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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 10.1.96.

OA 13/96 with MA 11/96

P.G. Dashmukh

... Applicant.

Versus

Union of India and others

... Respondents.

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. O.P. SHARMA, MEMBER (A)

For the Applicant

... Mr. V.P. Mishra

For the Respondents

... —

ORDER

PER HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

Applicant, P.G. Dashmukh, has filed this application u/s 19 of the Administrative Tribunals Act, 1985, (for short the Act), praying therein, as follows :-

- "i) That the respondents be directed to regularise the applicant on the post of FWI Grade III scale Rs.1400-2300 w.e.f. 14.2.72 and assign seniority over the persons junior to him in the open line i.e. above Shri Pameshwar Singh, at Sr.No.9, and below Shri S.K. Gupta, at Sr. No.8 in the seniority list of FWIs Grade II dated 9th June, 1995 (Annexure A/15).
- ii) That the respondents be directed to accord proforma promotion to the applicant on the post of FWI Grade II in scale Rs.1600-2660 retrospectively w.e.f. 1.4.85 when Shri Pameshwar Singh, who is junior to the applicant in the Open Line, was appointed to the aforesaid post.
- iii) That the respondents be directed to confer upon the applicant the further benefit of promotion to the post of FWI Gr.I from the date the aforesaid Shri Pameshwar Singh was promoted to the post of FWI Gr.I i.e. from 19.5.92, of course after passing the selection as the same being a selection post and further assign seniority above Shri Pameshwar Singh, at Sr. No.9, and below Shri S.K. Gupta, at Sr.No.8 in the seniority list of FWI Gr.I scale Rs.2000-3200 dated 9th June, 95 (Annexure A/30).
- iv) That based upon the seniority and proforma promotion, so assigned as aforesaid, the respondents be further directed to pay arrears of salary to the applicant.
- v) Any other relief as deemed fit by the Hon'ble Tribunal in the facts and circumstances of the case."

Cikr 2. We have heard the learned counsel for the applicant and have gone

through the records of the case.

3. The facts of the present case, as stated by the applicant, are that he was appointed as Permanent Way Mistry (in short PWM) in the scale Rs.130-212 w.e.f. 11.7.63. This scale was revised to Rs.150-240 and subsequently to Rs.380-560 and now it is Rs.1400-2300. On contraction of cadre, the applicant was retained as Tally Clerk scale Rs.110-180 though persons junior to him were retained as PWM. However, the applicant was absorbed as PWM on 1.3.68 and assigned seniority as PWM from 11.7.63. He was promoted as APWI (Construction) on 3.1.72. On 7.6.76, he was reverted on account of contraction of cadre while the persons junior to him were retained. On representations made he was restored back to the post of FWI on 21.2.79. While the applicant was posted as FWI Grade-III scale Rs.1400-2300 at Jamnagar, he was reverted to the post of PWM on account of contraction of cadre. However, the Hon'ble High Court of Gujarat stayed the applicant's reversion and he continued to work as FWI Gr.III from 21.2.79 onwards until he was provided lien in the Open Line in pursuance of Railway Board's letter dated 13.3.72 and the decision of the High Court of Bombay. The applicant was promoted to the post of FWI Gr.II scale Rs.1600-2660 by order dated 16.1.90. On 18.9.90, respondent No.3 published the seniority lists of FWI Gr.II scale Rs.1600-2660 and FWI Gr.III scale Rs.1400-2300 endorsing a copy of the same to the applicant on 26.7.91 and in the aforesaid seniority^{list} the applicant was assigned seniority amongst FWI Gr.III scale Rs.1400-2300 at Sl.No.14, the post to which the applicant was promoted on 14.2.72 while in the Survey & Construction Department. The applicant's contention is that since he was working continuously from 21.2.79 in the post of FWI scale Rs.1400-2300, he should have been regularised on the said post from 14.2.72 and assigned seniority amongst FWI Gr.II above Shri Ramashwar Singh, who is at Sl.No.8, and below Shri S.K. Gupta, at Sl.No.7 in the seniority list of FWIs dated 18.9.90. The applicant made several representation but they evoked no response, as stated by the learned counsel for the applicant.

4. The applicant has been making representations in regard to his grievances from time to time from 18.9.89 to 5.6.95 vide Annexures A-16 to Annexure A-27.

5. The applicant has relied on (1995) 30 ATC 409, P.Nazi Viswanathan and others v. Union of India and others, wherein the Madras Bench of the Tribunal observed at page 414, as follows :-

"What is challenged in this application, is not the seniority position of any particular individual in the background of any particular facts

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controversied by that individual against whom the claim is made. The challenge is to the criteria proposed to be adopted by the Railways to draw up the Seniority List for those for whom the training was curtailed. The relief claimed is only against the Railways and not against any particular individual. Further Respondents 2 to 8 have got themselves -impleaded. They would represent those Section Controllers and also other categories who could be affected by a decision in favour of the applicants. Their case has not gone unrepresented."

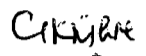
In the present case, the applicant has claimed regularisation as FWI Gr.III scale Rs.1400-2300 w.e.f. 14.2.72 and assignment of seniority over persons junior to him in the Open Line i.e. above Shri Pameshwar Singh, at Sl.No.8, and below Shri S.K. Gupta, at Sl.No.7 in the seniority list of FWI Gr.II dated 9.6.95. He has claimed promotion to the post of FWI Gr.II scale Rs.1600-2660 retrospectively w.e.f. 1.4.85 when Shri Pameshwar Singh who is junior to the applicant in the Open Line was appointed to the aforesaid post, and further sought a direction to the respondents to confer upon him the benefit of promotion to the post of FWI Gr.I from the date the aforesaid Shri Pameshwar Singh was promoted to the post of FWI Gr.I i.e. from 19.5.92. In the seniority list of FWI Gr.III scale Rs.1400-2300 dated 18.9.90 the applicant's name appears at Sl.No.14. However, in the seniority list of the same date of FWI Gr.II scale Rs.1600-2660 Shri S.K. Gupta and Shri Pameshwar Singh figure at Sl.No.7 and 8 respectively. The name of the applicant does not appear in the aforesaid seniority list of FWI Gr.II scale Rs.1600-2660. In these seniority lists dated 18.9.90 what has been challenged now is the assignment of seniority to Shri Pameshwar Singh and since the same was endorsed to the applicant and circulated on 18.9.90 (Ann.A-15), a challenge to the same should have been made within a period of one year, as envisaged by Section 21 of the Act. The facts of the case cited supra and relied upon by the applicant are quite different and in that case persons whose seniority was likely to be adversely affected had joined as respondents. In the present case, the challenge to the seniority was not made within the prescribed period of limitation and repeated unsuccessful representations made from time to time in regard to the applicant's grievances from 18.9.89 to 5.6.95 shall not extend limitation. If correct seniority was not assigned to the applicant, the same should have been challenged before a legal forum within the prescribed period of limitation, as contained in Section 21 of the Act. It has been held in the case of Bhoop Singh v. Union of India and others, AIR 1992 SC 1414, that it is expected of a government servant who has a legitimate claim to approach the court for the relief he seeks within a reasonable period assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for

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years. The applicant, instead of seeking relief before a legal forum, has been making representations to the departmental authorities. We do not find any sufficient cause for condonation of delay and, therefore, this MA (No.11/96) for condonation of delay is rejected.

6. The OA is dismissed at the stage of admission on the ground of belatedness and laches as also on the ground of non-joinder of necessary parties.


(O.P. SHARMA)
MEMBER (A)


(GOPAL MISHRA)
VICE CHAIRMAN

VK