

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

CIRCUIT SITTING AT BILASPUR

CA No.742/04

Bilaspur, this the 12th day of May 2005.

CORAM

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. A.K. Bhatnagar, Judicial Member

1. Haradhan Dey
S/o Late B.N. Dey
R/o Railway Colony
Qr.No. L-22 Bangla Yard
Bilaspur, Thana Torwa
Tehsil & Dist. Bilaspur.

2. Alok Kumar Nandi
S/o Late N.N. Nandi
R/o Railway Colony
Qr.No. 17/1 Bangla Yard
Bilaspur.

3. Ram Ishwar Prasad
S/o Late G.C. Prasad
Railway Colony
Qr.No. 443/A, Bilaspur.

Applicants.

(By advocate Shri A.K. Gupta)

versus

1. Union of India through
General Manager, S.E.C.R
Bilaspur.

2. The Senior Divisional Engineer
(Coordination)
South East Central Railway
Bilaspur.

3. The Divisional Railway Manager
South East Central Railway
Bilaspur.

4. The Sr.D.P.O.
South East Central Railway
Bilaspur.

5. The Chairman
Railway Board, Rail Bhawan
Baroda House
New Delhi.

Respondents.

(By advocate Shri M.N. Banerjee)



O R D E R (oral)

By M.P.Singh, vice Chairman

By filing this OA, the applicants have sought the following reliefs:

- (i) Direct the respondents to promote and regularise the applicants in IOW-III w.e.f.1987 and further promote and regularise them as IOW-II w.e.f. 1993 and thereafter promote and regularise them to the post of IOW-I w.e.f. 1998, and also direct the respondents to pay arrears of salary w.e.f.1987 in the respective grades upto the year 1998 and onwards.
- (ii) Quash letter dated 26.8.02 (Annexure A1).
- (iii) Direct the respondents to implement the instructions contained in Annexure A4 vide R.B.'s No.E(NG)B/86/RC-2/86 of 19.8.88 SL.No. SE 228/88.
- (iv) That all the recruitments made after 1982 wherein only direct recruitment quota of 75% have been filled up and 25% quota of departmental promotion quota has not been filled up. May be quashed and declared as void.
- (v) Quash Annexure A5 dated 1.7.2000, Annexure A6 dated 1.11.03 and Annexure A7 dated 1.1.96 and direct the respondents to prepare a fresh seniority list division-wise.

2. The brief facts of the case are that the applicants were appointed in the year 1982 as works mistry with the respondent Railways. According to the applicants, 75% of the vacancies of IOW-III ^{are} ~~is~~ required to be filled up by direct recruitment of candidates possessing diploma in Civil Engineering and the remaining 25% vacancies by promotion from the works-mistries. According to them, until 31.12.87, the ratio of recruitment viz. direct and departmental promotion was 50%/50%. The grievance of the applicants is that the respondents have filled up 75% quota by direct recruitment but they have not filled up the remaining vacancies of 25% quota. Thus the applicants became eligible for promotion to the post of IOW-Gr.III. in the year 1987 after 5 years of service. If the respondents had filled up the promotion quota of 25%, the applicants would have been selected and appointed as IOW-Gr.III in 1987 and consequently they would have been promoted as

IOW Gr.II in 1993 and IOW Gr.I w.e.f. 1998. The respondents have not filled up the promotion quota of 25% as per rules and hence the applicants are still working as IOW Gr.III. Hence this OA is filed.

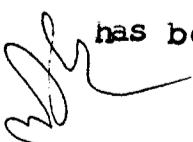
3. Respondents in their reply have stated that in the year 1988, persons engaged in the Construction Organisation on casual basis appeared for selection for the post of IOW Gr.III. Selection was conducted against the direct recruitment/open market recruitment and those who were selected and appointed as IOW Gr.III were subsequently regularised and their seniority was fixed in that grade from the date they were appointed. It is also submitted by the respondents that the applicants are claiming promotional benefit and arrears of pay from 1987, which shows that the cause of action arose in the year 1987 and the applicants have approached this Tribunal after 16 years. Hence the OA is hopelessly barred by limitation under Section 21 of AT Act, 1985. Apart from this, the applicants have alleged that several ^{other &} works mistries were promoted as IOW Gr.III but they were not considered for the same. The applicants have not mentioned any specific name of persons to whom and when such promotions were given, ignoring the applicants. Therefore, it is not possible to submit any comment on the plea taken by the applicants. It is further submitted by the respondents that whenever vacancies arises, selections are conducted duly bifurcating the said vacancies in departmental quota and direct recruitment quota by following rules, procedures and guidelines given by the Railway Board from time to time. In view of this, the OA is without merit and hopelessly barred by limitation and therefore, it is liable to be dismissed.



4. Heard learned counsel for both parties. We have given careful consideration to the rival contentions. The applicants who were appointed as works mistries in 1982 have been claiming promotion to the next higher grade after completion of 5 years' service for appointment as ICW Gr.III under promotion quota. According to the submission made by the applicants, the applicants were promoted in the year 1994 whereas they could have been promoted in the year 1987. Learned counsel of the applicants has submitted that the cause of action has arisen in 2002 as they came to know about their seniority position from the list put up in 2000. Therefore, the cause of action arises from that year. The learned counsel also submitted that seniority and promotion of a Government servant is a continuous cause of action and he can raise such grievance at any point of time during his service.

5. On the other hand, learned counsel for the respondents states that the present case is hopelessly barred by limitation. The applicants are claiming seniority and promotion as also arrears of pay from 1987 and they have filed this OA after a lapse of 17 years. According to the learned counsel for the respondents, the Department has filled up the vacancies under direct recruitment quota as per rules and persons have been appointed and as per the law laid down by the Hon'ble Supreme Court, seniority of those who have been appointed in 1987 cannot be unsettled at this belated time. This will create problems in the department.

6. We find that this case is hopelessly barred by limitation. No application for condonation of delay has been filed by learned counsel of the applicants.



The contention of the applicant's counsel that this is a continuous cause of action is not correct and accordingly rejected. We also find that the respondents have made the recruitment to the post of IOW-III as per rules and prescribed procedure. The seniority of the persons appointed in the year 1987 and subsequently cannot be disturbed at this belated stage without giving them an opportunity of hearing. Those who would be adversely affected by change of seniority have not been impleaded as a party in the present case. The Hon'ble Supreme Court has held in such cases that the settled position of the seniority long back ~~settled~~ should not be unsettled.

7. For the reasons recorded above, the OA is dismissed. No costs.


(A.K. Bhatnagar)
Judicial Member


(M.P. Singh)
vice Chairman

aa.

प्रांतिक रांग ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि द. के हितातः—

- (1) सरिता, रांग ओ/न्या, जबलपुर, रांग ओ/न्या, जबलपुर
- (2) अ. रांग ओ/न्या, जबलपुर, रांग ओ/न्या, जबलपुर
- (3) रामराम रामराम, जबलपुर, रांग ओ/न्या, जबलपुर
- (4) योगेन्द्र, रांग ओ/न्या, जबलपुर, रांग ओ/न्या, जबलपुर

सूचना एवं आवश्यक दाखिली है

ज्येष्ठ रजिस्ट्रार

Dr. I. Kartikeya Dr. B.P.
M. D. Beharjee Dr. B.P.

Issued

19.5.05