

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 12.07.2000

OA No.23/2000

Magan Beharilal Srivastava S/o Shri Babu Swami Dayal Srivastava, retired Driver 'A' Ajmer Division and resident of 316/38, Hagon Ki Gali, Nayasth Mohalla, Purani Mandi, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.

.. Respondents

Mr. P.D.Khanna, counsel for the applicant.

....

CORAM:

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

Hon'ble Mr. H.F.Hawani, Administrative Member

ORDER

Per Hon'ble Mr. H.F.HAWANI, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

- "1) That the Hon'ble Tribunal's decision dated 23.9.93 in T.A.No.178/92 be implemented in the true spirit by giving the weightage of service of substitute period rendered by the applicant from 9.11.1953 to 10.8.1954 as given to 9 other employees according to DME Abu Road's letter dated 12.8.1954 and to restore the seniority accordingly with all consequential benefits.
- 2) That may be declared that the applicant's date of appointment and confirmation is 9.11.1953 as previously decided by the Divisional Supdt. Ajmer vide letter No.EP/1160/ 4 VolXV dated 3.7.1972 and he may be given all consequential benefits w.e.f. 9.11.1953.
- 3) That any other relief which this Hon'ble Tribunal

Amur

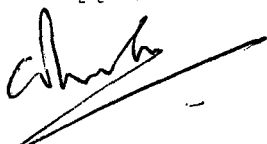
deem fit be granted."

2. We have heard the learned counsel for the parties and have gone through the material on record.

3. The controversy in this OA lies in a small compass. which is, whether in terms of the decision of this Bench of the Tribunal dated 23.9.93 in the earlier TA filed by the applicant No. 178/92, the applicant can still be entitled to the relief sought in the present OA. To trace the background briefly, the main grievance of the applicant in TA No.178/92 was that ".....he should be assigned seniority from 9.11.1953 and he should be equated in the treatment with Prem Narain and others.....". It will be useful at this juncture to extract the operative part of the order rendered by this Tribunal in that TA:

"Equal treatment should be given to all the persons similarly situated and the same policy should be adopted in such matters. The respondents are directed to examine whether in the cases of Prem Narain and 9 other persons, the date of appointment has been taken as the date from which they have been engaged as substitute and, if so, similar benefit should be extended to the applicant. In case Prem Narain and others have not been given advantage of the date of substitute appointment and their earlier orders might have been recalled then the applicant will have no grievance. The matter of seniority will be again re-examined in the light of the directions given above within a period of 4 months and if the earlier seniority is restored, then the applicant will be entitled for all consequential benefits."

4. Pursuant to the above order of this Tribunal in TA No.178/92, the Department, on receipt of a representation from the applicant, re-examined the case of the applicant and stated in their letter at Ann.A1 that "seniority was not assigned to Shri Prem Narain and 9 others by counting the substitute service but was assigned on the basis of panel position notified vide DME's Office- ABE's letter No. Appt/Class IV/10294 dated 12.8.54 in ABR Distt."



5. In the order of this Tribunal dated 23.9.1993 as quoted in para 2 above, it was clearly mentioned that in case Prem Narain and others have not been given advantage of the date of substitute appointment and their earlier orders might have been recalled, then the applicant will have no grievance. In their letter dated 8/12.1.1999 (Ann.A1) the respondents have in very clear terms stated that seniority was not assigned to Prem Narain and others by counting the substitute service but was assigned on the basis of panel position. It is also worth noting that in its primary relief clause, the applicant prays that the "Tribunal's decision dated 23.9.1993 in TA No.178/92 be implemented in the true spirit....". Instead of filing a new OA, the applicant would have been well advised to file a Contempt Petition if he entertain such ideas about the implementation of the order of the Tribunal. In this view of the matter, this case is hit by the principles of res-judicate since the relief sought in this OA, even if couched in somewhat differently, has already been rejected by this Tribunal in the previous OA.

6. We are also of the considered view that the relief sought in this Original application are hopelessly barred by limitation. The law regarding limitation, as it has developed now, has demanded of the Courts/Tribunals to be very strict in enforcing the provisions regarding limitation very rigorously. In one of their latest judgments, their Lordships of the Apex court in the case of Ramesh Chand Sharma v. Udhram Singh Kamal and ors, reported in 2000 (1) ATJ 178 have held that the Tribunal was not right in deciding the OA on merits overlooking the statutory provisions contained in Section 21(1) and (3) of the Administrative Tribunals Act, 1985. The Apex Court has also held in a number of cases that repeated representations do not extend the period of limitation. The judgment of Hon'ble the Supreme Court in the case of Union of India v. S.S. Fothiwal reported in 1999 SCC (L&S) 251 can be referred to in this regard. In the present case, the applicant is seeking counting of service rendered as substitute from 9.11.1953 to 10.8.1954 for determining his seniority. Even if we keep aside for a moment the fact that this Tribunal had already adjudicated on this issue in the order delivered in TA No.178/92 filed by the applicant earlier, it will not be proper for us to examine the case of seniority and consequential benefits which relates to a period 47 years in

ahur

②

: 4 :

the past. It is a well settled principle of service jurisprudence that things settled in the past should not be unsettled. It can create a cascading effect and may sometime result in persons who had been made junior facing many disadvantages. Simply because the applicant got a letter from the Department on 8/12.1.1991 (Ann.A1) in reply to his letter, it cannot be said that the provisions of limitation will not come into play. In view of the settled legal position that repeated representations do not cure the limitation, it will not be proper for us to open an extremely old case of seniority/promotions. This OA is, therefore, also hopelessly barred by limitation also.

7. The applicant has tried in vain to bring in a new issue in this OA. It was argued by the learned counsel for the applicant that the names of ten employees mentioned in the letter dated 8/12.1.1999 do not find place in the letter dated 12.8.1954 of the DME, Abu Road. We find that this internal correspondence between various authorities cannot help the applicant in establishing his case that his services as substitute must be reckoned for seniority as it is a well established principle of service jurisprudence that services rendered as a substitute cannot be considered as regular service and such persons cannot become senior to regularly appointed persons. It has been stated in absolutely clear terms by the respondents in their letter dated 8/12.1.1999 (Ann.A1) that seniority was not assigned to Prem Warain and others by counting their services as substitute as alleged by him and seniority was assigned on the basis of panel position i.e. on the basis of their regular service. The letter also goes on to explain, by giving examples of certain persons, that persons engaged/appointed earlier to the applicant were placed below him because their date of confirmation was later than him. Ann.A1 should have settled the matter once for all but the applicant choose to file the present OA and, in our considered opinion, wasted the time and resources of this Tribunal, besides expenditure from public exchequer. This was thus a fit case for imposing cost on the applicant but considering that the applicant is an old retired employee, we are not proceeding to do so.

Sharma

9

: 5 :

8. In the circumstances, we do not find any merit in this Original Application and it is accordingly dismissed.

9. There will be no order as to costs.



(H.F.NAWANI)

Adm. Member



(P.S.RAIKOTE)

Vice Chairman