92 which was replied. It is stated that the claim of the applicant is belated and hopelessly barred by limitation and even on merits, the applicant has no case, therefore, it is prayed

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that the O.A may be dismissed with costs.

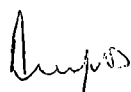
4. Rejoinder was filed reiterating the facts stated in the O.A.

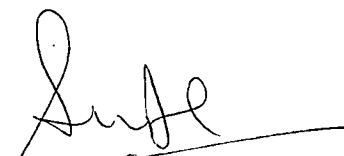
5. Heard the learned counsel for the parties and also perused the whole record.

6. On a perusal of averments of the parties, it only appears that the applicant was holding the post of AIOW on ad hoc basis and not in substantive capacity. On the basis of the pleadings, it also appears that the applicant did not qualify the test and he also failed to file any document so as to establish that his name was in the panel. The applicant is claiming on the post of AIOW in substantive capacity from the year 1974 but the representation filed by the applicant appears to be in the year 1992 and this O.A was filed by the applicant in the year 1994. Therefore, in our considered view, the claim of the applicant appears to be hopelessly barred by limitation as contained under the provisions of Sec.21 of the Administrative Tribunals Act, 1985. Moreover, the applicant could not establish the fact that he could qualify the selection test or he was working on the post of AIOW in substantive capacity w.e.f. the year 1974. The claim to this effect was made by the applicant at such a belated stage so we have no alternative except to hold that this O.A is hopelessly barred by limitation.

7. We are, therefore, of the opinion that the applicant is not entitled to any relief either on merits or on the basis that the claim of the applicant appears to be hopelessly barred by limitation.

8. We, therefore, dismiss the O.A with no order as to costs.


(A.P.Nagrath)
Member (A).


(S.K.Agarwal)
Member (J).