

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER: 27/4/2001

OA 398/96

D.M. Kalla son of Shri Moti Lal Kala Petd. MEN (C) Sangner, Jaipur and Ex. Inspector of Works, Western Railway, Rajkot Division. At present resident of House No. 2239, Siwar Pakliwalon Ka Rasta, Kishan Pole Bazar, Jaipur.



....Applicant.

VERSUS

1. Union of India through the Secretary,
Government of India, Department of Railways,
New Delhi.
2. General Manager, Western Railway,
Churchgate, Mumbai.
3. D.R.M. (E), Western Railway, Rajkot Division,
Rajkot.

.... Respondents

Mr. Rinesh Gupta, Counsel for the applicant.

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

CORAM

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

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

ORDER

PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)



The applicant has filed this OA with a prayer that the respondents be directed to give promotion to the applicant in the scale Rs. 335 485(A) / 550 750(P) w.e.f. 14.2.1969 and further in pay scale Rs. 450 575 (A)/ 700 900 (P) w.e.f. 25.2.1970 with all consequential benefits.

2. The case of the applicant is that he is senior to one Shri S.C. Saxena who has been given the benefit of stepping up of pay and consequential benefits with respect to his junior; and that ^{sure} Shri S.C. Saxena is junior to the applicant, ~~he~~ thus is similarly entitled to stepping up and promotion with respect to Shri S.C. Saxena. He submits that one Shri Ramanand Saxena had filed an application OA 298/90 before this Tribunal, which was allowed by order dated 4.10.93 with following observations:

"In the result, the OA is accepted. It is directed that the case of all the persons who were senior to Mr. Saxena (S.C. Saxena), referred to from S.No. 52 to 78, may be considered and if they are found suitable otherwise then the benefit extended to Mr. Saxena may be extended to all of them."

It is stated by the applicant that after he came to know of this benefit extended to Shri Ramanand Saxena by this Tribunal, he made a representation to the Department dated 16.1.1996 for seeking the same benefit as extended to Shri Ramanand Saxena and in view of the direction of the Hon'ble Tribunal in that case wherein Tribunal had directed ☐ that the persons who were senior to Shri S.C. Saxena and were at sl.no. 52 to 78 of the seniority list may be considered and if they are found suitable otherwise. then the benefit extended to Mr. Saxena may be given to all of them. The seniority list has also been filed by the applicant at Annexure Ad where his name appears at sl. no. 75 and that of Shri S.C. Saxena at sl. no. 79. The applicant stated that despite his representation dated 16.1.96 and notice of demand of justice dated 22.4.96, respondents have taken no action whatsoever. His plea is that after clear direction in the case of Ramanand Saxena, the respondents were under duty to grant similar benefit to all persons placed in the seniority list at sl. nos. 52 to 78, which they had failed to do so. The applicant has filed this application seeking direction to the respondents to act as per direction of the Tribunal in the case of Shri Ramanand Saxena to



grant him all benefits including promotion, pay protection in respect to his juniors and payment of arrears and revision of pension according to that revision of pay.

3. The respondents in their reply have give a detailed background of the case stating that Shri S.C. Saxena claimed and got the benefit of promotion from the date of one Shri N.B. Rao. While narrating the facts, it has been claimed that Shri N.B. Rao did not belong to the Open Line but belonged to the Servey and Construction Department and that the seniority units of the two were different. This seniority was merged on 22.11.77 as per orders of the Railway Board dated 13.3.1972 and prior to that Shri N.B. Rao and Shri S.C. Saxena were working in two different cadres. It has been stated that the benefit of Next Below Rule is only admissible to an employee with respect to his junior in the same seniority units and in this case, as stated above, the seniority units were different. The case of the respondents is that Shri S.C. Saxena was not entitled to benefit of promotion and stepping up of his pay vic-a-vic Shri N.B. Rao but because of incorrect presentation of facts before the Allahabad Bench of this Tribunal, Tribunal passed the orders in favour of Shri S.C. Saxena. Thereafter, Shri Ramanand Saxena approached this Tribunal by filing OA 298/90 staking his claim to the benefit of promotion with respect to Shri S.C. Saxena. The Tribunal in the case of Shri Ramanand Saxena directed that all those who were senior to Shri S.C. Saxena and appearing in the seniority list at sl. nos. 52 to 78 also be considered and extended the same benefit, if they are found suitable otherwise. Union of India filed an SLP in the Hon'ble Supreme Court against the said order of the Tribunal dated 4.10.93 but the Hon'ble Supreme Court dismissed the said SLP, a copy of which has been furnished before us. The order in the said SLP is reproduced as follows:-

"Since the order passed by the Central Administrative Tribunal has been passed on the basis that SC Saxena was junior to the respondents and he has been granted promotion, we do not find any basis for interfering with the impugned order of the Tribunal at this stage. The SLP is, therefore, dismissed. The




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learned Counsel for the petitioner states that the petitioner prays to go for review of the decision of the Tribunal in Saxena's case. In case review is allowed and Saxena's case is set aside, the petitioner may seek revival of the petition."

4. It is admitted by the respondents that no review was filed in the case of Shri S.C. Saxena. The respondents have taken a plea that in the said OA 292/90, filed by Shri Ramanand Saxena Divisional Railway Manager, Rajkot had not been impleaded as a respondent, and that Division was not given any opportunity to contest the said OA. The order given by the Tribunal on 4.10.93 in the case of Ramanand Saxena also included some persons within the jurisdiction of Rajkot Division. The plea of the respondents is that Order dated 4.10.93 is in the nature of an order in personam and the office of the DPM Rajkot is entitled to contest the case filed by a person claiming the benefit from the said order dated 4.10.93. It is maintained by the respondents that appropriate legal remedy for the applicant was to file a Contempt Petition u/s 17 of the Administrative Tribunal's Act for the noncompliance of the order or to initiate execution proceedings u/s 27 of the said Act. He did not do so and is debarred from filing another OA. The respondents have also opposed this application on the ground of limitation u/s 21 (2)(a) of the said ACT. The order in the OA is dated 4.10.93 and this application has been presented in July, 1996 and is thus barred by limitation.

5. The respondents have also placed on record Annexure P4 whereby a speaking order has been passed by the General Manager, Western Railway arising out of the directions given by Ahmedabad Bench by order dated 1.12.93 in OA 213/93 filed by Shri M.L. Jaiswal. In that case Mr. Jaiswal also claimed benefit in respect of his Juniors Shri Ramanand Saxena and Shri S.C. Saxena, claiming that he was senior to Shri Ramanand Saxena and was entitled to those benefits arising out of the directions of the Tribunal in that case. The General Manager after going into the background of the case rejected the claim as presented by Shri Jaiswal. The respondents contended that



the case of the applicant is identical with that of Shri Jaiswal as such applicant does not get any benefit from the order dated 4.10.93 passed in OA no. 298/90. The respondents have opposed the claim of the applicant also on the ground that the decision in the case of S.C. Saxena was passed on erroneous and incorrect facts and that benefit of order passed on incorrect facts cannot be extended to other persons even though they are considered senior to Shri S.C. Saxena.

5. The learned counsel for the applicant produced for our perusal, a copy of the order dated 21.11.97 passed in OA No. 113/92 filed by Shri M.L. Gupta to support the claim of the applicant. Consequent to orders passed in this OA, Shri M.L. Gupta has been extended the same benefit as given to Shri S.C. Saxena on the ground that Shri M.L. Gupta's case stands covered by the direction of the Tribunal in Para 4 of the order dated 4.10.93 in Ramanand's case. The learned counsel also relied on the orders of the Hon'ble Supreme Court in the SLP filed by the respondents in the case of Ramanand Saxena wherein the Apex Court had dismissed the SLP and their Lordships had noted that the Department was inclined to file a review application on the decision of the Tribunal in S.C. Saxena's case. It was held that in case review was allowed and Saxena's case was set aside, the petitioner respondent department could seek a review of the petition in Ramanand Saxena's case. It was stated that no such review was filed and these orders have attained finality. The learned counsel submitted that in Ramanand's case, the Tribunal had directed for extending the similar benefit to those persons appearing at sl. nos 52 to 78 in the seniority list. Since the respondents have not acted their own and have not even decided the representation of the applicant, he had no alternative but to seek relief from the Tribunal.

6. The learned counsel for the respondents vehemently opposed the application mainly on two grounds. The first was that the application was barred by limitation in as much as the applicant claims relief with effect from 1969 after lapse of 27 years. Even considering from the date of order in Ramanand's case, the application suffers from laches and applicant cannot claim the relief at such a belated stage. He contended that as per applicant's own case he filed this application only when he

came to know of orders passed in Ramanand's case but such a plea cannot extend limitation. On this, learned counsel relied upon the Hon'ble Supreme Court's orders, stated that in 1996 SCC(L&S) 1488, the Apex Court had observed that mere fact that the applicant filed belated application immediately after coming to know that similar claim/relief has been granted by the Tribunal to others was not a proper explanation for condonation of delay. The learned counsel cited number of cases in support of his contention that a wrong decision cannot bind others and similarly situated persons cannot claim benefit arising out of a wrong decision. Number of cases have been cited by the learned counsel but we find that reference to cases other than 1999 SCC (L&S) 642 was of no consequence and facts of those cases were different and those are not matters relating to such extending the benefit arising by a wrong decision. In this case, the Apex Court considered the case of voluntary workers in Health Service working at a pittance of Rs. 50 per month and claimed regularisation as others similarly placed had been regularised. By directing the Department to consider the case of regularisation of voluntary workers, as they had been working for a number of years, the Hon'ble Supreme Court observed that one wrong decision cannot multiply by another wrong and cannot result into extending similar benefit to others similarly placed.

7. The learned counsel for the applicant placed reliance on the case of K. Ajit Babu & Others vs. Union of India & Others, 1997(6) SCC 473 to put across the point that consistency, certainty and uniformity in the field of judicial decisions are the benefits arising out of the 'Doctrine of Precedence'. The Precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is that cases should be decided alike. It was to support his arguments that once a principle has been decided by a Court of Law, then all persons similarly placed should be extended the benefit arising out of that principle.

8. On limitations, the learned counsel placed reliance on a case F.C. Sharma & Others Vs. Union of India & Others 1997(6) SCC 721 wherein order of the Tribunal rejecting condonation of delay had been challenged. This case had arisen by notification dated 5.12.98 issued by Railway Board making a retrospective amendment and this was held to be invalid by Full Bench of the Tribunal in its judgement in C.P. Pangadhamaiah Vs. Chairman,

Railway Board 1994(27) 129. The Hon'ble Supreme Court had held that in regard to the facts and circumstances of that case, Tribunal should have condoned the delay in filing of the application and appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal.

8. We have given our anxious consideration to the rival contentions of both the parties. We do not find any force in the

arguments advanced by learned counsel for the respondents that in Ramanand Saxena's case DRM Rajkot was not a party and hence was not bound by the decision. The General manager of Western Railway was the party. Once a Head of the Zone has been impleaded and given direction and it does not allow any of the subordinate units to take a plea that they were not bound by direction issued to the General Manager. The other arguments advanced by the learned counsel for the applicant that the judgement in the case of S.C. Saxena as delivered by Allahabad Bench of the Tribunal, is not binding on others as the same was passed on incorrect presentation of facts. The same stand has been taken in the SLP filed in Ramanand's case before the Hon'ble Supreme Court. The Apex Court had upheld the order of the Tribunal in Ramanand's case while taking note that the Department was considering filing a review in Saxena's case. It has not been brought before us by the respondents whether any action for review was taken. The Department cannot make use of its own inaction against the alleged wrong order and deny the benefit to others similarly placed. It would be useful to draw attention to the observations made by the Tribunal in Para 3 of order dated 4.10.93 regarding respondents' action of opposing the claim on the ground that department could not place correct facts before the Allahabad Bench. The observations are reproduced below:

"If we accept the contentions of the respondents then it will give licence to the respondents to give benefit through the process of judicial verdict to those whom they want to give the benefit by not placing the proper record before the Tribunal. It is the duty of the respondents to punish the officials




who have not placed the records before the authorities and because of their negligence if any judgement, adversely affecting the respondents had been passed by the Tribunal."

^{officials} The respondents have failed to take up any of the for making so called erroneous presentation before the Allahabad Bench of the Tribunal. They have further failed to file a review application in that case even after making submission to the Hon'ble Supreme Court. It naturally raises doubt about the respondent's stand that correct facts were not placed before the Allahabad Bench in S.C. Saxena case.

9. We do not find any reason to treat DFM Rajkot as an entity independent of General Manager, Western Railway and in that view we reject this stand of the respondents that they are not bound by the order of Ramanand Saxena's case as not being a party to that case.

10 On the point of limitation, we find that cause of action had arisen when the benefit of next below was granted to Shri S.C. Saxena, on 6.7.1988. The seniority list dated 7.12.77 was already available, ^{but} the applicant did not take any action right from 1988 to 31.3.1993 when he retired, to claim NER benefit vis-à-vis Shri S.C. Saxena. The next stage for him for taking the benefit arose when the order dated 4.10.93 in the case of Ramanand Saxena was passed. The applicant has presented this application only in July, 1996 and that too not accompanied with any application for condonation of delay. ^{mere} statement is included in Para 3 of the application that this application was within limitation as prescribed u/s 21 of the Administrative Tribunal's Act. Section 21 of the Act provide that a Tribunal shall not admit an application in a case where final order as mentioned in Clause (a) of subsection 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made. The final order in this case obviously is, when orders were passed to grant benefit to S.C. Saxena in 1988, consequent to the order of the Allahabad bench of the Tribunal. Further when this Tribunal




passed an order dated 4.10.93 in the case of Ramanand Saxena that too gave another opportunity to enforce his claim. He did not do that. We find that he made a representation only in January 16, 1996.

11. In Bhoop Singh v. Union of India, AIR 1992 SC 1414, it was held; "it is expected of a government servant who has legitimate claim to approach the court for the relief he seeks within a reasonable period. This is necessary to avoid dislocating the administrative setup. ... The impact on the administrative set up and on other employees is a strong reason for not considering the stale claim." It was observed that inordinate delay or latches itself is a ground to refuse relief. The cause of action has to reckon from the actual date of the order which causes grievance to the employee and judgement and orders of the court in another case do not give the cause of action.

The main purpose of limitation provided u/s 21 of the Administrative Tribunals Act is that the government servant, who has a legitimate claim, should immediately agitate for the same against the adverse order within a period of one year of the order or within one year after the lapse of six months from the date of any representation to which no reply has been received.

12. In Yashbir Singh and Others v. Union of India & Others, AIR 1988 SC 662, Hon'ble the Apex Court observed; "it is well settled that anyone who may feel aggrieved with an administrative order or decision affecting his right should act with due diligence and promptitude and not sleep over the matter. Raking of old matters after a long time is likely to result in administrative complications and difficulty and it would create insecurity and instability in the service which would affect the efficiency." In Union of India v. Harnam Singh, 1993 SCC (L&S) 375, their Lordship of Hon'ble the Supreme Court held; "the law of limitation may operate harshly but it has to be applied with all its vigour and courts/Tribunals cannot come to the aid of those who sleep over the rights and allow the period of limitation to expire."




13. In Pamash Chandra Sharma v. Udham Singh, 2000 (1) SC SLJ 178, the applicant challenged the order of rejection of promotion dated 2.7.91 on 2.6.94 by way of OA. Tribunal allowed the relief but the Supreme Court held that the OA was time barred before the Tribunal and the Tribunal was not right in over looking the statutory provisions as contained u/s 21(1)(2) of the Administrative Tribunals Act.

14. In State of Karnataka & Others v. S.M.Kotrayya & Others, 1996 SCC (L&S) 1488, Hon'ble the Apex Court held that the mere fact that the applicant filed belated application immediately after coming to know that in the similar case relief has been granted by the Tribunal, was itself not a proper ground for condonation of delay. It was held that what is required to be explained to over come limitation is as to why remedy for redressal could not be availed of before expiry of the period prescribed under sub section (1) and (2) of Section 21 of the Administrative Tribunals Act, 1985.

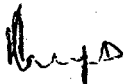
15. In G.C. Bhattacharjee v. Railway Board & Others, OA No.1269 of 1992, decided on 14.3.97 by the Allahabad Bench of the Tribunal, it was observed that; "any representation made by the government servant based on a decision of the Tribunal in another case, several years after the right to sue accrued to him, cannot give rise to a fresh cause of action.

16. In view of the above discussion, it is obvious that the applicant was not vigilant enough and did not take any action to seek legal remedy in time. When the department failed to act on its own to implement the directions in Ramanad's case, the applicant did not take recourse to legal remedy available to him within the period of limitation. He represented only in January, 1996. His belated representation cannot provide a ground to over come limitation. Thus, we cannot persuade ourselves to overlook the breach of specific provisions made u/s 21 of the Administrative Tribunals Act, on the part of the applicant



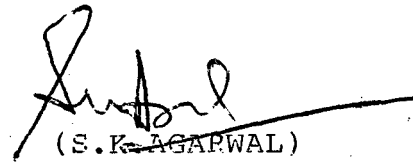
and consequently no relief can be granted.

17. In view of the facts and circumstances, the OA is dismissed on the ground of limitation. No order as to costs.



(A.P.NAGRATH)

MEMBER (A)



(S.K. AGARWAL)

MEMBER (J)