CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 334/2005.

Jaipur, this the 25th day of July, 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. G. R. Patwardhan, Administrative Member.

V. T. Keswani
S/o Shri Tillumal Keswani,
Aged 64 years,
C/o B-5, (1st Floor) Path-4,
Jamna Nagar, Sodala,
Jaipur.

... Applicant.

By Advocate : Shri Sunil Samdaria.

Vs.

1. Union of India
Through its General Manager,
Western Railway, Church Gate,
Mumbai.

... Respondent.

: O R D E R (ORAL) :

The applicant has filed this OA thereby challenging the order dated 16.7.204 (Annexure A/1) whereby representation made by the applicant claiming ~~for~~ promotion from the date of his juniors has been rejected.

2. Briefly stated, the facts of the case are that the applicant while working as Station Master, Gulabpura, charge sheet dated 13.3.89 was issued against him, which culminated in passing of the order of penalty of withholding of one grade increment for one year commencing from 1.2.1990. According to the applicant,

the penalty which was imposed came to an end on 31.1.1991. It is further stated that two junior persons namely Shri M. M. Sharma & Shri J. K. Sharma, were promoted in the grade of Rs.1600-2660 vide order dated 19.2.1991 whereas the claim of the applicant was wrongly ignored as on 19.2.1991 no penalty against the applicant was in operation. It is further stated that yet in another departmental action initiated against the applicant a penalty of "Withholding of yearly increment which fell due on 1.2.94 for a period of one year with future effect was imposed upon the applicant vide order dated 5.5.93. Aggrieved against the penalty imposed vide order dated 5.5.93 (Annexure A/3), the applicant preferred statutory appeal. The appeal so referred was decided by the Appellate Authority vide order dated 10.1.94 modifying the penalty inflicted upon applicant. That as a consequence of modification of penalty from withholding of increment to that of censure there was no impediment in granting promotional grade to the applicant when person junior to him namely Shri R. A. Mule & U. S. Choudhary were granted the grade of Rs.2000-3200 on 7.7.93 w.e.f. 1.3.93. It is further stated that the applicant faced yet another departmental action in which he was saddled with the penalty of reduction of lower scale of Rs.1200-2040 (RP) on pay of Rs.1200/- for a period of two years with future effect. It is stated that the applicant preferred a statutory appeal challenging the penalty inflicted by Annexure A/6 and the

aforesaid penalty was modified by converting punishment from 'with cumulative effect' to 'without cumulative effect'. It is further stated that the effect of the modified penalty order was that withholding of increment has to remain in operation only from 1.2.95 to 31.1.97.

3. The grievance of the applicant is that on three occasions i.e. 19.2.91, on 3.3.93/7.7.93 & on 26.6.97 the applicant had a right to be promoted because on all the three occasions persons junior to the applicant were promoted/granted higher scale coupled with the fact none of the penalty was in operation on the date when his juniors were promoted. It is further stated that the applicant was fixed in the pay scale of Rs.1600-2600 (RP) vide order dated 6.3.97 whereas he ought to have been granted the aforesaid grade on 19.2.1991 when the said scale was granted to his juniors. It is further stated that the applicant submitted various representation ventilating his grievance of non promotion & non grant of higher scale. Some of the representations which have been annexed by the applicant are dated 21.8.92, 27.9.92, 15.11.92, 13.8.96, 25.1.97 and 10.3.97. It is stated that none of the representations submitted by the applicant were decided by the department and in the meanwhile, applicant retired on 31.1.2001. It is only after service of legal notice dated 12.12.03 and 15.4.04, Annexure A/4 & Annexure A/5, respectively, that the respondents have rejected the representation vide

impugned order dated 16.7.04, Learned Counsel for the applicant has stated that this application is within limitation.

4. We have heard Learned Counsel for the applicant at admission stage. Learned Counsel for the applicant could not satisfy us how the application is within limitation. The only argument put forth by him is that since the representation of the applicant has been decided on 16.7.04, as such, this application is within limitation. We are not convinced with the submission made by the Learned Counsel for the applicant. Sub-section (1) of Section 21 of the Act, dealing with limitation reads thus:

> "(1) A Tribunal shall not admit an application -
>
> (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made :
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> (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of the said period of six months.

Sub-sections (1) and (2) of Section 20 which are relevant in the context are extracted below :

> (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievance.

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance ; or

(b) Where no final order has been made by government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

It is no doubt true that, a combined reading of Section 21 (1) read with Section 20(1) & (2) of the Act, makes it clear that where a remedy by way of the preferring an appeal or by making a representation is provided under the Rules, the cause of action is deemed to arise for the purpose or reckoning the period of limitation of one year, not from the date of the original adverse order, or grievance, but on the date when the competent authority (to whom the appeal or representation is made under the Rules) makes an adverse final order on the appeal or representation. Where no final order is passed by such authority within six months, the one year period is reckoned from the date of expiry of six months, that is eighteen months from the date of preferring such appeal or making such representation. But what is relevant and important is that such appeal or representation to the competent authority provided under the Rules, should have been preferred within the period prescribed. For example if the Rules provide that the appeal or representation should be made within three months, an aggrieved employee cannot file the appeal or representation after two years and then contend that the period of limitation of one year should be reckoned from the date of rejection of such belated appeal or representation."

5. The question which requires our consideration in the instant case is that what would be the position where the

Rules do not provide for the remedy of an appeal or representation against the adverse order or grievance? This is in turn gives rise to two questions :

(i) When does the cause of action arise in such cases?
(ii) Whether the provision for limitation apply to such cases?

According to us, where the Rules do not provide for filing of an appeal or making of a representation to a higher authority, the cause of action would be the date of adverse order (or occurrence of the cause for grievance) itself. This is the view which the Supreme Court has held in the case of S. S. Rathore vs. State of Madhya Pradesh, AIR 1990 SC 10. The Hon'ble Supreme Court has pointed out that where the Rules do not provide for filing an appeal or making a representation to a higher authority, submission of a representation or repeated unsuccessful representation will not furnish or extend the cause of action. Representations not contemplated or provided for in law cannot obviously furnish a cause of action.

6. At this stage it will be useful to notice some of the decision of the Apex Court which deals with limitation, delay and laches.

6.1 In Bhoop Singh v. Union of India, AIR 1992 SC 1414 : [1992 (4) SLR 761 (SC)] the Supreme Court observed thus :

"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."

6.2 Dealing with a matter where seniority dispute was raised after more than a decade, the Supreme Court is B.S. Bajwa vs. State of Punjab, (1998) 2 SCC 523 : [1998 (1) SLR 461 (SC)] held thus :

" 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 long 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."

6.3 Dealing with a matter relating wrong fixation of pay, the Supreme Court in M. R. Gupta vs. Union of India, AIR 1996 SC 669 :[1995 (5) SLR 221 (SC)] observed thus :

> " The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation if a continuing wrong of on merits his claim is justified. Similarly, any other consequential relief claim by him, such as promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs."

The Supreme Court also made a distinction between cause like termination from service or imposition of punishment which furnish a 'one time cause of action' and causes like wrong pay fixation which is a continuous wrong which subsists during the entire tenure of service furnishing a 'recurring cause of action' every month when the salary is incorrectly computed.

7. Thus, from the reading of Section 21 vis a vis law as settled by the Apex Court in the aforesaid cases, the following position may be summarized thus :

"(a) Where the Service Rules provide for a remedy by way of an appeal or a representation to a competent authority, then the period of limitation will be one year from the date of final order rejecting the appeal/representation. Where the appeal/representation is not disposed of by a final order within six months from the date of presentation of such appeal or representation, the period of limitation will be one year from the date of expiry of such six months, that is 18 months from the date of filing of appeal/representation.

(b) Where the Service Rules do not provide any remedy by way of an appeal or a representation against a final order, the period of limitation for approaching the Tribunal will be one year from the date of such a final order.

(c) Where the grievance is in regard to inaction on the part of the employer or failure on the part of the employer to give a relief or benefit to the employee which is alleged to be due to the employee, though there is no 'limitation'. The doctrine of delay and laches will apply and applicants who are not diligent will be refused relief."

8. Coming to the facts of this case, at the outset it may be stated that, even if, it is held that the present OA is within limitation, the applicant is also not entitled to relief even on merit. As per the case set out by the applicant in this OA, the grievance of the applicant is that he should have been promoted in the grade of Rs.1600-2660 when two of his juniors namely Shri M. M. Sharma and Shri J. K. Sharma were promoted as on 19.2.91, the date when junior persons to the applicant were promoted in the grade of Rs.1600-2660 vide order dated 19.2.91, the penalty of imposition of withholding of one grade increment for one year came to an end on 31.1.91. The submission made by the applicant is bereft

of merit. As can be seen from the impugned order Annexure A/1, the so called junior persons to the applicant were promoted in the grade of Rs.1600-2660 w.e.f. 29.10.90 whereas the applicant was imposed penalty of stoppage of one increment vide order dated 25.7.89 w.e.f. 1.2.90 to 31.1.91. Thus, the applicant was not entitled for promotion in the grade of Rs.1600-2660. That apart, the applicant has not challenged the validity of the promotion order of the so called juniors in the grade of Rs.1600-2660 made in the year 1991. As such, the validity of the said order cannot be gone into. Even on this ground also, the applicant is not entitled fro any relief. Similarly the applicant is also claiming promotion in the grade of Rs.2000-3200 w.e.f. 1.3.93 when the said grade was given to Shri R. A. Mule and U. S. Choudhary. The applicant has also not challenged the validity of order dated 7.7.93 whereby person junior to the applicant were promoted w.e.f. 1.3.93. That apart, it has been mentioned in the impugned order that as on 1.3.93 the disciplinary proceedings were pending against the applicant which culminated into the passing of the penalty order vide order dated 17.1.95. Thus, no infirmity can be found in the action of the respondents. However, the applicant was fixed in the pay scale of Rs.1600-2660 vide order dated 6.3.97. The applicant has also not challenged the validity of this order thereby praying that he should be granted promotion from an earlier date. The applicant has retired on

superannuation on 31.1.01. During his tenure as Railway servant he has not challenged the validity of the aforesaid order, in case the representations of the applicant was not decided by the competent authority. Rather it appears that the last representation made by the applicant which has been placed on record is dated 25.1.97. It is only much after the retirement on 31.1.01 that the applicant further re-agitated the matter by issuing a legal notice Annexure A/14 and A/15 dated 12.12.03 and 15.4.04 respectively.

9. According to us, even if, it is held that the present application is not time barred and cause of action has accrued in favour of the applicant when his representation was decided on 16.7.04, no relief can be granted to the applicant without challenging the validity of the order passed in the year 1991 and 1993 whereby the applicant was not promoted on account of pendency of penalty / pendency of departmental proceedings.

10. For the foregoing reasons, the OA is dismissed at admission stage with no order as to costs.

(G. R. PATWARDHAN)
ADMINISTRATIVE MEMBER

(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./