

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

(S)

Respondent (S)

for Applicant (S)

Advocate for Respondent (S)

THE REGISTRY

ORDERS OF THE TRIBUNAL

12.08.2009

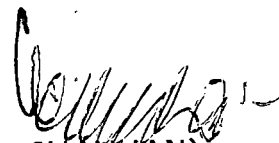
OA No. 327/2009

Mr. Prahlad Singh, Counsel for applicant.

Heard learned counsel for the applicant.

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


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 12th August, 2009

ORIGINAL APPLICATION NO. 327/2009

CORAM:

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

Dinesh Kumar Khatnal son of Shri Narain Das aged about 41 years, resident of Plot No. 179/B, Prem Nagar-I, Gujar Ki Thadi, Jaipur (Rajasthan). At present working as OS-I, under the HA's Office, North Western Railway, Jaipur (Rajasthan).

.....APPLICANT

(By Advocate: Mr. Prahlad Sharma)

VERSUS

1. Union of India through the General Manager (Personnel), North Western Railway, Headquarter's Office, Jaipur (Rajasthan).
2. The Chief Commercial Manager, North Western Railway, Jaipur (Rajasthan).
3. The Divisional Railway Manager, North Western Railway, Bikaner (Rajasthan).
4. The Senior Personnel Officer, North Western Railway, Jaipur (Rajasthan).

.....RESPONDENTS

(By Advocate : -----)

ORDER (ORAL)

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

- (i) That, action of the respondents regarding denial of promotion of the applicant on the post of Office Superintendent-II (Typist) may kindly be declared arbitrary and illegal.
- (ii) That, respondents may kindly be ordered to promote the applicant on the post of Office Superintendent II (Typist) since October, 1997 against the reserve category of Scheduled Caste and seniority of the applicant may be declared likewise.

- (iii) That, the respondents may kindly be directed to pay the arrears and all consequential benefits of the applicant according to his promotion since October, 1997.
- (iv) That, cost of the litigation may kindly be awarded in favour of the applicant, as he has been dragged in litigation by the respondents.
- (v) That, other any appropriate order or direction, which this Hon'ble Tribunal deem fit and proper may kindly be passed in favour of the applicant."

2. At the outset, it may be stated that the applicant is claiming his promotion on the post of Office Superintendent-II (Typist) w.e.f. 1997 with consequential benefits. From the material placed on record, it is evident that the applicant has been granted promotion to the post of Office Superintendent Grade II on 18.01.2005. The applicant has also further been promoted to the post of OS Grade I. The applicant has not raised any objection regarding his promotion from 1997 at the relevant time. From the material placed on record, it is also evident that having accepted his promotion to the post of Superintendent Grade II, and further promotion as SO Grade I, the applicant has filed OA No. 153/2006 when the respondents proposes to change the seniority of the applicant in the cadre of Head-Typist which may subsequently affect his promotion to the aforesaid post. Even at that time he has not filed any OA raising grievance regarding his promotion to the post of Superintendent Grade II from back date. The grievance of the applicant, as raised vide letter dated 22.3.2001, that his case for promotion to the post of Office Superintendent II be considered, was redressed when he was promoted on 18.1.2005. The fresh grievance as raised by the applicant in the year 2007 followed by Legal Notice dated 25.03.2009 is of no consequence. Learned counsel for the applicant submits that respondents have not passed any order on such representation, as such this OA is within the period of limitation. Even in Para No. 3 of this OA, the applicant has made the following averments:-

"The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985, as his legal notice dated 25.03.2009 has not been considered by the respondents."

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3. We have given due consideration to the submission made by the learned counsel for the applicant. We are of the view the present OA cannot be entertained. The Apex Court in the case of C. Jacob Director of Geology and Mining and Another, 2008 (2) SCC (L&S) 961, has deprecated the practice of the court in giving direction to the department to consider the stale claim. It has been observed that Court should be circumspect in issuing such direction which ultimately leads to consideration of case on merit at subsequent stage of litigation as if cause of action stood revived due to fresh consideration. It was further held that department can reject the stale case on the ground of delay alone without examining on merit. Thus in view of law laid down by the Apex Court and the fact that applicant stood promoted in January, 2005 on the post of Office Superintendent Grade II (Typist) and he has not raised any grievance at that time, Applicant is precluded to claim benefit from back date at this stage. Further he has been promoted to the higher post of Superintendent Grade I in the year 2005 also. It is not justified for us to entertain the stale claim of the applicant or to re-open the entire issue relating to the year 1997 in the year 2009. Two circumstances namely delay of about 13 years and the applicant by his own conduct and neglect has ^{waived} ~~washed~~ his right and has acquiesced to his promotion in the year 2005 cannot be ignored. Even the Government was not bound to give reply to ~~every representation~~ every representation. Further the applicant has also not explained inordinate delay in filing OA in the year 2009.

4. Thus in view of what has been stated above, we are of the view that the applicant has not made out any case for our interference. Accordingly the OA is dismissed at admission stage with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ