

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL


28.11.2006


OA 194/2005

None present for the applicant.

Despite an undertaking given by the learned counsel for the applicant to argue this matter today, none is present on behalf of the applicant.

Let the matter be listed on 17.1.2007. It is made clear that no further adjournment will be granted on that date.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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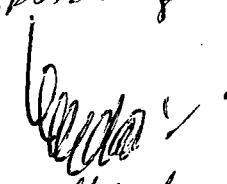
17.1.07

Mr. Rajveer Parmar, Counsel for applicant.

*Heard the learned counsel
for the applicant.*

*For the reasons dictated
separately, the OA is disposed of.*

(J.P. Shukla)
M (A)


(M.L. Chauhan)
M(J)

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.194/2005.

Jaipur, this the 17th day of January, 2007.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Mahesh Chand Garg
S/o Shri Udai Chand Garg,
Aged about 60 years,
R/o Shanti Kunj, House No.5,
Friends Colony, Dadwada,
Kota Junction (Rajasthan).

... Applicant.

By Advocate : Mr. Rajesh Sharma.

Vs.

1. Union of India
Through its General Manager,
Western Railway,
Mumbai.
2. Chief Administrative Officer (Construction)
Western Railway,
Mumbai.

... Respondents.

: O R D E R (ORAL) :

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

"i). It is, therefore, prayed that your Lordships may kindly be pleased to call for the entire relevant record and examine;

ii) Your Lordships may kindly be further pleased to accept and allow this OA and by an order and direction and command your Lordships may kindly be further pleased to declare that the applicant is entitled to get the benefits of pay fixation and benefit of special pay and further benefit of

revision of pay and other allowance admissible on such pay with interest, @ 12%p.a., in the grades the applicant has worked. Accordingly, the respondents may be directed to revise the pay of the applicant and after determining the pay by giving the benefit of pay fixation, pay revision and special pay they may be directed to determine the pay and accordingly pay the arrears of such with interest @ 12%p.a. The respondents may be further directed to determine the retrial benefits and pension etc. on the basis of determined revised pay.

(iii) Any other relief or order or direction which this Hon'ble High Court may deem fit and proper and also passed in favour of the applicant."

2. Briefly stated, the facts of the case are that the applicant was initially appointed as Clerk on 7.2.1964. He was selected as Junior Clerk in January 1996 and promoted as Senior Clerk on March 1971 and he was further promoted as Head Clerk on 1.1.1984 and Senior Clerk/Chief Clerk on January 1993. Thereafter he was promoted as Office Superintendent Gr.I in January 1995 and subsequently retired on 31.03.2003. The grievance of the applicant is regarding fixation of his pay at par with his junior and similarly situated persons and to grant him retrial benefits after fixing his pay. It is case of the applicant that he made repeated representations to the respondents and one of the last representation was rejected on 9.9.2004 and thereafter the applicant has filed this OA in which it has been pleaded that the application is within limitation as prescribed under Section 21 of the Central Administrative Tribunals Act, 1985.

3. We have heard the Learned Counsel for the applicant at admission stage. We are of the view that the present OA is hopelessly time barred and cannot be entertained at this belated stage. From the material placed on record, it is clear that the applicant, for the first time, raised his grievances vide his application dated 31.10.1979 regarding continuance of so called junior namely, Shri P. S. Nair and V. R. Deshmukh, officiating as Senior Clerk whereas the applicant was reverted to the post of Junior Clerk. The request of the applicant was declined on the ground that the aforesaid two persons are continuing in that capacity by virtue of the stay granted by the Court. The grievance of the applicant regarding one Shri D. D. Sharma and Shri R. C. Gupta was also declined. This fact is evident from the order dated 24.05.1980 (Annexure A/2). The applicant has also placed on record another letter dated 13.12.1980 (Annexure A/5), a perusal of which also shows that the applicant was also declined the benefit of seniority in the cadre of Senior Clerk as according to the respondents the same was not admissible to him as per rules in view of the decision contained in letter dated 24.5.1980 (Annexure A/2). The applicant again made representation dated 28.01.1981 (Annexure A/6) regarding proforma fixation of pay against S/Shri P.S. Nair, V. R. Deshmukh and R. C. Gupta, who according to the applicant, were junior to him. A perusal of this letter reveals that a reference has been made to the letter dated 24.05.1980, which letter was

received by him vide XEN (S&C)I-KTT's endorsement No.RLD/E 1030/1 Vol.III dt. 11.12.80. Further the applicant has also placed on record Annexure A/7 which is dated 16/17.03.1981, a perusal of which shows that the applicant was made aware about the decision taken vide letter dated 31.12.1980. Thus, from the material placed on record, it is evident that the applicant is agitating the claim which claim has been decided and declined to him in the year 1980 after a lapse of about 25 years. When Learned Counsel for the applicant was confronted with this proposition as to how this application is within limitation as prescribed under Section 20 & 21 of the Administrative Tribunals Act, 1985, Learned Counsel for the applicant submits that the earlier order was ^{not} served upon him and when the matter was taken up in the year 2003, the record was not traceable and it is only in the year 2004 that the order has been conveyed to him and as such the present OA is within limitation. Such contention of the applicant cannot be accepted in view of the material placed by the applicant on record in the form of Annexure A/2, A/4, A/6 and A/7, a perusal of which shows that not only the applicant was aware about the decision taken by the authorities but he was also aware about the rejection of his claim and the applicant had also filed repeated representations against seniority as well as granting promotion to the applicant over and above his so called juniors. That apart, vide Annexure A/1 dated 9.09.2004, the case of the applicant for fixing

his pay at par with his junior was declined on the ground that the said Shri R. C. Gupta was senior to the applicant as he was holding the post of Senior Clerk, Head Clerk, Chief clerk, Office Superintendent prior to the promotion of the applicant on these posts. At this stage it will be useful to reproduce the relevant portion of the impugned order which shows the date of the applicant vis a vis the date of so called junior Shri R. C. Gupta, which thus reads as under :-

"	<u>Shri R. C. Gupta</u>	<u>Shri M. C. Garg</u>
Jr. Clerk	06.02.63	09.07.69
Sr. Clerk	08.03.65	12.11.81
Head Clerk	01.01.84	01.01.84
Chief Clerk	08.04.91	25.02.92
O.S.	01.09.92	02.01.95
Retired on	30.09.95	31.03.2003"

Thus, from the portion as quoted above, it is clear that Shri R. C. Gupta was promoted as Senior Clerk prior to the applicant. Further Shri Gupta was promoted as O.S. prior to the applicant. As such, it cannot be said that Shri R. C. Gupta is junior to the applicant. Thus, even on merit on the basis of Annexure A/1, the applicant has not made out any case for our interference. The law on the point is well settled. At this stage, it will be useful to quote the decision of the Apex court in the case of P.S. Sadasivaswamy v. State of Tamil Nadu, AIR 1974 Supreme Court 2271, whereby the Court has held that entertaining a petition where a person who do not approach it expeditiously for relief and who stand by and allow things to happened and then approach the Court to

put forward stale claims and try to unsettle settled matters and 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 and impedes the work of the court in considering legitimate grievances as also its normal work. At this stage it will be useful to quote the relevant portion of the judgment which thus reads as under :-

" 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 of discretion for the Courts to refuse to exercise their extraordinary 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 would, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

4. At this stage it will be useful to quote the decision of the Apex Court in the case of Bhoop Singh v. Union of India, 1992 (4) SLR 761 (SC), wherein the Apex court has held as under :-

"It is expected of a Government servant who has a legitimate claim to approach the Court for the

relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim.

There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief."

5. Dealing with a matter where seniority dispute was raised after more than a decade, the Supreme Court in the case of B. S. Bajwa v. State of Punjab (1998) 2 SCC 523 has held as under :-

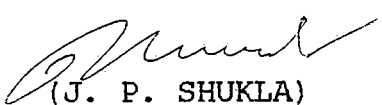
" The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance was made by B. S. Bajwa and B. D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallized which ought not to have been re-opened after the lapse of such a long period. At every stage others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

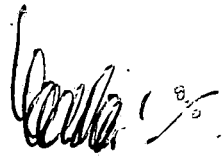
6. At this stage, it will also be useful to quote the decision of the Apex Court in the case of Karnataka Power Corpn. Ltd. And another vs. K. Thangappan and another, 2006 SCC (L&S) 791, whereby the Apex Court has held that the relief can be refused to a person if there is negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances and mere making a representation to the authorities concerned cannot justify belated approach. For that purpose reliance was placed by the Apex Court on the decision rendered by the Apex court in earlier cases. At this stage it will be useful to quote Para 10 of the judgment, which thus reads as under :-

"10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K. V. Rajalakshmiiah Setty v. State of Mysore, (1967) 2 SCR 70. This was reiterated in Rabindranath Bose case, (1970) 1 SCC 84 by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In State of Orissa v. Pyarimohan Samantaraya (1977) 3 SCC 396 making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See State of Orissa v. Arun Kumar Patnaik (1976) 3 SCC 579 also).

7. Thus, for the foregoing reasons, we are of the view that the present petition is hopelessly time barred and cannot be entertained. Once the representation of the applicant has been rejected in the year 1980, making

another representation on similar line will not explain the delay and making of repeated representations cannot constitute a satisfactory explanation of delay. As such, the OA is required to be dismissed for delay alone. Even on merit, the applicant cannot claim parity for fixing of pay vis a vis the persons though may be junior at initial stage but were promoted on higher post much prior to the applicant. Thus, they cannot be said to be junior to the applicant. Further the applicant has not challenged the validity of the promotion order of the so called junior at the relevant time. As such, validity of those orders cannot also not be gone into. Accordingly, we are of the view that the present OA is bereft of merit and is accordingly dismissed with no order as to costs.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./