

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 19.11.2004

OA No.244/2003

Ganga Sahai s/o Ramdhan aged about 47 years, Beldar, Section Engineer (Works) Alwar and r/o Railway Quarter No. G 13-B, Railway Colony, Alwar.

.. Applicant

Versus

1. Union of India through General Manager, North West Railway, Jaipur.
2. Divisional Railway Manager, North West Railway, Jaipur

.. Respondents

Mr. N.K.Gautam, counsel for the applicant.

Mr. Tej Prakash Sharma, counsel for respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

ORDER

Per Mr. M.L.Chauhan

The applicant has filed this Original Application thereby praying for the following reliefs:-

- "1) Declare the order dated 20.2.2003 and 1.11.97 (Annexure A/1 and A/4) as wrong, illegal and unoperative.
- 2) Direct the respondents to assign the seniority to the applicant as per orders dated 31.8.96 (Annexure A/2) and grant him consequential seniority and monetary benefits accordingly and post him as Khallasi.
- (3)" i.e.

2. Facts of the case are that the applicant was initially appointed as Beldar. Next promotional avenue from the post of Beldar was Khallasi. The applicant passed trade test for the post of Khallasi and he was offered the post of Khallasi but he refused to join on the said post of Khallasi on two occasions. Therefore, the applicant was allowed to work as Beldar and his name in the panel of Khallasi was deleted due to his refusal. Subsequently, he was given promotion to the post of Khallasi vide order dated 21.8.96. Since, according to the respondents, promotion granted to the applicant to the post of Khallasi was due to mistake and contrary to rules, therefore, the order of reversion of the applicant was passed by the respondents vide memo dated 1.10/11.97. It is alleged by the applicant that thereafter he continued to represent before the authorities regarding his illegal reversion and he has also sent notice of his advocate dated 1.2.2000, but the respondents have neither decided the representation of the applicant nor given any reply to him. Subsequently, the applicant filed OA No. 100/2001 before this Tribunal and this Tribunal vide order dated 22.11.2002 directed the respondent No.2 to consider the representation submitted by the applicant and particularly representation dated 17.11.97 (Ann.A3) and pass appropriate speaking order under intimation to the applicant within a period of 3 months from the date of receipt of copy of the order. Accordingly, the respondents have passed impugned order dated 20.2.2003 (Ann.A1) thereby rejecting the representation of the applicant. It is this order as well as order dated 1.10/11.97 which are under challenge in this OA.

3. The respondents have filed detailed reply stating, inter alia, that the applicant had passed trade test of

Khallasi but he refused to join the said post of Khallasi on two occasions as per communication dated 7.3.81 and 22.7.82 and therefore, he was allowed to work as Beldar and his name in the panel of Khallasi was deleted due to refusal and subsequently he was given promotion to the post of Khallasi erroneously though as per para 224 of the Indian Railway Establishment Manual (IREM) Vol.I he has not qualified the suitability test afresh and therefore, promotion given by the railways was due to mistake and was contrary to rule and therefore vide order dated 1.11.97, the same was withdrawn and he was rightly reverted to the post of Beldar in the pay scale of Rs. 775-1025.

4. The applicant has filed rejoinder. In the rejoinder he has stated that he never submitted refusal for his posting as Khallasi. The applicant after his 12 days working as Khallasi was returned to work as Beldar on 19.4.86 against his will and wishes against which the applicant had prolonged correspondence with the respondents and he was accordingly posted as Khallasi and assigned seniority vide order dated 21.8.96 (Ann.A2).

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

5.1 The fact that the applicant has passed the trade test of Khallasi and he was offered post of Khallasi after passing the trade test in the year 1981 is not disputed. The respondents have placed on record letter dated 7.3.81 (Ann.R1). Perusal of this communication reveals that the applicant was posted as Beldar on his own request and debarred for promotion for one year. The respondents have also placed on record letter dated 12.7.82 (Ann.R2) written by the

Inspector of Works, Alwar to the Assistant Engineer, Alwar which indicates that none of the employee is willing to work against the post of Khallasi. The applicant has not controverted these facts in his rejoinder. Rather, the applicant in the rejoinder has stated that he worked as Khallasi for 12 days and thereafter he was returned to work as Beldar on 19.4.86. Even if, this assertion of the applicant is admitted to be correct, the applicant has not made out any case that he never submitted his refusal to work against the post of Khallasi in the year 1981. What the applicant has stated in the rejoinder is that he has worked on the post of Khallasi for 12 days that too in the year 1986 almost 5 years after passing of trade test. Thus, the fact that the applicant has refused to join the post of Khallasi on two occasions has not been controverted by the applicant. On the contrary the respondents have placed on record order dated 7.3.81 and subsequent letter dated 12.7.82 to show that the applicant has refused to avail the promotion on the post of Khallasi, therefore, his name was deleted from the panel for promotion to the post of Khallasi.

5.2 Further, the applicant cannot have any grievance regarding his reversion from the post of Khallasi vide order dated 1.11.97 which promotion was granted to the applicant contrary to the provisions contained in para 224 of the IREM (Vol.I), which is in the following terms:-

"224. Refusal of Promotion

I. Selection Posts

.....

II. Non-selection Posts

(i) Such an employee should be debarred for future promotion for one year but not be transferred away from that station for one year if unavoidable

domestic reasons exists. He should again be debarred for promotion for one year in case he refuses promotion again after the first year of debarrment or refusal of promotion for second time, the Administration can however transfer him to out station in the same grade and the employee has again to appear for a suitability test when his turn for promotion comes."

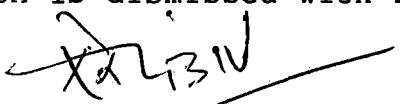
5.3 Admittedly, the applicant has not appeared in the suitability test again, as such he could not have been promoted to the post of Khallasi vide order dated 21.8.96 contrary to provisions as contained in para 224, which have been reproduced hereinabove. Thus, no infirmity can be found in the order dated 1.10/11.97 whereby the order issued earlier was withdrawn and the applicant was reverted to the post of Beldar in the pay scale of Rs. 775-1025.

5.4 That apart, the applicant is not entitled to any relief yet on another ground. Admittedly, the applicant passed the trade test in the year 1981 and he was granted promotion on the post of Khallasi in the year 1981 and subsequently he was given opportunity to join the promotion post which the applicant refused. This all happened in the years 1981 and 1982. In case the applicant was aggrieved on account of his non-promotion to the post of Khallasi, he should have agitated the matter at that time. Having not done so, he cannot be permitted to agitate the same at this belated stage thereby claiming seniority over and above his junior persons without impleading them as respondents in this OA. Further, the cause of action arose in favour of the applicant in the year 1997 when promotion wrongly granted was withdrawn vide order dated 1.10/11.97 (Ann.A4). The applicant slept over the matter and it is only in the year 2001 that he filed OA in this Tribunal.

The applicant has not explained as to why he has not availed remedy available to him within the time prescribed under Section 21 of the Administrative Tribunals Act. Even in the earlier OA, the learned counsel for the applicant has made categorical statement that he would be satisfied if the respondents are directed to consider representation submitted by him particularly one dated 17.11.97 (Ann.A3) and pass appropriate order within the specified time frame and it was on the basis of this statement that this Tribunal has given direction to the respondents to decide representation of the applicant dated 17.11.97 (Ann.A3). Such a direction given by this Tribunal in the earlier OA will not extend period of limitation. The Apex Court in the case of State of Orissa vs. Chandra Sekhar Mishra, 2003 SCC (L&S) 878 has stated that where a person did not approach the Tribunal within the period of limitation provided by the statute, the Tribunal should not have entertained the appeal. In that case the respondent was appointed as Homoeopathic Medical Officer and he was issued a notice dated 13.12.77 informing that his services would be terminated w.e.f. 31.1.78. The respondent chose to challenge the order of termination by filing the OA in 1992. The Tribunal by order dated 23.11.95 directed that representation be filed with the State Government. The said representation was filed and the same was rejected. The respondent again approached the Tribunal and the Tribunal purported to follow orders which had granted relief to other claimants allowed the OA and directed the appellant therein to appoint respondent as Homoeopathic Medical Officer with retrospective effect with all service benefits. The Apex Court held that service of the respondents were terminated w.e.f. 31.1.78 and the respondent did not approach the Tribunal within the period of limitation provided by the statute. On this ground alone, the Tribunal

should not have entertained the appeal. The present case is also covered by the ratio as laid down by the Apex Court. In the instant case also the applicant has challenged the order of reversion dated 1.11.97 in the year 2001 after the period prescribed by the statute. Under these circumstances, it would not be permissible for the earlier Bench to give direction to the respondents to decide the representation of the applicant. In any case, the cause of action accrued in favour of the applicant in the year 1997, as such the present OA filed in 2003 cannot be entertained which has been filed after the period prescribed in the statute and is hopelessly time barred. The applicant has neither filed any application for condonation of delay nor given any satisfactory explanation as to why he has not approached this Tribunal within the time prescribed under the statute. On this score also, the present application cannot be entertained.

6. Viewing the matter from any angle, the applicant has not made out any case for our interference. Accordingly, the OA is dismissed with no order as to costs.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)