

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 11.10.2001

O.A. No. 476/1995

Ajit Singh Ahluwalia son of Sardar Hazara Singh Ahluwalia aged around 52 years resident of 182, Padmawati Colony, New Sangar Road, Jaipur; presently posted as Inspector of Works, Traffic Workshop, D.R.M. Office, Western Railway, Jaipur.

... Applicant.

v e r s u s

1. Union of India through the General Manager, Western Railway, Church Gate, Bombay.
2. The Chief Engineer (E), Northern Railway, Church Gate, Bombay.
3. The Divisional Railway Manager, Western Railway, Jaipur.

... Respondents.

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

Mr. K.S. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed by Shri Ajit Singh Ahluwalia under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents to assign seniority to the applicant on the basis of his initial appointment in Western Railway in accordance with Employment Notice No. 1/71-72 for category No. 12 (A1OW). The applicant

also has sought for a direction to the respondents not to assign bottom seniority to the applicant on the post of Apprentice Inspector of Works (AIOW, for short).

2. The applicant contended that on the basis of Employment Notice No. 1/71-72 issued by the Railway Service Commission, he applied for the post of AIOW. After interview, he was declared successful for that post. Thereafter, the applicant submitted an application for appointment on the post of AIOW, but he was asked to perform the work of Estimator in the office. Accordingly, he joined his duties on 30.07.73 in the office of the Deputy Chief Engineer (S&C), Western Railway, Kota.

The applicant was given assurance that he would be appointed on the post of AIOW shortly, since the posts of Estimator and the AIOW carried the same pay scale, and as such, there would not be any financial loss to the applicant. However, he submitted a representation dated 20.08.73 vide Annexure A/3 regarding his posting as AIOW, but due to the conspiracy hatched by certain persons, the applicant was not allowed to join as AIOW, which had better promotional avenues. Meanwhile, when he was working as Senior Estimator, he was transferred to the office of the Divisional Superintendent (E), Kota, vide order dated 27.06.77 (Annexure A/4). Likewise, the applicant was being transferred from one place to another from time to time without granting him any relief. In those circumstances, he made representation to the Minister for Railways on 10.12.1980. The applicant was further contended that he was working in the Survey and Construction Department as Estimator, but his lien was maintained in the Jaipur Division of the Western Railway. Vide Annexure A/7 seniority list dated 06.06.83, he was shown as Senior Draftsman Estimator. On his representation dated 21.07.81 vide Annexure A/8, the Divisional Office stated that it has no objection if the applicant is posted as AIOW. Accordingly, order Annexure A/9 dated 18.07.83 was issued transferring him from the post of Head Estimator to the post

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IOW (Gr. III), but with bottom seniority. The applicant contended that assigning him bottom seniority is illegal. Therefore, he again made some representations, but all in vein. He made further representation on 06.03.90, and in reply to that, the order Annexure A/13 dated 07.05.90 was issued, stating that his services as Estimator cannot be counted for assigning him seniority in IOW. He stated that against that also, he made further representation dated 02.08.94 vide Annexure A/15, and vide impugned order at Annexure A/1 dated 15.12.94, his representation has been rejected.

3. By filing reply, the respondents have denied the case of the applicant. They contended that his representations were earlier rejected vide orders dated 09.08.90 and 21.03.91, therefore, the present application is barred by time. They also stated that the applicant was appointed as Estimator in the year 1973, and on his request vide letter dated 22.01.82, the applicant was transferred to IOW cadre by assigning the seniority at the bottom, after the confirmed, officiating and temporary IOWs. The applicant accepted the said condition and joined the post of IOW, and in these circumstances, the applicant cannot maintain this application for counting the services in the cadre of Estimator. They have also stated that the seniority list also reflected that earlier he worked as Estimator, and on his request, he was transferred to IOW with bottom seniority. Those orders were also the applicant has not challenged. Therefore, the present application is liable to be dismissed. They have further stated that the representations stated to have been made in the year 1973 vide Annexure A/3 and vide Annexures A/6 and A/8 of 1980 and 1981 respectively were not received by the department. However, on his representation dated 22.01.82 and also on his undertaking that he would join the post of IOW with bottom seniority, he was transferred and posted as IOW. His earlier representations were rightly rejected vide orders dated 09.08.

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and 21.03.91. Therefore, there is no merit in this application. Even if the applicant has any right, he waived the same by accepting the post of IOW with bottom seniority. Therefore, the present application has no merit. The respondents have further stated that as per Para 312 of Indian Railway Establishment Manual Vol.II, the seniority can be fixed only on the basis of the work done in the cadre, and as such, the applicant is not entitled to get his seniority fixed in the IOW cadre from the date of his initial appointment in the Western Railway. Accordingly, they contended that the application is liable to be dismissed.

4. By filing rejoinder, the applicant denied the allegations made by the respondents in the reply.

5. After hearing the arguments, we perused the records. The applicant has not produced his appointment order of the year 1973. He contended that in pursuance of the call letter dated 08.12.71 vide Annexure A/2, he was to be appointed as AIOW, but not as Estimator but on the ground that there was no vacancy on the post of AIOW, the applicant was asked to perform the duties of Estimator. But in the absence of the appointment order, the contention of the applicant cannot be believed. The fact also remains that on his appointment dated 30.07.73, he started working as Estimator only. In the seniority list dated 06.06.83 vide Annexure A/7, his name is found in the seniority list of Estimator, clearly stating that his lien was maintained in the department as Estimator from 30.07.73. From this, it follows that he was appointed as Estimator, and he was working as Estimator right from the year 1973, and he was transferred to IOW with effect from 1983 on his request, with the bottom seniority. His earlier representation vide Annexures A/3 in the year 1973 and Annexures A/6 and A/8 etc cannot be accepted for the simple reason that the applicant has r

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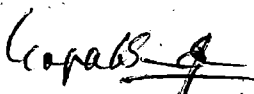
produced any acknowledgement to show that these representations were made to the respondents, since the respondents have denied receipt of such representations. At any rate, vide order dated 18.07.83 (Annexure A/9), he was transferred on the post of IOW (Gr.III) with the condition that "he will have to accept the position in the seniority list of IOW scale Rs. 425-700 (R) below that of the existing confirmed, officiating and temporary IOWs at Jaipur Division and will seek his chances for further promotion in the avenue of IOW category only". Though the respondents have denied this Annexure A/9 dated 18.07.83 as fabricated, since the reference letter shows a letter dated 21.06.85, but taking this Annexure A/9 as per its contents, it is clear that the applicant was transferred from the post of Head Estimator to the post of IOW (Gr.III) by assigning him bottom seniority. The applicant has joined the post of IOW by accepting the said condition. If the conditions contemplated vide Annexure A/9 was not acceptable, the applicant should not have joined on the post of IOW. Therefore, the applicant is estopped from contending contrary to the conditions imposed by Annexure A/9. In the impugned order vide Annexure A/1, it is further stated that in his representation dated 22.01.82 he had given an undertaking that he was ready to accept bottom seniority if he was transferred from the post of Estimator to the post of IOW. Accordingly, the applicant was transferred to the post of IOW. In these circumstances, it is clear that the applicant cannot now go back and contend that his services as Estimator from 1973 to 1983 should be treated as if he worked as IOW, cannot be accepted. Moreover, the seniority list filed by the applicant vide Annexure A/11 dated 25.08.88, clearly shows that the applicant was appointed in the year 1973 as Estimator, and on his request, he was transferred to the post of IOW with effect from 19.07.83. This seniority list of the year 1988 also, the applicant has not challenged. At any rate, his further representation dated 06.03.90 has been rejected by the department vide order dated 07.05.90 (Annexure A/13), stating


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that the applicant was not entitled for counting his services on the post of Estimator in his present cadre of IOW. If the applicant was really aggrieved by that order dated 18.07.83 (Annexure A/9), he should have challenged the same within the prescribed period of one year. He has also not challenged the order dated 07.05.90 (Annexure A/13). Therefore, his cause is barred by time. It is stated in the impugned order that his earlier representations have been rejected in the year 1990 and 1991 by duly communicating to him. Consequently, his further representation dated 01.11.94 also was rejected.

6. Having regard to these circumstances, we do not find any illegality in the impugned order at Annexure A/1 dated 15.12.94. At any rate, as we have stated above, his claim is barred by time. Hon'ble the Supreme Court has clearly laid down the law in 1999 SCC (L&S) 251 (Union of India and Another vs. S.S. Kothiyal and Others) that the repeated representations do not save the limitation, and in the light of this judgement, the applicant's plea that his application is in time from the date of the impugned order, cannot be accepted. Accordingly, we pass the order as under:-

"The application is dismissed. But in the circumstances,
without costs."


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.