

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

27/11/07BA 596/203 with MA 509/203

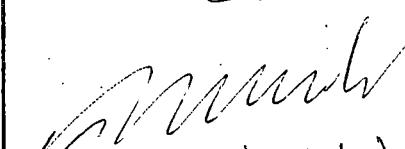
Mr. Shiv Kumar, Counsel for applicant

Mr. Yogesh Sharone, Proxy Counsel for

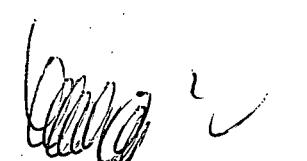
Mr. Virendra Dave, Counsel for respondents

Heard learned Counsel for the parties.

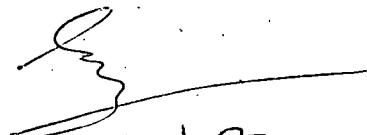
Order Reserved.

  
(G.P. Shukla)

M (A)

  
(M.L. Chauhan)

M (J)

29.11.2007order pronounced today in the  
open court by the aforesaid  
Bench.

29/11/07.

C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 29<sup>th</sup> day of November, 2007

ORIGINAL APPLICATION No.596/2003  
with MA No.509/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Hira Lal,  
Shri Poosaram,  
aged about 48 years,  
r/o Mata Ghar Road, Railway Quarter No. 407/D,  
Abu Road, Ajmer,  
at present employed on the post of  
Office Superintendent, Adhoc basis,  
under Deputy Controller of Stores  
(now known as Deputy Material Manager),  
Ajmer, Northern Western Railway,  
Ajmer.

.. Applicant

(By Advocate: Shri Shiv Kumar)

Versus

1. Union of India through the General Manager,  
North Western Railway,  
Jaipur
2. Chief Controller of Stores, Jaipur,  
North Western Railway,  
Jaipur.
3. Deputy controller of Stores  
(now known as Deputy Material Manager),  
Ajmer, North Western Railway,  
Ajmer.

.. Respondents

(By Advocate: Shri Yogesh Sharma, proxy counsel for  
Shri Virendra Dave)

## O R D E R

**Per Hon'ble M.L.Chauhan**

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

- i) That the respondents may be directed to extend the same benefits in favour of applicant being similarly situated employee as per judgment dated 08.05.2003 (Annexure-A8) passed in the case of Nemraj and Ors. V/s U.O.I. and Anr. OA No.61/2002 with all consequential benefits. Further the respondents may be directed to consider the representation of applicant dated 25.07.2003 (Annexure-A10) in light of judgment dated 08.05.2003 (Annexure -A8) passed in the case of Nemraj and Ors. V/s U.O.I. and Anr. OA No. 61/2002.
- ii) Any other order/direction may be passed in favour of applicant which may be deemed fit just and proper under facts and circumstances of this case.
- iii) That the cost of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant belongs to Schedules Caste (SC) category. The applicant seeks direction to the respondents to consider his case for grant of promotion on the post of Chief Clerk in the pay scale of Rs. 1600-2660 under restructuring scheme which came into effect w.e.f. 1.3.1993. The grievance of the applicant is that 3 persons namely, S/Shri Radhey Shyam Garg, P.C.Soni and Hem Chand, who were junior to the applicant, were given benefit of restructuring and promoted vide order dated 14.5.1993 (Ann.A1), but the case of the applicant was not considered. It is further averred that in similar circumstances, OA No.266/95 was filed

before this Bench by Shri Nem Raj and two others and this Hon'ble Tribunal has decided the same vide judgment dated 25.11.1999 (Ann.A4). It is further averred that when the judgment of this Tribunal dated 25.11.99 was not implemented then the same person filed another OA No.61/2002 which was decided by this Bench on 8.5.2003 (Ann.A8). It is further stated that the respondents have implemented the said judgment and the applicant thereafter immediately made a representation on 25.7.2003 (Ann.A10) to the concerned authority stating that he is similarly situated employee and he may be extended the same benefit as per judgment dated 8.5.2003. The applicant has also stated that earlier, he has made representation to the respondents, which was considered and rejected vide order dated 21.8.1995 (Ann.A6). The applicant has also placed on record copy of the seniority list dated 31.10.92 of Head Clerks in the grade of Rs. 1400-2300 as Ann.A3 whereby name of the applicant find mention at Sl.No. 16 and that of so called three persons junior to the applicant, namely, S/Shri Radhey Shyam Garg, P.C.Soni and Hem Chand Gupta find mention at Sl.Nos. 22, 23 and 24. It is on the basis of these pleadings, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have raised objections regarding territorial jurisdiction of this Tribunal,

inasmuch as, according to respondents, the applicant at the relevant time was working at Abu Road which comes within the jurisdiction of CAT, Jodhpur Bench, as such Jaipur Bench has got no jurisdiction to entertain this OA. Further preliminary objection raised by the respondents in the reply is that the present OA is time barred as according to the respondents, the applicant is challenging the order dated 14.5.1993 after a lapse of more than 10 years. It is further stated that the applicant has also filed representation which was rejected vide order dated 19.8.95 (Ann.A6) and further the OA No. 266/95 filed by Shri Nemraj was also decided on 29.11.1999, as such, the OA is time barred. It is further stated that guidelines issued by the Headquarter office vide letter No. E(SCT)/220/15(1)Court Cases dated 12.2.1998 were in existence at the time of granting promotion w.e.f. 1.1.1993 on account of restructuring and the applicant was not within the eligibility zone for promotion. As such, he could not have been considered against the general post. It is further stated that the reserved candidates who have been enjoying the status by virtue of their reserved position, were considered against the reserved vacancy as per notified seniority but against the general post he was not considered within the eligibility zone for selection/suitability and promotion in the year 1993.

The respondents have also contested the OA on the

ground that the applicant has not impleaded affected persons who were given benefit under upgradation scheme and also that the benefit of upgradation was limited to the extent of upgraded posts and now without snatching the benefit from the promoted employees, it cannot be given to the applicant unless it is withdrawn from others. Therefore, the affected persons are necessary parties and without impleading them, the controversy cannot be decided. The respondents have also stated that the applicant cannot be granted the benefit of the judgment rendered in OA No. 61/2002, Nemraj and ors. vs. UOI and Anr. as it is a time barred case.

4. The applicant has also filed Misc. Application No. 509/03 for condonation of delay. In the said application, the only ground taken by the applicant for condoning the delay is that the applicant is similarly situated to that of the applicants in OA No. 61/2002 decided on 8.5.2003 and being a similarly situated, he made representation to the concerned authority, but his case was not considered, as such, he has been compelled to move this Tribunal. It is on this ground, the applicant has sought condonation of delay.

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

6. We are of the view that the applicant is not entitled to any relief for more than one reason.

(Q)

As already stated above, the grievance of the applicant is regarding order dated 14.5.1993 (Ann.A1) whereby 14 persons were granted promotion as Chief Clerk in the scale of Rs. 1600-2660 w.e.f. 1.3.1993 from the post of Head Clerk scale Rs. 1400-2300. It is evident from the material placed on record that the applicant made a representation dated 12.8.1995 which representation was rejected and the applicant was informed vide letter dated 19.8.95 that the benefit of upgradation w.e.f. 1.3.93 was granted to the persons who were eligible at that time. You could have been promoted, if your name found mention in the eligibility list. The applicant has not challenged the validity of this letter by filing representation to the authorities subsequently or in the present OA. Thus, we are of the view that the present OA is hopelessly time barred and thus, liable to be dismissed on this score alone.

Further, from the material placed on record, it is evident that the applicant is basing his claim on the basis of the judgment rendered by this Tribunal in OA No.61/02 which was decided on 8.5.2003 and subsequently made representation based on this judgment. The applicant has pleaded in the Misc. Application No.509/03, that being similarly situated he is entitled to the benefit of the said judgment and as such the same constitute a sufficient cause for condonation of delay. According to us, such an

explanation given by the applicant cannot be accepted as sufficient cause for condonation of delay in view of the law laid down by the Apex Court in the case of State of Karnataka and ors. vs. S.M.Kotrayya and ors., 1996 SCC (L&S) 1488. That was a case where respondents therein utilized the benefit of LTC advance and drew the amount but the same was never utilized. Consequently, recovery came to be made in the year 1984-86. Some of the persons filed applications in the Tribunal questioning the power of the Government to recover the same. Thereafter the Tribunal allowed similar claims and had held that the Government could not recover the same from the respondents. On coming to know of it, the respondents filed applications in August, 1989 before the Tribunal with an application to condone the delay. The Tribunal had condoned the delay by the impugned order. The matter was carried before the Apex court. After considering the provisions of Section 21 of the Administrative Tribunals Act, 1985, in para 9 observed as under:-

"9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub section (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of

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them to explain under sub section (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

The observations made by the Apex Court in the case of S.M.Kotrayya (supra) is squarely applicable in the facts and circumstances of this case. Under these circumstances, we are of the firm view that the applicant has not made out any case for condonation of delay.

As already stated above, the case of the applicant is still worst, inasmuch as, representation of the applicant regarding promotion was rejected as far back as in the year 1995 (Ann.A6). The applicant has accepted this order and not challenged validity of this order, which has attained finality. It was only in the year 2003 taking benefit of the judgment of this Tribunal in OA No.61/2002 that the applicant made a further representation for considering his case in the light of the judgment rendered by this Bench, which course, according to us, is not permissible.

That apart, even on merit, the applicant is not entitled to any relief. As can be seen from the impugned order dated 14.5.1993 (Ann.A1), only 14 posts of Chief Clerk in the scale Rs. 1600-2660 were upgraded on account of restructuring w.e.f. 1.3.93. Promotion to these posts were to be made from the post

of Head Clerk scale Rs. 1400-2300. As per seniority list Ann.A3, benefit of higher scale has been granted to persons at Sl.No. 1 to 13 strictly as per seniority except three persons namely S/Shri Radhey Shyram Garg, P.C.Soni and Hem Chand Gupta whose name find mention at Sl.No.22, 23 and 24. It may be stated here that Shri Brijesh M.Sharma whose name find mention at Sl.No.14 has not been reflected in the seniority list and it is not understood how he has been granted benefit of the upgraded scale. Be that as it may, since there was no grievance regarding Shri Brijesh M.Sharma in the earlier OA No.61/2002 on the basis of which judgment the applicant is claiming benefit and also in this OA, no finding is required to be given regarding promotion of Brijesh M.Sharma. The grievance of the applicant is regarding three persons namely S/Shri Radhey Shyam, P.C.Soni and Nem Chand Gupta. These three persons who were junior to the applicants in earlier OA as well as the applicant in this OA, were held not entitled to grant of higher scale under restructuring scheme pursuant to the judgment in OA No. 61/02, the benefit of which the present applicant is claiming. As against 3 persons, who were held wrongly promoted, the respondents have granted promotion to 3 other persons namely S/Shri Nemraj, Roop Chand and Pooran Chand, applicants in OA No.61/02 as per the seniority list Ann.A3. Admittedly, these three applicants in OA No.61/02 were senior to the

applicant of this OA, whose name find mention at Sl.No.16. As such, even if the present OA is allowed, the applicant is not entitled to any benefit because the benefit has already been granted to the applicants in OA No. 61/02 against the three so called junior persons who were wrongly promoted and even if direction is given to the respondents to consider case of the applicant, that will be a futile exercise, inasmuch as there will be no post available against which the case of the applicant for upgradation can be considered.

7. Thus, viewing the matter from any angle, we are of the view that the applicant is not entitled to any relief. Accordingly, OA as well as MA are dismissed with no order as to costs.



(J.P. SHUKLA)

Admv. Member



(M.L. CHAUHAN)

Judl. Member

R/