

91

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET
ORDERS OF THE TRIBUNAL

29.03.2012

OA No.383/2009

Mr. M. Shrivastava, counsel for the applicant.
Ms. Sabina Khan, proxy counsel for
Mr. V.S. Gurjar, counsel for respondents

The learned counsel appearing for the applicant prays for adjournment. Prayer granted.

Put up on 3.5.2012.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.Rathore)
Judi. Member

R/

03/05/2012

OA No. 383/2009

Mr. S. Shrivastava, counsel for applicant.
Mr. V. S. Gurjar, counsel for respondent nos. 1 to 5.
None present for respondent No. 5.
Heard.

O.A. is disposed of by a separate
order on the separate-sheets for
the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
(Justice K. S. Rathore)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 3rd day of May, 2012

ORIGINAL APPLICATION No. 383/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Pradeep Kumar Saxena son of late Shri Ram Mohan Lal Saxena aged about 55 years, resident of 726-B, New Railway Colony, Near Pani Ki Tanki, Kota. Presently posted as S.S.E. (Training School), Kota.

... Applicant

(By Advocate : Mr. S. Shrivastava)

Versus

1. Union of India through General Manager, West Central Railway, Indra Market, Jabalpur, M.P.
2. Chief Personnel Officer, West Central Railway, Jabalpur.
3. Chief Personnel officer, West Central Railway, Churchgate, Mumbai.
4. Divisional Railway Manager, West Central Railway, Kota.
5. Rakesh Shrivastava, presently posted as A.D.E.N. (General) at Headquarter, Jabalpur under Chief Engineer.

... Respondents

(By Advocates: Mr. V.S. Gurjar – Respondent nos. 1 to 4
None present for respondent no. 5.)

ORDER (ORAL)

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

- "(i) That this Hon'ble Tribunal may graciously be pleased to quash and set aside the panel of AEN in question dated 25.04.2005 (Annexure A/1) issued vide order dated 26.04.2005 to the extent it includes the name of co-respondent no. 5 and may declare the promotion of the co-respondent no. 5 as AEN illegal and further be pleased to quash the order dated 14.05.1992 (Annexure A/2) to the extent it has allowed to interpolate the name of the co-respondent no. 5 in the panel dated 28.06.1991 for which co-respondent no. 5 was not found suitable after viva-voce test.
- (ii) That respondent may be directed to fix or provide correct seniority to the petitioner as S.E. in the pay

Anil Kumar

scale of 6500-10500 as per the date of panel dated 19.05.1992 was made effective and also by extending the benefit of ad-hoc services in same scale and reflect the petitioner's name above the co-respondent no. 5 so as to include name of the petitioner in panel dated 25.04.2005 (Annexure A/1).

- (iii) That one (1) post out of 18 sanctioned for General category is still lying vacant. Keeping in view the facts and circumstances of the case respondents may be directed to adjust or accommodate the petitioner on the said unfilled post as an alternative.
- (iv) Any other order in favour of the petitioner, which this Hon'ble Tribunal may deem fit and proper as per the facts and circumstances of the case;
- (v) Award the cost of the petition in favour of the humble petitioner."

2. Learned counsel for the applicant submitted that the respondents published a provisional seniority list dated 07.10.2004 (Annexure A/3) in which the name of the applicant has been shown at sr. no. 44 whereas the name of private respondent no. 5, Shri Rakesh Shrivastava, is shown at sr. no. 48. The respondents again published an eligibility list as per integrated seniority list for selection dated 30.11.2004 (Annexure A/4) in which the name of private respondent no. 5 is at sr. no. 30 and the name of the applicant is at sr. no. 31. The respondents declared the result of the written test on 07.03.2005 (Annexure A/5) in which the name of private respondent no. 5 is at sr. no. 23 and that of the applicant at sr. no. 24. In this list, the applicant was wrongly shown below the private respondent no. 5. The applicant submitted a representation dated 14.04.2005 (Annexure A/6) to the competent authority regarding his seniority viz-a-viz respondent no. 5. The respondents further published a panel dated 25.04.2005 (Annexure A/1) of selected incumbents based on the

Anil Kumar

seniority and the result of the written test in which private respondent no. 5 was empanelled.

3. He further argued that grievance of the applicant is that private respondent no. 5 is not senior to the applicant in any manner in the feeder cadre of SC (Rs.6500-10500) because the applicant was selected in the feeder cadre vide panel dated 19.05.1992 which was made effective from 16.05.1992 and that too in continuation of his ad hoc services in the same grade w.e.f. 25.10.1989 while the name of private respondent no. 5 was wrongly interpolated in the panel of 28.06.1991 through illegal order in spite of the fact that he could not qualify the viva voce test for the said panel. The applicant is in all respect senior to private respondent no. 5 in the feeder cadre even then private respondent no. 5 was shown senior to him and on the basis of that seniority; he was empanelled while the applicant was ignored. He further argued that the applicant had filed an OA No. 327/2005, which was withdrawn vide order dated 01.12.2008 (Annexure A/12) with liberty to file fresh OA.

4. He further argued that the name of private respondent was wrongly interpolated vide Annexure A/2 in the provisional panel published on 28.06.1991. The private respondent no. 5 appeared in the main selection, he qualified the written test but he could not qualify the viva-voce test. Therefore, he could not have appeared in the subsequent supplementary examination. Therefore, the order dated 14.05.1992 (Annexure A/2) is arbitrary and it should be quashed and set aside. He further

Anil Kumar

argued that on the basis of these facts, the applicant may be declared senior to private respondent no. 5 and his name may be included in the panel of AEN dated 25.04.2005.

5. On the contrary, learned counsel for the respondents issued preliminary objection that the OA is hopelessly time barred. By virtue of this OA, the applicant has prayed for quashing the order dated 14.05.1992 (Annexure A/2), which was issued by the Central Railway and Central Railway is not even made party in this case. The present OA has been filed in the year 2009 after the lapse of about 17 years. Therefore, the OA be dismissed on the ground of limitation alone.

6. Even on merit, he submitted that no relief can be given to the applicant in the present OA. The selection in question has been conducted strictly in accordance with Para 203.5 of the IREM. Since employees from different seniority unit i.e. P.Way, Works Bridge, Drawing etc. are eligible to be considered for promotion, the integrated seniority list of 279 Engineering staff working in the grade of Rs.6500-10500 (RSRP) was issued vide letter No. WCR/PHQ/EE/Seniority/04 dated 30.09.2004, in which the date of promotion of respondent no. 5, Shri Rakesh Shrivastava and applicant, Shri P.K. Saxena, were shown as 23.05.1992 and 27.07.1992 respectively. He further submitted that the applicant and private respondent no. 5 submitted their willingness to take the examination in the Performa through proper channel showing their dates of promotion in Grade Rs.6500-10500. (RSRP) as 23.05.1992 and 27.07.1992

Anil Kumar

respectively and also agreed to their seniority position. The photocopies of the willingness submitted by the applicant and the private respondent no. 5 are dated 22/29.10.2004 and 05.08.11.2004 (Annexure R/1 and R/2 respectively).

7. He also argued that before viva voce, the revised integrated seniority list was got noted to all the candidates including the applicant. He further argued that the list of eligible staff to appear in the written test was issued vide letter No. WCR/PHQ/Gaz/Selection/AENGR/B/LGS dated 30.11.2004 showing the date of promotion of Shri Rakesh Shrivastava, respondent no. 5 and Shri P.K. Saxena, the applicant, in grade of Rs.6500-10500 (RSRP) as 23.05.1992 and 27.07.1992. All the eligible staffs were also asked to submit their representation, if any, regarding eligibility list with the instruction that seniority of the successful candidates in the written examination will be reviewed. The respondent no. 5 and the applicant did not submit any representation against their seniority position given in the eligibility list.

8. That the panel of successful candidates was issued on 25.04.2005 wherein the private respondent no. 5 was on the panel. That the applicant belongs to P. Way cadre of Engineering department and his name was placed on the provisional panel issued by Western Railway vide letter dated 19.05.1992 and he was promoted as PWI Grade I vide letter dated 27.07.1992 whereas the order of private respondent was issued on 21.05.1992 (Annexure R/4 and R/5 respectively).

Anil Kumar

9. He further argued that private respondent no. 5 belongs to Works Cadre of Engineering Department and his name was placed on the provisional panel w.e.f. 28.06.1991 issued by the Central Railways vide letter dated 14.05.1992 and was promoted vide letter dated 21.05.1992. On the contrary, the applicant was promoted as PWI Grade-I purely on ad hoc basis vide letter dated 25.10.1989 but was reverted back as PWI Grade II vide letter dated 24.09.1991. Thus in view of these facts, it is clear that private respondent no. 5 was senior to the applicant and the name of private respondent no. 5 has been rightly placed in the panel dated 25.04.2005 (Annexure A/1).

10. Learned counsel for the applicant argued that the present OA is within limitation. He filed an earlier OA in 2005, which was withdrawn vide CAT's order dated 01.12.2008 (Annexure A/12). He came to know about certain facts about the seniority of respondent no. 5 when certain documents were filed by him in OA No. 327/2005, therefore the present OA is within limitation.

11. Heard the learned counsel for the parties and perused the documents on record. As regards the limitation, the applicant has challenged the order dated 14.05.1992 (Annexure A/2) vide which the name of private respondent no. 5 was interpolated in the panel dated 28.06.1991. Thus the cause of action to the applicant arose in the year 1992. Therefore, we are not convinced with the arguments of the learned counsel for the applicant that this OA is within limitation. Earlier OA No.

Anil Kumar

327/2005 was also filed in the year 2005 and in that OA, the order dated 14.05.1992 (Annexure A/2) was not challenged. The Tribunal had stated that the fact that proceeding was pending in this Tribunal by way of this OA shall be taken into consideration for the purpose of limitation for filing substantive OA. Had the applicant sought the relief of quashing the order dated 14.05.1992 in that OA, even then that could have been barred by limitation. Even if we exclude the period of 3 years i.e. from 2005 to 2008, the period in which OA No. 327/2005 was pending before the Tribunal, even then this OA is barred by limitation.

The Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others** decided on 07.03.2011 [Petition for Special Leave to Appeal (Civil) 7956/2011] has held that:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

"21. Limitation.-"

- (1) A Tribunal shall not admit an application,-
 - (a) in a case where a final order such as it 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;
 - (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 expiry of the said period of six months.
- (2) Notwithstanding anything contained in sub-section (1), where-

Anil Kumar

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

The application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clause (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

12. Further the Hon'ble Supreme Court in the case of **Union of India & Others vs. M.K. Sarkar**, 2010 (1) SCC (L&S) 1126, in Para Nos. 14, 15 and 16 has held as under:-

Anil Kumar

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in **C. Jacob vs. Director of Geology and Mining**, 2008 (2) SCC (L&S) 961, Para No. 9

"9. The Courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere discretion to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the latches gets obliterated or ignored."

15.The issue of limitation or delay and latches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a Court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and latches.

16. A court or tribunal before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and latches. Even if the court does not expressly say so, that would be the legal position and effect."

Anil Kumar

13. The Hon'ble Supreme Court in the case of **E. Parmasivan & Others vs. Union of India & Others**, 2005 SCC (L&S) 125, has held the similar view. In this case, the petitioners, who retired from service between 31.01.1974 to 31.05.1985, filed claim in 1995 for fixation of their pay on promotion in terms of Ministry of Defense OM dated 12.01.1976. Hon'ble Supreme Court in Para Nos. 2 & 3 has held as under:-

"2. The anomaly in the scale of pay of the petitioners arose as early as on 12.01.1976 when the Government of India declined to extend the revised scale of pay in terms of the concordance table to members of the cadres of the Store Officers and Administrative Officers. Therefore, the petitioners would have raised objection regarding the anomaly in their scale of pay at that point of time. Even thereafter when they retired from the service they could have made the claim for pay fixation in terms of the concordance table and for calculation of pension on that basis. They did not take any step in that regard till 1995.

3. In the circumstances of the case the Tribunal, in our view, was right in holding that the original application filed by the petitioners was barred by limitation and hence no relief as claimed by them could be granted to them. Thus the petition being devoid of merit is dismissed."

Thus on this ground of limitation alone, the OA is liable to dismissed.

14. It may also be mentioned here that the order dated 14.05.1992 (Annexure A/2) has been issued by the Central Railway but Central Railways has not been made party by the applicant. Therefore, in the absence of Central Railway being party no adverse order can be issued against them.

Anil Kumar

15. Even on merit, the applicant has failed to make out any case. It is not disputed between the parties that seniority list was to be prepared on the basis of staff working in the grade of Rs.6500-10500 (RSRP). Learned counsel for the respondents has categorically stated that private respondent no. 5 was promoted w.e.f. 25.05.1992 while the applicant was promoted w.e.f. 27.07.1992 and, therefore, since private respondent No. 5 was promoted earlier than the applicant, therefore, he has been rightly shown senior to the applicant. Learned counsel for the applicant has stated that the applicant's seniority should be w.e.f. 25.10.1989 the date from which he was promoted on ad hoc basis. Learned counsel for the respondents argued that seniority cannot be given for working on ad hoc basis. Moreover, he was reverted back as PWI Grade II vide letter dated 24.09.1991. Therefore, it is not correct to say that the applicant was continuously working w.e.f. 25.10.1989.

16. The applicant and private respondent no. 5 submitted their willingness to take the examination in the Performa through proper channel showing their dates of promotion in Grade Rs.6500-10500 (RSRP) as 23.05.1992 and 27.07.1992 respectively and also agreed to their seniority position, which is evident from Annexure R/1 and R/2. Moreover, even before viva-voce, the revised integrated seniority was got noted to all the candidates including the applicant (Annexure R/3) but the applicant did not submit any representation against that seniority position given in the eligibility list. Thus on the basis of the facts & circumstances of the case, the action of the official

Anil Kumar.

respondents in placing the private respondent no. 5, Shri Rakesh Shrivastava, senior to the applicant, Pradeep Kumar Saxena, is in order. We do not find any reason to interfere with the panel dated 25.04.2005 (Annexure A/1) issued by the official respondents. Thus even on merit, there is no force in the OA.

17. Consequently, the OA is dismissed not only on the ground of limitation but also on merit with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

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