

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL


07.01.2009


OA No.97/2005 with MA No. 77/2005

Mr. Vinod Goyal, proxy counsel to
Mr. Virendra Lodha, counsel for applicant
Mr. Kumar Gaurav, proxy counsel to
Mr. T.P.Sharma, counsel for resp. Nos. 1 to 3
Mr. Amit Mathur, proxy counsel to
Mr. Kapil Mathur, counsel for respondent No.4

Heard the learned counsel for the parties

For the reasons dictated separately, the OA
stands disposed of.


(B.L.KHATRI)
Admv.Member


(M.L.CHAUHAN)
Judl.Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 7th day of January, 2009

ORIGINAL APPLICATION No.97/2005
With MA No.77/2005

CORAM:

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

Bhawani Shankar Meena,
s/o Shri Prabhu Dayal Meena,
A-77, Mangal Vihar,
Dadi Ka Phatak,
Murlipura,
Jaipur, at present holding
the post of Dy. Chief Trains
Controller in DRM Office,
Jaipur.

.. Applicant

(By Advocate: Shri Vinod Goyal, proxy counsel to Shri
Virendra Lodha)

Versus

1. Union of India
Through General Manager,
North West Railway,
Jaipur
2. Divisional Railway Manager,
North West Railway,
Jaipur
3. Senior Divisional Personnel Officer,
D.R.M. Office,
North Western Railway,
Jaipur.

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4. Shri Ramesh Chandra Mathur,
Presently holding the post of
Chief Trains Controller,
D.R.M. Office,
North Western Railway,
Jaipur.

... Respondents

(By Advocate: Shri Kumar Gaurav, proxy counsel to Shri T.P. Sharma for resp. No. 1 to 3 and Shri Amit Mathur, proxy counsel to Shri Kapil Mathur for resp. No.4)

ORDER (ORAL)

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

- i) by an appropriate order or direction, the Hon'ble Tribunal may kindly call for the entire record pertaining to issuance of impugned order dated 23.1.2004 (Annex.A/1) read with order dated 7.11.1995 (Annex.A/2) and read with order dated 11.3.2003 (Annex.A/3) and after examining the impugned order dated 23.1.2004, 7.11.1995 and order dated 11.3.2003 to extent it deserves promote to the applicant on the post of Chief Trains Controller vis-à-vis respondent No.4 and further to consider the case of applicant for promotion to the post of Chief Trains Controller promoted with all consequential benefits be pleased to declare null and void and be quashed and set aside.
- ii) By further appropriate order or direction the official respondents be directed to promote the applicant on the post of Chief Trains Controller from the date person junior to applicant to the respondent No.4 with all consequential benefits like arrear of salary with interest including the seniority on the post of Chief Trains Controller after re-fixing the applicant in seniority list of Chief Trains Controller, Dy. Chief Trains Controller and Assistant Trains Controller.

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- iii) By further appropriate order or direction if any order prejudicial/detrimental to the interest of the applicant is passed on the basis of impugned orders during the pendency of the Original Application or thereafter the same may kindly be taken on record and be quashed and set aside.
- iv) Any other order or direction which may be considered just and proper in the facts and circumstances of the case be passed in favour of the applicant.
- v) Cost of the OA may kindly be awarded to the applicant.

2. Alongwith this OA the applicant has filed Misc. Application No.77/05 for condonation of delay. In the application for condonation of delay, the applicant has submitted that against the panel dated 26.8.1992 the applicant submitted representation to the official respondents but the same was not replied by the official respondents and no cogent reasons have been given by the respondents in defeating the seniority list published by the official respondents on 3.8.1991. It is further pleaded that subsequently applicant made representations Ann.A2 and A3. In para 2 of the Misc. Application, the applicant has stated that since undue benefit has been given to respondent No.4 in giving promotion ignoring claim of the applicant, as such, the applicant has the recurring cause of action and delay, if any, is not intentional, as such, the same may be condoned.

The respondents have filed reply to the Misc. Application and have stated that the applicant is

claiming promotion and other consequential benefits w.e.f. 1993 whereas the present application has been filed in the year 2005, after a delay of about 10 years, as such, the present OA is not maintainable.

3. At this stage, it will be relevant to notice some relevant facts, which have bearing for the purpose of decision in this case. The case as set out by the applicant in this OA is that respondents have issued a seniority list dated 3.8.91 (Ann.A4) wherein name of the applicant figures at Sl.No.106 while name of respondent No.4 at Sl.no.233. It is further pleaded that notification dated 26.8.1992 for promotion to the post of Assistant Trains Controller was issued wherein name of the applicant appears at Sl.No. 4 whereas name of respondent No.4 appears at Sl.No.1. It is also pleaded that against this notification/eligibility list, a representation dated 20.8.1993 was submitted by the applicant to official respondents but the same was not replied by the respondents. The grievance of the applicant is that since as per seniority list dated 3.8.1991 (Ann.A4) he was senior to respondent No.4, as such, it was incumbent upon the respondents to prepare eligibility list in accordance with the said seniority list whereas the eligibility list dated 26.8.1992 (Ann.A5) has been prepared contrary to the seniority list dated 3.8.1991.

4. Notice of this application was given to the respondents. The respondents have filed reply. The fact that panel for giving promotion to the post of Assistant Trains Controller was prepared on 26.8.1992 for the grade of Rs. 1400-2600 in which name of the applicant appears at Sl.No.4 and of respondent No.4 at Sl.No.1 is not disputed. The reason for preparing the panel in the aforesaid manner, as can be seen from Para 5 of the reply is that the said panel was prepared on the basis of base grade seniority and the applicant was informed about this by the railway administration vide order dated 7.11.1995. It is denied that representation submitted by the applicant was not replied by the railway administration. In fact as per record a proper reply was given to the applicant in response to his representation vide letter dated 12th October, 1993 wherein it was stated by the respondents that panel dated 26.8.1992 was based as per base grade seniority and accordingly, the applicant was junior to Shri Ramesh Chandra Mathur, respondent No.4, which is evident from reply. The objections raised by the applicant were considered and communicated. As per the averments made in the reply, copy of the reply given to the applicant on 12th October, 1993 was marked as Ann.R1. However, from the reply affidavit it is evident that respondents have not annexed copy of this Ann.R1 with the reply.

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 present OA is hopelessly time barred and the same cannot be entertained. As can be seen from the facts as noticed above, the main grievance of the applicant is regarding panel dated 26.8.1992 whereby name of respondent No.4 was shown at Sl.No.1 and that of applicant at Sl.No.4. Against that panel the applicant made representation, which according to the respondents, was replied on 12th October, 1993 and the same was rejected. Thus, cause of action in favour of the applicant has arisen for the first time on 12th October, 1993 when his so called representation against the panel dated 26.8.1992 was rejected. The cause of action has again arisen in favour of the applicant when respondent No.4 was granted promotion to the post of Assistant Trains Controller in the year 1993. Admittedly, the present OA has been filed in the year 2005 after a lapse of about 12 years. Thus, we are of the view that the present OA cannot be entertained at this belated stage simply on the ground that the applicant has made repeated representations to the authorities. Law on the point is well settled and the Hon'ble Supreme Court in number of decisions has categorically stated that repeated representations will not extend the cause of action. Further, the

contention raised by the applicant in the OA that non-grant of promotion is continuous cause, as such, the OA is within limitation cannot be accepted in view of the law laid down by the Apex Court in the case of Secretary to Govt. of Punjab vs. Ajit Singh and ors., 1999 SCC (L&S) 1322 wherein the Apex Court has held that non-consideration for promotion is not continuous cause.

7. Yet for another reason, the applicant is not entitled to any relief. The applicant has not challenged validity of the order whereby the so called person junior to him i.e. respondent No.4 was promoted to the post of Assistant Trains Controller in the year 1993. So long as validity of the said order is not challenged, no relief can be granted to the applicant. Even on this ground, the applicant is not entitled to any relief.

8. At this stage, it will be useful to notice few decision of the Hon'ble Apex Court which has bearing on the matter.

In the case of P.S.Sadasivaswamy vs. State of Tamilnadu, AIR 1974 SC 2271, the Apex Court has held that a person aggrieved by an order of promoting a junior should approach the Court at least within six months or at the most one year of such promotion. In the case before the Apex Court the appellant was

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senior to respondent Nos. 2 to 4 in the cadre of Assistant Engineer. Respondent No.2 was granted promotion as Divisional Engineer by giving him relaxation whereas no such relaxation was given to the appellant. He made repeated representations. The case of the Department before the High Court was that relaxation has been given only in the case of overseas scholars, hence petition filed by the appellant was dismissed. The matter was carried to the Apex Court and the Apex Court in para-2 made the following observations:-

".....A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise to discretion for the Courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court in considering legitimate grievance as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal." (emphasis supplied)

The ratio as laid down by the Apex Court is squarely applicable in the instant case.

Further, the Apex Court in the case of Gyan Singh Mann vs. High Court of Punjab and Haryana, (1980) SCC (L&S) 257 has held that where petition was filed about 11 years from the date on which promotions were claimed, it was held that such inordinate delays could not be overlooked on the ground that the petitioner was making successive representation to the department.

9. Thus, viewing the matter from any angle, we are of the view that the applicant cannot be granted any relief on account of delay and latches. Further, right has accrued in favour of respondent No.4 and no relief at this belated stage can be granted which will cause serious prejudice to respondent No.4 on account of omissions and negligence of the applicant. In fact the applicant has acquiesced in the matter of grant of promotion to respondent No.4 and by his conduct has waived his legal right, if any.

10. For the foregoing reasons, we are of the view that the present OA is hopelessly time barred and the same is required to be dismissed on this ground alone without going into merit of the case. Ordered accordingly.




11. In view of dismissal of the MA for condonation of delay, no order is required to be passed in the OA which shall stand dismissed accordingly.


(B.L. KHATRI)

Admv. Member

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(M.L. CHAUHAN)

Judl. Member