

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH  
HYDERABAD**

O.A. No.248 of 2013

Date of CAV:29.11.2017.

Date of Order :19.12.2017.

Between :

V.R.Ganeshan, s/o V.L.Ramakrishnan,  
aged about 60 yrs, Occ:Retd. DOM/NED,  
South Central Railway, r/o 24-19, Vishnupuri,  
Malkajgiri, Hyderabad-500 0047.

... Applicant

AND

1. Union of India, rep., by the Chairman,  
Railway Board, Rail Bhavan, New Delhi.

2. The General Manager,  
South Central Railway, Railnilayam,  
Secunderabad.

3. The Chief Personnel Officer,  
South Central Railway, Secunderabad.

4. The Divisional Railway Manager,  
Personnel Branch, Sanchalan Bhavan,  
South Central Railway, Secunderabad.

5. The Divisional Railway Manager,  
Vijayawada Division, Vijayawada.

6. The Sr.Divisional Personnel Officer,  
Vijayawada Division, Vijayawada.

... Respondents

Counsel for the Applicant ... Mr.V.Venkateswara Rao

Counsel for the Respondents ... Mr.N.Srinatha Rao, SC for Rlys

**CORAM:**

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)**

**THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

**ORDER**

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

This OA has been filed seeking the following relief:

*“To declare Lr.No.SCR/P-HQ/21/ET/10/VRG/AGM Dt.27.12.2012 issued by the 3<sup>rd</sup> respondent as illegal, arbitrary and unconstitutional and set aside same with directions to the respondents to consider the applicant 's case for granting promotion to the post of Chief Controller against a restructured vacancy w.e.f 1.1.1993 in the pay scale of Rs.2375-3500 on par with his junior and to fix his pay in the said scale of pay and also in the pay scale of Rs.15000-37000 of the post of DOM (Group B) w.e.f 1-5-2005 with all consequential benefits such as fixation in the corresponding revised scales of pay, arrears of pay and allowances etc., and pass any other order or orders as is deemed fit, proper, necessary and expedient in the circumstances of the case.”*

2. The brief facts of the case are that the applicant who was working as Deputy Chief Controller at Bangalore, came on an inter-railway mutual transfer with Sri K.G.Ravindranath, Dy.CHC/BZA Division and reported to duty at Vijayawada on 04.09.1987. Immediately after joining at Vijayawada, he was deputed to Railway Electrification Project, Secunderabad, as Dy.Chief Controller on 12.10.1987. Although he was repatriated to Vijayawada Division on 08.12.1993, he was not relieved from Railway Electrification, Secunderabad, due to administrative exigency. The applicant submits that his seniority was not fixed in BZA Division. On coming to know that some of his juniors were promoted to the next higher grade without even fixing his seniority in the BZA Division, he submitted a representation on 21.10.1993 to the 3<sup>rd</sup> respondent for fixation of seniority and promotion to the next higher grade of Chief Controller in the pay scale of Rs.2375-3500/- on par with his juniors. Since there was

no response to his request, he submitted representations again on 02.06.1994 and 25.07.1994. The Deputy Chief Personnel Officer, Personnel Branch, South Central Railway, Secunderabad, having noticed the injustice done to him addressed a letter to the Sr.DPO, Vijayawada, giving directions to fix his seniority under intimation to Headquarters. Even then, no action was taken for fixing his seniority and granting his promotion to the next higher grade on par with his immediate junior. Ultimately, on 08.09.2004 he was repatriated to his parent unit at Vijayawada and he continued to submit representations for fixation of his seniority and promotion to the next higher grade. On 07.02.2005, the 6<sup>th</sup> respondent fixed his seniority as Dy.CHC in BZA Division in the scale of Rs.2000-3200/- showing the date of his promotion as 16.06.1985 in the seniority list published on 12.09.1989. He was also placed between the names of his colleagues viz., Sri M.Kalyan Ram and Sri T.Nagabhushanam. He passed Group-B written test on 05.03.2005 and again requested for correct fixation of his seniority in the grade of Dy.CHC and promotion to the grade of Chief Controller with effect from 01.03.1993 on par with his junior. His pay in the Group-B post was, however, fixed without fixing his scale in the pay Rs.2375-3500/- of the Chief Controller's grade with effect from 01.03.1993 resulting in huge financial loss. While working in Group-B post, he took voluntary retirement on 25.11.2009. After his retirement, he again submitted representations on 13.03.2010, 18.04.2010 and 07.09.2010 to the 3<sup>rd</sup> and 2<sup>nd</sup> respondents. The 6<sup>th</sup> respondent vide his proceedings dated 20.04.2011 directed the 3<sup>rd</sup> respondent to take further action for fixation of the applicant's pay on the basis of the seniority assigned to him, vide his proceedings dated 07.02.2005. While so, the 3<sup>rd</sup> respondent, vide his letters dated 24.05.2011 and 27.12.2012 rejected his claim on the ground of delay.

3. The applicant's case is that the impugned letter is illegal, arbitrary and unconstitutional as the delay that has occurred was not attributable to him. He is therefore entitled to promotion to the post of Chief Controller against a restricted vacancy with effect from 01.01.1993 on par with his junior Sri T.Nagabhushanam.

4. The respondents have filed a brief reply statement pointing out that the applicant has filed this OA to consider him for promotion to the post of Chief Controller with effect from 01.01.1993 with a delay of 20 years. Therefore, the OA is not maintainable on account of delay, laches and limitation under the Administrative Tribunals Act. Further, in reply to his representations, the applicant has been informed on 24.05.2011 that the records pertaining to the seniority list of 1993 is not traceable and as such no action can be taken at this distant time. Further, if the promotion has to be given to the applicant, one of his juniors would have to be reverted and the applicant has not impleaded any of the juniors who would be affected by granting him promotion with effect from 01.01.1993. Thus, the relief sought is liable to be rejected in limini more particularly since no application has been filed to condone the abnormal delay that has occurred.

5. Heard the learned counsel on both sides and perused the record.

6. The learned counsel for the Applicant drew our attention to the Annexure.A-IX letter of the 6<sup>th</sup> respondent in which it has been admitted that the applicant's name had inadvertently been omitted in the seniority list published earlier. Thus, the applicant has suffered huge financial loss on account of the inaction of the respondents.

7. Per contra, the learned Standing Counsel for the Respondents argued that after 1994, the applicant has chosen to give representation only in 2004 and that he kept silent for a period of 10 years. Further, he has represented in 2009 after his retirement and has filed this OA after 4 years of his retirement. Hence, the OA is hopelessly barred by limitation. He also placed on record the letter of the respondents that inspite of thorough search it was not possible to trace out the relevant seniority list. Further, after the applicant became a Group-B officer, the records of his earlier service as CHC became obsolete, and as such will not qualify for preservation under the rules relating to preservation of records in the Railways.

8. From the material on record, it is evident that the applicant is seeking retrospective promotion to the post of Chief Controller against a restructured vacancy with effect from 01.01.1993 and consequential benefits such as pay fixation etc.,. It is seen that the applicant submitted representations on 02.06.1994 and 25.07.1994 for fixation of his seniority as Dy.CHC in BZA Division. After a lapse of 10 years, he again submitted a representation on 19.07.2004 to the Sr.DPO/BZA/ for fixation of his seniority and promotion. His seniority in the grade of Dy.CHC in which grade he was transferred to BZA Division was ultimately fixed on 07.02.2005. It is his case that after passing Group-B written test on 05.03.2005, he submitted a representation for promotion to the grade of Chief Controller with effect from 01.03.1993 on par with his junior. After making one more representation on 03.12.2005, he remained silent till he took voluntary retirement on 25.11.2009. After a lapse of 4 years of his retirement, he has filed the present OA. Apart from submitting representations to the authorities on an intermittent basis with huge gaps, the applicant has failed to avail of the remedies available to him under the law for redressal of his grievance at the appropriate time. We are, therefore, in agreement with the respondents that the OA suffers from delay, latches and is barred by limitation as per the Administrative Tribunals Act, 1985.

9. The Hon'ble Supreme Court has held in a catena of decisions that delay reflects inactivity and inaction on the part of the litigant. In this context, it would be relevant to cite the judgment of the Hon'ble Supreme Court in *State of Tamilnadu v. Seshachalam* (2008 (1) AISLJ 413, in which it has been held as follows:

*“11. Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or latches is a relevant factor for a Court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or latches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Opinion of the High Court that G.O.Ms.No.126 dated 29.5.1998 gave a fresh lease of life having regard to the legitimate expectation, in our opinion, is based on a wrong premise. Legitimate expectation is a part of the principles of natural justice. No fresh right can be created by invoking the doctrine of legitimate expectation. By reason thereof only the existing right is saved subject, of course, to the provisions of the statute. (See *State of Himachal Pradesh & Anr. v. Kailash Chand Mahajan & Ors.* 1992 Supp.(2) SCC 351). “*

10. Further, in *Ghulam Rasool Lone v. State of J&K & Others* (2009 (3) AISLJ 211) (SC), the Hon'ble Supreme Court has held as follows:

*“ 17. It is beyond any cavil of doubt that the remedy under Article 226 of the Constitution of India is a discretionary one. For sufficient or cogent reasons a Court may in a given case refuse to exercise its jurisdiction; delay and latches being one of them.*

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*19. If at this late juncture the petitioner is directed to be promoted to the post of Sub-Inspector even above Abdul Rashid Rather, the seniority of those who had been promoted in the meantime or have been directly recruited would be affected. The State would also have to pay the back wages to him which would be a drainage of public funds. Whereas an employee cannot be denied his promotion in terms of the Rules, the same cannot be granted out of the way as a result whereof the rights of third parties are affected. The aspect of public interest as also the general administration must, therefore, be kept in mind while granting equitable relief.”*

11. In view of the law laid down by the Hon'ble Apex Court, we hold that no relief can be granted at this stage. It is also relevant to observe that refixing the seniority which was in force in 1993 after a lapse of more than 20 years would amount to unsettling the settled position as observed by the Hon'ble Apex Court in Para 10 supra.

12. In the result, the OA fails and is accordingly dismissed. No order as to costs.

**(MINNIE MATHEW)**  
**MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO )**  
**MEMBER (JUDL.)**

Dated: this the 19th day of December, 2017

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