

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

O.A. No. 348/1997

Date of order: 5.7.2002

N.N. Mathur s/o Shri C.B.L. Mathur, aged around 45 years, resident of R-6, Road No. 5, Ganpati Nagar Railway Colony, Jaipur. Presently posted as Commercial Inspector, Western Railway, Jaipur Division, Jaipur.

...APPLICANT.

v e r s u s

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Shri Kishan Lal Sen, Commercial Inspector, Western Railway, Jaipur Division, Jaipur. Resident of 1208, Niwai Mehant ka Rasta, Ramganj Bazar, Jaipur.
4. Shri O.P. Kulshrestha, Commercial Inspector, D-109, Lalkothi, Siwad Area, Bapu Nagar, Jaipur (Raj.).
5. Shri N.K. Bairwa C/o Shri H.L. Bairwa, E-151, Ramesh Marg, C-Scheme, Jaipur
6. Shri Sanjeev Kumar Meena, Sr. Commercial Inspector (Sr. CMI), Commercial Branch, Western Railway, Headquarter Office, Churchgate-Bombay, MUMBAI (Maharashtra).

7. Shri O.P. Meena (Sr. CMI),
Sri Commercial Inspector,
Western Railway, Railway Station,
Sikar (Raj.).

8. Shri Randhir Singh (Sr. CMI),
resident of 217/6, Road No. 6,
Ganpati Nagar Railway Colony,
Jaipur (Raj.).

... RESPONDENTS.

Mr. R.N. Mathur, counsel for the Applicant.
Mr. U.D. Sharma, counsel for the Respondent No. 1 & 2.
Mr. Sunil Samadari & Mrs. Haya Bansal, counsel for
Respondents No. 3 to 8.

CORAM:

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

: O R D E R :

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

Shri N.N. Mathur has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has prayed for the following reliefs:-

"i) That the respondents may be directed to assign seniority w.e.f. 1.9.1987 or in alternate prior to 1.9.1987 with all consequential benefits of salary and promotions;

ii) A declaration may be made that the private respondent are junior in comparison to the applicant in the seniority scale of Rs 1400-2300 and the subsequent scales.

- iii) That a declaration may be made that private respondents shall rank junior in comparison to the applicant in the cadre of C.M.I;
- iv) That the official respondents may be directed to issue a seniority list in the cadre of C.M.I. in the scale of Rs 1400-2300 in which applicant may be assigned seniority above the private respondents;
- v) That the official respondents may be directed to give promotion to the applicant in the higher scale of Rs 1600-2660 and in the scale of Rs 2000-3200 ;
- vi) That the official respondents may be further directed to treat applicant senior in comparison to private respondents in both the scales, referred to above;
- vii) Any other appropriate order or direction which the Hon'ble Court thinks just and proper in the facts and circumstances of the case even the same has been not specifically prayed for but which is necessary to secure ends of justice may kindly also be passed."

2. The factual matrix of the case as stated by the applicant in the Original Application are that the applicant was initially appointed as Commercial Clerk in the year 1975 after passing the requisite examination conducted by Railway Service Commission. He was promoted on the post of Commercial Inspector, (hereinafter referred to as C.M.I., for brevity), in the pay scale of Rs 425-640 on adhoc basis, from 01.11.84. He was continued on the same till 04.10.1986 and in the meanwhile he was allowed to undertake the selection test for the same, held by the Headquarter Office, Mumbai but being low in the seniority list he was not selected and was reverted from 05.10.1986.

3. The applicant is said to have submitted representation against his non-selection but the same was not considered by the Department. He was again assigned the duties on the promotional post of C.M.I. (Control) w.e.f. 01.09.1987 and

he was continued on the same but the written orders were issued only on 04.10.1989 (Annexure A/1). A certificate to this effect in the shape of merit certificate was issued on 15.04.1988 (Annexure A/2). He represented in the matter and requested for grant him the promotion to the post of C.M.I. from the date he was performing his duties i.e. 01.09.1987.

4. The applicant got another chance to undertake the selection test conducted for the post of C.M.I. and he was selected for the same vide panel dated 07.06.1991. He was thereafter given the posting on the post of C.M.I. on regular basis vide letter dated 20.06.1991.

5. Further case of the applicant is that certain persons were selected as Commercial Inspector against direct recruitment quota in September, 1988 as Commercial Apprentice. But the respondents completely ignored the claim of the applicant from on the post of C.M.I. from the date/ which he was performing his duties. The applicant submitted representation dated 31.07.1991 requested for grant of promotion on regular basis w.e.f. 01.09.1987 on the ground that as per the circulars of the Department, the vacancies were required to be determined annually and to conduct the selection for the same regularly. The representation did not yield any result, the applicant wanted the seniority to be above the said direct recruits but they were given the scale of Rs 1600-2660 in pursuance of judgement and since the Apprentices were given higher pay scale they were given seniority in the scale of Rs 1600-2600. A case was filed by the Union of India against one Shri N. Bhaskar and Ors. (JT 1996 (5) SC 500), wherein the Hon'ble Supreme Court held that the

benefit of pay scale of Rs 1600-2600 to all the Traffic/ Commercial Apprentices, has been misunderstood and seniority has been erroneously given to the Apprentices. Thereafter the Apprentices i.e. Private Respondents were given placed in the scale of Rs 1400-2300 above the applicant. The applicant made representation on 31.07.1991 for determining the vacancies year-wise in pursuance with Railway Board circular dated 25.01.1983 which has been reproduced in para 4(8) of the Original Application.

6. The applicant was given promotion against the vacancies of the year 1986-87 and is evident from the seniority list dated 01.07.1991 (Annexure A/7). Against the name of the applicant, the date of actual working has been shown as 01.09.1987. It has also been submitted that promotion to the post of C.M.I. is given on the basis of seniority-cum-suitability. The applicant appeared in the written test conducted in the month of February, 1986 and qualified the same. Thereafter he was promoted but the word "Adhoc" has been used. And since he was given the promotion after qualifying the written test, the period of Adhoc is required to be count for the purpose of determining seniority, in view of the various judgements of the Apex Court. The citation of number of judgements have been mentioned in para 4(10) of the Original Application.

7. The Original Application has been filed on multiple grounds mention in the Original Application, which we are skipping.

8. The Government Respondents have filed the reply to the Original Application and have controverted the facts

and grounds raised in the Original Application. The respondents have very specifically submitted that the Original Application is barred by limitation. Since the applicant has himself admitted in para 1 of the O.A. that respondents no. 3 to 8 have been assigned higher seniority, in the seniority-list issued in 1991. Thus the Original Application is clearly barred by limitation. Further it has been submitted that the applicant was granted adhoc promotion to the post of Assistant Commercial Inspector, for a limited period, vide letter dated 30.05.1985 and the same was discontinued in ~~the~~ the year 1986 when the regularly selected candidate became available. Thereafter he was given the adhoc promotion only on 04.10.1989. It has also been ^{as} specifically averred that the representations/has been indicated in the O.A. has never been submitted to the respondents. As far as the showing the date of the applicant as working on the post of C.M.I. from 01.09.1987 is concerned, there was no specific formal order in the matter and no right can be conferred for such utilisation. It is wrong to contend that the applicant qualified any test in the year 1986. The applicant has passed the selection only in the year 1991. It is wrong to contend that the applicant was promoted against the vacancies of the year 1986.

9. As far as the private respondents are concerned they are direct~~ed~~ recruits and are definitely senior to the applicant. The judgement of Union of India & Ors. V/s N. Bhaskar & Ors~~s~~ has no relevancy as regards the assignment of seniority to the private respondents vis-a-vis the applicant. The private respondents i.e. the direct recruits had joined their post in the year 1988

whereas the applicant was given promotion on regular basis w.e.f. 20.06.1991 and the seniority is to be government to the date of joining on the posts of regular basis. Various decisions referred in the O.A., have no relevancy, since the services rendered on informal and ad hoc basis would not count for the seniority. The seniority dated 01.07.1991 in subsequent seniority dated 08.09.1995 have attained finality and cannot be assailed by the applicant at this late stage and the claim of assignment of higher seniority w.e.f. 01.09.1987 or prior thereto is clearly barred by limitation, delay and acquiescence. Therefore, this O.A. deserves to be dismissed with costs.

10. There is no reply filed on behalf of the private respondents.

11. The rejoinder to the reply has been filed by the applicant. It has been submitted that the representation dated 31.07.1991 of the applicant was duly received by the respondents and since the higher grade i.e. 1600-2660 was granted to the direct recruits in pursuance to the judgement of the Hon'ble Tribunal, there was no question to have contested the seniority position vis-a-vis the direct recruits. In fact, even in his representation dated 31.07.1991, the applicant has challenged the seniority position only on the ground that though he was continuously working in the grade 1400-2300 since 01.09.1987 against the clear cut vacancy he was entitled to get the benefit from that date itself. And for the fault of the administration for not conducting the selection test for 4 years back, he could not get the chance for appearing in the selection by which regular promotions are granted. And meant:

the direct recruitment was made and direct recruits were allowed to join earlier and were granted the seniority over the applicant. And after decision of the Hon'ble Supreme Court the matter was settled and the direct recruits were entitled only to the grade 1400-2300 and the question of claim of seniority arose. The matter was immediately reminded. Further it has been submitted that he appeared in the test in the year 1986 but he was not sufficiently senior, thus, could not be empanelled and the certain other factual aspect have been reiterated.

12. We have heard the learned counsel for the parties and have perused the records of this case.

13. The learned counsel for the respondents have stressed their objection regarding the limitation in filing the rule position, it has been strenuously argued that despite specific written objection regarding delay in filing of the application, the applicant has not chosen any application for condonation of delay and until and unless there is a specific application for condonation of delay, this Hon'ble Tribunal has no power to adjudicate upon and decide the matter on merits. It has also been submitted that the Tribunal would not like to gather the reasons for filing the application beyond the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985, from the pleadings in the O.A. As per the rules in force there is a provision of explaining the delay by filing a specific application for condonation of delay which is to be supported by an Affidavit. In absence of such specific application the delay cannot be condoned.

14. On the other hand, the learned counsel for the applicant has argued at length and has tried to persuade this Tribunal that the O.A. is very much within the time. In addition to this, he has also narrated the reasons for the delay by taking us to the various documents. Inasmuch as he has submitted that the position of the private respondents became clear only vide letter dated 16-12-1996 (Annex. R/6) which they were assigned the seniority on the post of C.M.I. scale 1400-2300 from the date of their joining in service i.e. in 1988, as per the judgement of the Hon'ble Supreme Court.

15. The learned counsel for the respondents have submitted that this order did not have any ~~xi~~ relation to the seniority of the applicant inasmuch as the direct recruits were appointed to the post of C.M.I. much earlier i.e. in the year 1988. (Even if they were granted the pay scale of Rs. 1400-2300), whereas the applicant was granted promotion to the said post on regular basis from 20-06-1991.

16. We have given our anxious consideration to the basic issue involved in the present case and are of the view that the basic claim of the applicant remains that he should be assigned seniority from 01-09-1987, on the ground that he has been physically working on the post of C.M.I. in support of his condonation, we were shown the service-sheet of the applicant as well as Annex. A/6 and the acting allowance voucher. Without considering and going into the merit of the case since we are examining first the question of limitation, it is to be ascertained as to when the cause of action which is the subject matter of this O.A. has arisen to the applicant. The first cause of action has arisen to the applicant on 01-09-1987 when it is said that

there was vacancy when he was asked to work on the promotional post C.M.I. The second cause of action arose to the applicant when he was given the ad hoc promotion vide letter dated 04/10/1989 (Annex. A/1), in stead of w.e.f. 01-09-1987 thereafter the another cause of action arose to him on 20-06-1991, when he was regularised on the post of C.M.I., in stead of the date from which he wanted his promotion. Thereafter seniority was issued vide letter dated 01-07-1991 and his name was shown below the private respondents, against which he is said to have made a representation.

17. Thereafter in our considered opinion no cause of action to be arisen, thus, O.A. ought to have been filed by 01 February, 1993 since his representation is dated 02 August, 1991 (one year plus six months thereafter) but the O.A. has been filed on 13-08-1997, thus, there is a delay of about 4½ years, even after giving all possible concessions.

18. It is the admitted position of the case that the applicant has not filed any application for condonation of delay. The applicant has also tried to explain the delay in the rejoinder to reply on the pretext that they were waiting for the disposal of the case relating to the Traffic Apprentice, which in our view had no relevancy in the matter at all, since the cause of action has arisen to the applicant much earlier even earlier to the appointment of the private respondents. Admittedly, O.A. is hopelessly time barred and hit by the law of limitation and, therefore, deserves to be dismissed on this ground alone. Even the repeated representations do not extent the period

of limitation and the benefit of limitation can be extended only in case where there are statutory remedies for that under these rules, as per the verdict of Hon'ble the Supreme Court in S.S. Rathore Vs. State of M.P. (AIR (1990) SC 10).

In the present case, there was no such statutory representation in the present case. As regards the power of the Tribunal to condone the delay, there has to be a specific application explaining the delay and giving good and sufficient reasons for condonation of delay and until the delay is condoned, the case cannot be decided on merits. We are supported in this proposition by the judgement of the Hon'ble Supreme Court in R.C. Sharma Vs. Udhamp Singh Kamal & Ors. (2000 (1) ATJ SC 178).

It was a Civil Appeal filed against the decision of the Tribunal which decided the case regarding no-promotion on merit, which was time barred, over-looking the statutory provisions contained in Section 21 (1) & 3 of AT Act, 1985. The Apex Court has held that Tribunal was not right in deciding the O.A. on merits. Similar view has been taken by the Apex Court in Secretary to Govt. of India and Anr. Vs. Shivram Mahadu Gailwar (1995 Supp. (3) SCC 231). In this view of the matter, we do not find that there is any need to adjudicate upon and decide the controversy involved in this case on merits.

19. Having regard to the provisions and position of law, the principles laid down by the Hon'ble Supreme Court in case of S.S. Rathore Vs. State of M.P. and H.R. Sharma Vs. Udhamp Singh Kamal & Ors. (Supra), we are of firm view that the O.A. deserves to be dismissed on the ground of limitation without going into the merits and the O.A. is accordingly dismissed. However, there shall be no order as to costs.

J.K. KAUSHIK
(J.K. KAUSHIK)
Judl. Member

A.P. NAGRATH
(A.P. NAGRATH)
Adm. Member