

Central Administrative Tribunal
Jabalpur Bench

OA Nos.236/05 & 237/05

Jabalpur, this the 19th day of July 2006.

C O R A M

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

OA No.236/05

Parasuram Shrivatra

Son of Late Shri Bhaiyalal Shrivatra

R/o Anandi Marg

Ward No.8

Nainpur 481 776 (M.P.)

Applicant

(By advocate Mr.Aditya Ahiwasi on behalf of Mr.Sanjay Verma)

Versus.

1. Union of India through
Its General Manager
South Eastern Railway
Kolkata (W.B.)

2. Chief Personal Officer (I/R)
South Eastern Railway
Garden Reach
Kolkata.

3. Divisional Rail Manager
South Eastern Railway
Nagpur (Mah.)

Respondents.

(By advocate Mr.M.N.Banerjee)

OA No.237/05

O.P.Agarwal

Son of Late Shri Kundanlal Agarwal

R/o Mandla Signal Ward No.6

Distt. Mandla (M.P.)

Applicant

(By advocate Shri Aditya Ahiwasi)

Versus

1. Union of India through
Its General Manager
South Eastern Railway
Kolkata (W.B.)
2. Chief Personal Officer (I/R)
South Eastern Railway
Garden Reach
Kolkata.
3. Divisional Rail Manager
South Eastern Railway
Nagpur (Mah.)

Respondents.

(By advocate Mr.M.N.Banerjee)

ORDER

By A.K.Gaur, Judicial Member

In both these Original Applications, the issue involved is same and the facts are identical. Hence these OAs are disposed of by a common order.

2. The applicants in both the OAs claim following identical reliefs:

- (a) Direct the respondents to grant senior selection A/T Grade II of Rs.2000-3500 from 1.4.88
- (b) Direct the respondents to make the payment of retrial benefits as if he has been granted the pay of selection A/T Grade II Rs.2000-3500 w.e.f. 1.14.88.
- (c) Direct the respondents to make the payment as pensionary benefits as if he has been granted the pay of selection A/T Grade II Rs.2000-3500 w.e.f. 1.14.88.

3. The applicants had initially joined the services of South Eastern Railway as Trained Graduate Teachers on 17.8.61, got Selection Grade A/T on 1.4.76 as per the recommendations of the 3rd Pay Commission along with other eligible teachers (A-1). According to 4th Pay Commission, vide Railway Board's letter dated 11.1.1988, the Selection Grade was converted to Senior Grade, and a new Selection Grade Rs.2000-3500/- was introduced to be given to Trained Graduate

Teachers (Grade II) after completion of 12 years in Senior Grade, subject to acquiring higher qualification of Post Graduate Teacher coming in the zone of 20% of Senior Grade (A-2). A list of 11 eligible Trained Graduate Teachers, who had completed 12 years in Senior Grade, and had come in the zone of 20% of the then senior grade was circulated vide Chief Personnel Officer, Garden Reach, Culcutta's (GRC) letter dated 13.7.89 to award the selection grade from 1.4.88 with instruction to be in readiness to appear for the selection. According to the applicants, despite holding the selection, the matter was delayed without any notice to the concerned eligible teachers and the selection was delayed for 15 months from the date of eligibility i.e. 1.4.88. Although, various representations were preferred by the applicants but no heed was paid to them. It is submitted on behalf of the applicants that after a long delay of more than 3 years, a new list was circulated vide CPO-GRC's letter dated 10.4.95 to award the grade from two different dates i.e. 1.4.88 (after 12 years) and 1.4.91 (after 15 years). Prior to it, the applicants were in the aforesaid lists of 13.7.89 and 27.5.92 for awarding the grade from 1.4.88 but in the second new list of 10.4.95, the applicants name was included for awarding the grade from 1.4.91. All this occurred due to 8 years long correspondence between the CPO-GRC and the Railway Board to give benefit to the Trained Graduate Teachers. The grievance of the applicants is that when the privilege was granted for one time only, the name of such Trained Graduate Teachers should have been placed below the names of erstwhile eligible 11 Trained Graduate Teachers holding Post Graduate Degree and fulfilling all the conditions. But it was not done so and the respondents had prepared the list as per their own interpretation. The applicants have suffered financial loss on account of delayed promotion. In Para 4.8 of the OA, the applicant has given a chart showing the loss of pay arrears due to difference of basic pay.

4. Heard learned counsel for the applicants at length.
5. Mr. M. N. Banerjee, learned standing counsel for the respondents, has argued that the OA is grossly time barred. Neither an application for condonation of delay supported by an affidavit has been filed, nor each day's delay has been explained

by the applicants in filing the original application. It was argued that the OA deserves to be dismissed on the ground of delay and laches alone without entering into the merits of the case.

6. Having heard the counsel for respondents on the preliminary point of limitation, it is noticed that the Hon'ble Supreme Court in JT 2002 (5) SC 367 has laid down that even in a case of continuing wrong, the Tribunal is justified in dismissing the original application which is grossly time barred. It has been contended on behalf of the applicant that in a case of continuing wrong, the period of limitation should not be strictly adhered to.

7. We are not satisfied with the argument advanced by the learned counsel for the applicant that in a case of continuing wrong, the principle of limitation will have no application. Even in case of continuing wrong, the question of limitation will come into play (JT 2002 5 SCC 367). The applicants had retired long before the judgement of the Principal Bench of the Tribunal dated 13.11.92 but their case was dismissed on the ground of limitation alone. The Hon'ble Supreme Court has maintained the view taken by the Tribunal and held that the original application was rightly dismissed being barred by limitation.

8. In order to show that the question of preliminary objection, as to the maintainability of the OA, on the ground of limitation should be decided as preliminary issue, the learned counsel for the respondents has cited JT 2000 (10) SC 306. A perusal of the aforesaid case clearly indicates that the question of limitation may be decided as a preliminary issue without entering into the merits of the case. ~~On the other hand~~ the Hon'ble Supreme Court has clearly observed that merits of the case should not be looked into without condoning the delay (JT 1998 (8) SCC 529. The Hon'ble Supreme Court in the case of R.C.Sharma Vs. Udhamp Singh Kamal 2000 SCC L&S 53 has clearly held that without condoning delay, no decision on merits should be given by the High Court or Tribunal. The same view has also been taken by the Hon'ble Supreme Court in 1999 SCC L&S 643.

9. In the present case, the applicants claim that they should have been given the benefit of promotion since 1988, whereas they have been granted the benefit w.e.f.

1991. The proper course for the applicants was to approach this Tribunal for redressal of their grievance at the earliest opportunity and not at a delayed stage. Anyone who feels aggrieved by seniority assigned to him should approach the court as early as possible – AIR 1990 SC (10). A Constitution Bench of the Supreme Court has held that the Tribunal shall not ordinarily entertain an application after an inordinate delay. It has been held in the case reported in AIR 1989 SC 2082- T.R.Kapur & another Vs. State of Haryana & Ors. that a person having remained complacent for long number of years, cannot turn around and say that notwithstanding his inaction, he should be granted promotion from due dates on the basis of seniority.

10. Without entering into the merits of the case, we proceed to decide the question of limitation alone and in our considered view, the OA is not legally maintainable. No application for condonation of delay, supported by an affidavit has been filed and no reasonable or plausible explanation has been given for the delay.

11. In view of the aforesaid observation the Original Applications are dismissed on the point of delay and laches alone.

A.K.Gaur
(A.K.Gaur)
Judicial Member

G.C.Srivastava
(Dr.G.C.Srivastava)
Vice Chairman

22.

कृतांकन से ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि दायीं भित्ति:-
(1) संघिव, उच्च न्याय, व्यापार एवं विभिन्नान, जबलपुर
(2) आकेदक श्री/श्रीमती/चु..... के काउंसल
(3) प्रत्यधी श्री/श्रीमती/चु..... के काउंसल
(4) नंगलाल, केप्यअ., जबलपुर व्यापारी
रुपां एवं आवश्यक कार्यालय
संस्था रजिस्टरेशन

Sanjay Verma 21/2
230 (2)
M. K. Banerjee
230 (2)

Approved
24-3-06