

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00399/2015

Thursday, this the 26th day of July, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

K. Vijayakumar,
Khalasi Helper, (Welder), (Retd),
Permanent Way, Southern Railway,
Shornut, Palghat Division. **Applicant**

(By Advocate – Mr. Siby J. Monippally)

V e r s u s

1	Union of India represented by Chief Personnel Officer, Southern Railway, Chennai – 1.	
2	Senior Divisional Personal Officer, Southern Railway, Palghat Division, Palghat – 3. Respondents

(By Advocate – Mr. Sunil Jacob Jose)

This Original Application having been heard and reserved for orders on 24.07.2018, the Tribunal on 26.07.2018 delivered the following:

O R D E R

Per: Ashish Kalia, Judicial Member:

The applicant is aggrieved by the refusal of the respondents to grant promotion to him at the appropriate time despite granting promotion to his juniors and eligibility. He is seeking the following reliefs in this O.A.

- “a) To grant promotion to the applicant retrospectively as Technician Grade-III with effect from 1993 when his juniors were granted promotion as Technician Grade-III with arrears of pay and re-determine the pension accordingly with interest.
- b) To declare that applicant is entitled to get promotion as Technician Grade-III with effect from 1993.
- c) Grant such further and other reliefs as the nature and

circumstance of the case may require.”

2. Applicant had entered the services of the Railways on 31.1.1979 and granted the temporary status in the same year in the scale of Rs. 260-400 from 21/11/1984 in the skilled category. Later on he was regularised as welder in the year 1994. He was promoted as Khalasi helper on 3.5.1994. Applicant has passed requisite trade test in the year 1985. It is submitted that applicant has filed earlier O.A. No.1076/1993 for grant of promotion to him as Technician grade III when his juniors were granted promotion. The Tribunal vide order dated 31.8.1994 disposed of the the original application with direction to the respondents to consider his representation. Even though the applicant has submitted the representation in time but it was not considered. It was disposed of in November, 1994 vide Annexure A.3. Aggrieved by this he has approached this Tribunal against discrimination *qua* his junior K.P.Surendran who was granted promotion to the Technician Grade III by an order dated 23.2.1994.

3. Notices were issued to the respondents and Mr.Sunil Jacob Jose, Standing counsel filed reply statement on behalf of the respondents.

4. The respondents in their reply emphatically opposed the present Original Application filed by the applicant after a gap of twenty years before this Tribunal as it is highly delayed. The respondents relied on the judgement of the Hon'ble Apex Court in *Union of India & Ors v. A Durairaj JT 2011 (3) SC 254* in which it was held as under:

“ 13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly for grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which

has been granted to others over the years. Further where a claim is raised beyond a decade or two from the date of cause of action, the employer will be a great disadvantage of effectively contest or counter the claim, as the officers who deal with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

5. Respondents further relied on the judgement of the Hon'ble Apex Court in the case of *Ramesh Kumar v. UOI & Ors. 2003 (4) SCT 69* in which it was held as under:

“Administrative Tribunal Act 21 and 19(1) delay – condonation of delay – scope of jurisdiction under Article 21 to condone delay.. Scope is very limited. There must exist sufficient grounds for the satisfaction of the Tribunal to condone only a reasonable delay, filing of repeated representation will not enlarge the period for filing an application under Act nor it will provide a sufficient ground and reason for condonation of delay. Entertaining of belated claims by the Tribunals will defeat the very object of the Act. The machinery under the Act was provided by the Parliament for speedy disposal of service disputes of the Government employees. That is why a shorter period of limitation is provided.”

6. The respondents further submitted that the applicant is not entitled to get the benefits of MACP Scheme as the Modified Assured Career Progression Scheme has been implemented in the Railway Service on acceptance of 6th CPC recommendations, as per Railway Board's order No. RBE.101/2009 dated 10.06.2009. Para 8 of the said order clearly states that “the scheme would be operational with effect from 01.09.2008. In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of October 1999) would be granted till 31.08.2008. This means that the MACP Scheme became operational only with effect from 1.9.2008. Till then, grant of financial upgradation was governed under erstwhile Assured Career Progression Scheme (ACP for short) which was introduced as a result of acceptance of 5th Central Pay Commission recommendations under which two financial upgradations were envisaged in the event of non-grant of

promotion, one after 12 years of regular service and the second after 24 years of regular service. The ACP scheme was introduced as per Railway Board's order No. RBE 233/99 dated 01.120.1999. It is submitted that the applicant having retired from Railway service with effect from 01.10.2006 cannot seek financial upgradation under MACP scheme as become operational only with effect from 1.9.2008. It is further submitted that, the applicant has already earned one promotion from pay scale of Rs.750-940/- to payscale Rs. 800-1150/- in the year 1994, as such he is not entitled for the 1st financial upgradation is eligible to those who complete 24 years of regular service. In the case of the applicant he took voluntary retirement with effect from 1.10.2006 and at the time his retirement he had only 22 years of regular service as such he is not entitled for the second financial upgradation under the ACP Scheme. This fact has been communicated to the applicant as per letter dated 4.10.2013. Hence pleaded for dismissal of the O.A.

7. We have heard the learned counsel for the parties and considered the rival submissions and perused the pleadings and case laws cited before us.

8. The point to be determined by this Tribunal is whether (i) the Original Application filed after 20 years for getting promotion with retrospective effect is maintainable or not and (ii) whether the applicant is entitled any other reliefs like the MACP in lieu of his promotions.

9. We proceed to decide the first point raised by the applicant in the present O.A. whether the applicant is entitled to get promotion from retrospective date is not maintainable for the reasons that he was sleeping

over his rights over the last more than two decades. More importantly he has not made his juniors as a party respondents by impleading their names in the O.A. But for the reasons best known to him not made as a necessary party. Because it is very necessary the persons against whom applicant is seeking seniority above them should be heard first in tune with the cardinal principle of law that no one should be condemned unheard.

10. We are in full agreement with the judgement cited by the respondents in the case of *Union of India & Ors. vs. A Durairaj (Supra)* that the scope of condonation of delay under Sec. 21 of the A.T.Act is very limited. Even otherwise we do not see any merit in the claim of applicant for grant of MACP as stated by the respondents as the said scheme has been made effective from 1.9.2008 and applicant took voluntary retirement on 1.10.2006 then he cannot seek upgradation under MACP scheme.

11. Respondents have rightly contended that the applicant has not brought out any documentary proof in support of his claim in the form of seniority list, etc. to show that he is senior to those juniors in the Annexure A.5 representation. The Annexure A.1 memorandum clearly states that “*it will not confer on those listed therein any claim for future promotion or continuance in the skilled grades and that it will not entitle them to have any permanent post in the artisan cadre directly.*” Moreover no names of the alleged juniors are reflected in the said Annexure A.1 to show their seniority position vis-a-vis the applicant. In *B.S. Bajwa & Anr. v. State of Punjab* (1998 SCC L&S) 611), the Hon'ble Apex Court has held that the question of seniority should not be reopened after a lapse of reasonable period, as it disturbs the settled position, which is not justifiable. Similarly,

in *M.B. Hiregouder v. State of Karnataka* (1992 SCC L&S 611), it has been held that the seniority position which has been stabilised during the course of time cannot be disturbed after a long lapse, in the absence of any challenge during the intervening period, despite this Tribunal had given him an opportunity to show cause his claim by submitting a comprehensive representation as far back in the year 1994 in OA. No. 1076/1993, the applicant has failed to do so.

12. In view of what is stated above, we do not find any ground in favour of the applicant as he has belatedly approached to this Tribunal and as per the judgement of the Hon'ble Apex Court seniority once settled should not be disturbed and more so the applicant has not made his juniors who are now seniors in the seniority list as party respondents and without hearing them this Tribunal cannot pass any order against them.

13. In the result, the O.A. fails being devoid of any merits and rejected on the ground of limitation also.

14. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*

List of Annexures of the Applicant

Annexure A-1 - A photostat copy of the order dated 09.09.1985.

Annexure A-2 - A photostat copy of the trade test result dated 12.11.1985.

Annexure A-3 - A photostat copy of the letter dated 21.11.1994 issued by Chief Personal Officer, Madras.

Annexure A-4 - A photostat copy of the order filling up 25% quota for skilled casual labourers in Palghat Division dated 17.02.1987.

Annexure A-5 - A photostat copy of the representation to the 2nd respondent for promotion and consequential revision of pension dated 30.01.2015.

Annexure A-6 - Order dated 30.01.1986 issued by Sr. D.P.O.

List of Annexures of the Respondents

Annexure R1 - A copy of letter dated 04.10.2013.
