

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 74/2000 &
~~XXXXXX~~
M.A. No. 56/2000

~~100~~

DATE OF DECISION 26-05-02

Sunil Kumar Manwani Petitioner

Mr. P.V. Calla Advocate for the Petitioner (s)

Versus

Union of India and another Respondents

Mr. R.G. Gupta Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

NA/A
agree

(Gopal S)
23/5/02

May 14/02
(G.L. Gupta)
Vice Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Original Application No. 74/2000
and M.A. No. 56/2000

Sunil Kumar Manwani
S/o Shri Jhaman Das Manwani
r/o Hari Bhawan
Sindhi Colony
Sanganer
Jaipur

: Applicant

rep. by Mr. P.V. Calla : Counsel for the applicant.

-versus-

1. The Union of India through
the General Manager,
Western Railway
Church Gate
Mumbai

2. The Divisional Railway Manager,
Western Railway
Jaipur Division
Jaipur.

: Respondents.

rep. by Mr. R.G. Gupta : Counsel for the respondents.

CORAM : The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
The Hon'ble Mr. Gopal Singh, Administrative Member.

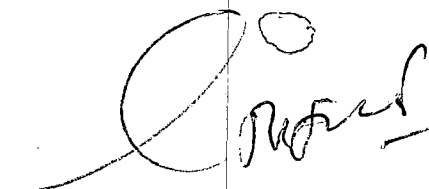
Date of the
order

: 26.8.02

per Hon'ble Mr. Justice G.L. Gupta,

ORDER

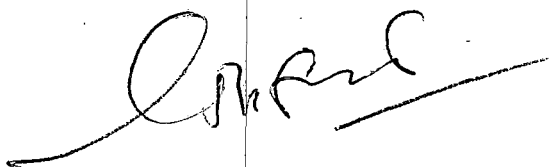
This is an application under Sec. 19 of the Administrative Tribunals Act, 1985, wherein the applicant seeks directions to the respondents to give him appointment on the post of Senior Clerk from the date on which the other candidates in the panel were appointed and provide him proper place in the seniority list.




2. The admitted facts which have emerged from the pleading of the parties are these:

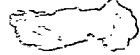
The applicant was appointed as Clerk in the year 1991. He was working on that post under the Deputy Controller of Stores, Western Railway, Ajmer. Applicant is a graduate. The next avenue of promotion for the clerks is to the post of Senior Clerk. As per Rules, 13½% of the total cadre strength of Senior Clerk are being filled from the serving graduates. A notification was issued on 23.1.91 for filling up of 9 posts under 13½% quota earmarked for the serving graduates. The applicant also applied for the post. The written test was conducted on 2.6.91. The applicant succeeded in the written test. He was called for the interview along with other candidates who had succeeded in the written test. The interview was held on 9.7.91. A list of successful candidates was published in the newspaper known as "Nyay" on 15.7.91. The applicant's roll number appeared in the list of successful candidates. The applicant's name figured at Sl. No. 2 in the panel prepared on 11.7.91. Some of the candidates who were successful in the examination were given the posting of Senior Clerk. On coming to know that one Nethram who was working as Clerk in the Ajmer division was given promotion and four others in the selection list were also given appointment as Senior Clerk, the applicant approached the authorities.


The applicant's case is that he was informed verbally that vide message XXR dated 27.8.91 the panel was frozen and therefore no appointment could be given to him. He made representation on 7.7.93 but it was not replied. He made representations on 6.8.93, 13.6.96, 3.8.98, 2.9.98 and 11.1.99 also. It was on 11.8.99 that he was informed vide



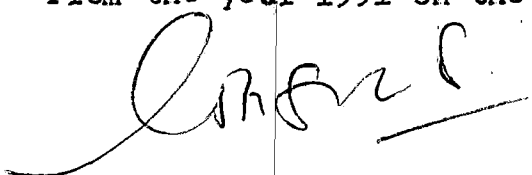
Annex. A.1 that the panel had been frozen and no further action has been taken. It is averred that when persons ranking junior to the applicant in the panel have been given appointment on the post of Senior Clerk, the respondents have done injustice to the applicant, by denying him the promotion to the post of Senior Clerk.

The applicant  has filed M.A. No. 56/2000 for condonation of delay, stating that if the Tribunal considers that delay has been caused, the same may be condoned in view of the facts of the case.

 3. The respondents, in their reply, have resisted the claim of the applicant mainly on the ground of limitation. It is averred that the applicant had slept over his rights from the year 1991 to 2000 and therefore he is not entitled to the reliefs prayed for in this O.A. It is stated that the applicant could not be given appointment because of the frozen of the panel by the higher authorities. It is also stated that though relaxation order was issued on 19.9.91, but that order was subsequently cancelled vide letter dated 4.10.91. (Annex. R.2).

 4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. Mr. P.V. Calla, learned counsel for the applicant contended that the application should not be non-suited on the ground of delay, because his name appears in the panel and his representations were never rejected. He canvassed that the cause of action arose to the applicant when he received the communication dated 11.8.99(Annex. A.1) He submitted that the applicant has been given promotion to the post of Senior Clerk in the year 2000 on the basis of his seniority whereas he was entitled to the promotion from the year 1991 on the basis of the panel published on 11.7.91.

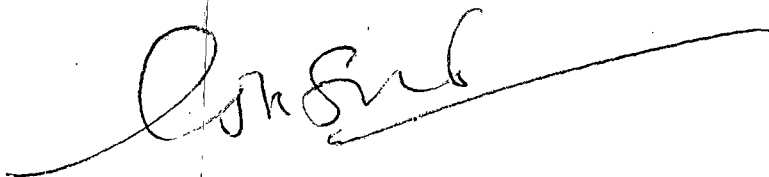


He pointed out that even the General Manager vide communication dated 6.12.99 stated that if the freeze had not been there, the applicant would have got his promotion in the year 1991 itself.

6. Mr. Gupta, learned counsel for the respondents, on the other hand, pointed out that the present application has been filed after a lapse of 9 years and no satisfactory reasons are given in the M.A for condoning the delay. Therefore, the learned counsel submitted, the O.A should be dismissed.

7. We have given the matter our thoughtful consideration. The question for consideration is whether cause of action had arisen to the applicant in the year 1991, and on that ground the O.A filed in 2000 should be dismissed? Certainly, the cause of action had arisen to the applicant when persons junior to him in the panel dated 11.7.91 were given appointment to the post of Senior Clerk. However, the matter does not end here. According to the respondents, after some persons in the panel were given appointment, the higher authorities directed the freeze of the panel and the respondent No. 2 could not issue appointment order of the applicant unless the frozen order was withdrawn.

The fact that the applicant was informed about the frozen order verbally is not denied by the respondents in the reply. When the panel had been frozen, it was natural for the applicant to wait for the expiry of the frozen period. The applicant went on making representations. For the first time the applicant was informed by letter dated 11.8.99, (Annex. A.1) that the panel was still frozen and the applicant would get appointment if the frozen

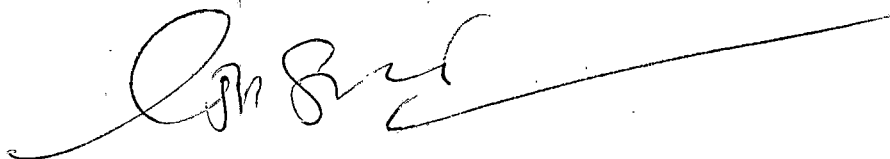


order is withdrawn. As long as the panel is frozen no further steps can be taken. In the facts and circumstances of this case, it has to be held that the cause of action also arose to the applicant when he received the communication dated 11.8.99. It is significant to point out that prior to the above communication dated 11.8.99, the applicant's representations were not considered and rejected. It is to be seen that the word 'frozen' is the past participle word of 'freeze'. One of the meaning of the word 'freeze' in the Oxford Dictionary-9th edition is 'to make temporarily unrealizable'. It is evident that when some benefit is frozen, it is not for all times to come. When the panel was frozen it meant that the right of the incumbent was kept in abeyance for the frozen period. That being so, the cause of action continued even on the date the instant O.A was filed.

In view of the fact situation, the O.A cannot be dismissed on the specious plea of limitation.

8. Admittedly, the applicant's name stood at Sl. No. 2 in the panel dated 11.7.91. It is further admitted that persons lower in merit than the applicant in the panel have been given appointment to the post of Senior Clerk. Evidently the applicant has been discriminated when he was not given promotion along with the persons, who despite being lower in rank in merit were given appointment to the post of Senior Clerk.

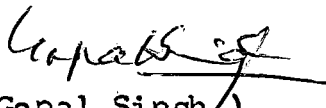
9. In the clarification(further reply) dated 2.4.2002, the respondents have averred that the applicant was allotted Jaipur Division along with three other candidates and the appointment orders were to be issued by the Jaipur Division, but before the appointment order



could be issued by the Jaipur Division, a message dated 27.8.91 was issued by the higher authorities. It is not the case for the respondents that there was no vacancy available in the Jaipur Division. Obviously there was no fault on the part of the applicant, when some time was taken by the respondent No. 2 in issuing the orders and in the meantime the freeze order was received. When persons lower in rank in the panel were given appointment to the post of Senior Clerk, why the applicant should suffer.

10. ~~In view of the aforesaid discussions~~ the application is allowed. The respondents are directed to give the benefit of promotion to the applicant of the post of Senior Clerk from the date the persons lower in rank in the panel were given such promotion. The applicant shall also be entitled to consequential benefits.

11. M.A. No. 56/2000 stands disposed of.
No order as to costs.


(Gopal Singh)
Administrative Member


(G.L. Gupta)
Vice Chairman

jsv.