

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER: 26 May 2002

OA No. 293/95

Mahendra Kumar Ratanpal son of Shri K.A. Ratanpal aged about 58 years, resident of 69/9, Behind Gurudwara, Chatai Ganj, Ajmer, Retired Chief Clerk, Compilation Office, Western Railway, Ajmer.

....Applicant.

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. General Manager, Western Railway, Churchgate, Mumbai.
3. Statistics and Analysis Officer, Compilation Office, Western Railway, Ajmer.

....Respondents.

Mr. S.K. Jain, Counsel for the applicant.

Mr. U.D. Sharma, Counsel for the respondents.


CORAM

Hon'ble Mr. H.O. Gupta, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)



The applicant has filed this Original Application u/s 19 of the Administrative Tribunal's Act, 1985. The following reliefs has been prayed for :-

- (i) That by an appropriate writ, order or direction, the impugned letter dated 26th September, 1994 (Annexure A-1) and letter dated 1.11.1995 (Annexure A/1A) be quashed and set aside and the applicant be declared to be entitled to the benefit of the above posts against the 20% quota with effect from he was appointed on the post of Clerk with all consequential benefits regarding the arrears of salaries and allowances, fixation of the pay accordingly and revision of the pension benefits and other post retirement benefits etc. with all consequential benefits.
- (ii) That the respondents be also directed to determine the number of posts against the 20% quota in the grade 80-220 as 5 instead of 3 and the applicant be given promotion on this basis.
- (iii) That the respondents be also directed to give promotion to the applicant taking his date of appointment as Senior Clerk from 4.11.1957 and promote him to the higher posts of Head Clerk, Chief Clerk and Office Superintendent etc. with all consequential benefits.
- (iv) The applicant be awarded interest @ 24% per annum on the arrears etc.
- (v) Any other relief which this Hon'ble Tribunal deem fit may also granted to the applicant.

2. The brief facts of the case are that the applicant was initially appointed on the post of Clerk in the pay scale of Rs. 60-130 on 4.11.1957 in the Compilation Office, Western Railway, Ajmer. The applicant passed the <sup>Examination</sup> B.A. vide Certificate dated 16.11.1957. The Railways introduced the upgradation Scheme in Compilation Office of the whole railways vide Circular dated 7.3.57 (Annexure A-2 and Annexure A-3). As per restructuring scheme, the position of the staff employed in the compilation office was as under:-

Sr. No.	Name of Posts	Scales prior to 1.4.1956	No. of Posts	Revised Scale from 1.4.56	No. of Posts in from 1.4.56
1.	Clerk	60-130	123	60-130	98
2.	Sr. Clerk	80-160	24	80-220	47
3.	Head Clerk	160-220	8	160-250	10

There was a confusion as regards the percentage of the upgradation and an impression was given that the persons possessing requisite qualification as on 1.4.1956 i.e. the date when the scheme came into effect, were only eligible to get the benefit of the scheme. However, the position was made clear by the Railway Board and the Scheme was made applicable to all the eligible persons possessing the qualification of graduation at time date of the of their appointment or acquiring the said qualification after their appointment but it was made subject to the 20% of the vacancies becoming available after the said cut off date. The applicant submitted a representation to the respondents on dated 3.4.1987 and requested for grant of the benefits of the upgradation under the said restructuring scheme. The matter was reminded a number of times. Multiple reminders were sent to the higher authorities but of no avail. The applicant finally retired from the post of Chief Clerk. The applicant took up the matter through one Shri Prof. Rasa Singh Rawat, Member of Parliament and finally the reply were given to the said Member of Parliament vide letter dated 26.9.94 (Annexure A-1) and 1.11.94 (Annexure A-1A) and it was said that the applicant is not entitled to the benefit of upgradation since on the cut off date, 1.4.56, he was not in the employment and no benefit could be given from the back date. His efforts did yield no results and hence he took recourse to court of law and filed this OA amongst various grounds taken in the OA.

*[Handwritten signature]*

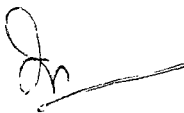
3. The OA was admitted on 1.2.2000 and notices were sent to the respondents for filing the reply. Respondents have filed a detailed reply and have controverted the facts and grounds taken by the applicant in the OA. The respondents have taken a preliminary objection regarding maintainability as well as the plea of limitation and it has been said that the OA is not maintainable for want of jurisdiction and as well as hopelessly time barred and thus deserves to be dismissed.

4. At the very outset, we would first deal with the preliminary objections - the maintainability of the OA in regard to jurisdiction of this Tribunal. The contention of the respondents is that the initial cause of action relating the subject matter of the OA relates to the year 1957 and as per Section 21 (2)(a), the grievance in respect of which an application is made, the claim relating to any cause of action prior to 1.11.1982 i.e. three years prior to the establishment of this Tribunal cannot be entertained by this Tribunal. The abstract of Section 21(2)(a) is reproduced as under :-

"(2) Notwithstanding anything contained in sub-Section(1) where

(a) the grievance in respect of which an application is made has arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High



court.

the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or as the case may be, Clause (b), of sub Section(1) or within a period of six months from the said date, whichever period expires later."

In view of this, the OA is not maintainable before this Tribunal. The learned counsel for the applicant has countered the arguments of the learned counsel for the respondents that the applicant has been consistently insisting and taking up his matter with the respondents and in this case, he has submitted multiple representations but his representations were kept in cold storage. It is only that the respondents replied vide two communications dated 26.9.94 (Annexure A-1) and 1.11.95 (Annexure-1A). These replies sent to the Hon'ble Member of Parliament should be considered as availing of the remedy under service rules and from the date of said orders, the OA has been filed within a period of one year. Thus, this Hon'ble Tribunal has jurisdiction to entertain this application. He also argued that OA has been admitted without any rider so no objection of limitation could be sustained.

5. The learned counsel for the respondents vehemently opposed the proposition made by the learned counsel for the applicant and submitted that no employee can make direct communication with Political authorities. We halt for a moment here and would discuss the second preliminary objection that of limitation raised by the respondents and will decide both the points together in succeeding paragraphs. The contention of the learned counsel for the applicant is that he has made multiple representations but the department did not grant him due relief and finally rejected his claim abruptly through a communication to a Member of Parliament and thus giving a cause of action in the year 1995, needs to be examined. The law is now well settled regarding the limitation and the scope

of Section 21 of the Administrative Tribunal's Act by the various Benches of this Hon'ble Tribunal and also by the Apex Court. The learned counsel <sup>for applicant</sup> has submitted a list of 17 judgements of various courts, However to cut short the controversy, we straightway come to the judgement of Hon'ble the Supreme Court in S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10, wherein it has been specifically provided that cause of action shall be taken to arise from the final order passed on appeal or representation where such appeal or representation is provided by the Statutes. The extract of relevant portion of the judgement is reproduced as under:-

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of a six months' period from the date of preferring of the appeal or making of the representation shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S: 21 of the Administrative Tribunals Act. Sub-Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's



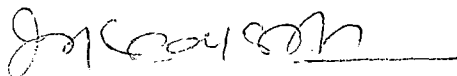
jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

In the present case, there was no provision under statutory appeal or filing of representation under Service rules. However, in normal course a 45 days' period is provided for making such representations against any adverse order/grievance. But in the present case, the representation was filed for the first time on 3.4.1987 i.e. after a delay about a period of 30 years. There is no explanation for the said long delay even for filing the first representation least to say for the subsequent period. Thus the present OA is highly belated. The learned counsel for the respondents have also invited our attention towards a letter dated 20.6.1959 (Annexure R-5), addressed to the applicant and three others. It refers to some of the representations of the applicant and claim was turned down. However, in the rejoinder the applicant has denied its receipt/service on him and has averred in the alternative that his claim was wrongly turned down. Even ignoring this rejection, repeated representations do not extend the period of limitation. The OA was admitted ex.parte and this cannot take away the legal objection of limitation/jurisdiction.

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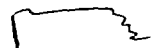
6. In view of the above discussion, we are of the considered opinion that this OA relates to a cause of action for period prior to 1.11.1982, beyond the jurisdiction of this Tribunal and we have no hesitation in holding that this Tribunal has no jurisdiction to entertain the OA. The OA is also not sustainable on the ground of limitation. The OA thus deserves to be dismissed on the ground of want of jurisdiction as well as being not within the limitation. We, therefore, do not choose to adjudicate upon the controversy on merits of this case.

7. In the premises, the OA fails and the same is hereby dismissed with no order as to costs.



(J.K. KAUSHIK)

MEMBER (J)



(H.O. GUPTA)

MEMBER (A)

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