

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : INDORE

Original Application No.201/00022/2016

Indore, this Wednesday, the 13th day of December, 2017

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Fateh Singh
S/o Somabhai Chouhan
C/o Mukesh Kumar Chouhan
Aged 61 years
Railway Quarter No.1529/D
New Railway Colony
Ratlam 457001
(By Advocate –**Shri A.N. Bhatt**)

-Applicant

V e r s u s

Union of India represented by
1. General Manager Western Railway
Headquarter Office
Churchgate
Mumbai 400 0020

2. Divisional Rail Manager
Western Railway Divisional Office
Varodadra Office
Varodadra 390001

3. Ashok Kumar
S/o Raojeebhai Patel
14 New Baljee Complex
Char Rasta Vaghadia
Vadodara 390001

4. Suresh S. Chouhan
F-17 Mani Nagar Society
P.P.-2 Behind Bakul Park
Refayanri Road
Vadodara 390001

- Respondents

(By Advocate –**Shri Arun Soni**)
(Date of reserving the order: 11.12.2017)

ORDER

By Navin Tandon, AM:-

The applicant has filed this Original Application for redressal of his grievances for promotions and pay fixation.

2. The applicant has submitted that he was engaged in Group D Casual Labour and worked as such for 25 years without any promotion whereas his juniors have been promoted twice. The applicant was never intimated regarding any trade test for promotion. In this regard, the applicant had submitted representation through Trade Union but no action was taken by the respondents. Thereafter the applicant sent a legal notice on 27.09.2012 (Annexure A-12) whereby the respondents have given a false and misleading reply dated 06.11.2012 (Annexure A-1).

3. The applicant has filed this Original Application for the following reliefs:-

“8.1 The letter issued from the office of the respondent No.2 for rejection of promotion may kindly be quashed.

8.2 The Respondents may kindly be directed to consider the case of the applicant for promotion from the date of his junior's promotion.

8.3 Further promotion, pay fixation its arrear may kindly be awarded.

8.4 All the consequential benefits arrears etc. may kindly be allowed with interest.

8.5 Any other relief/reliefs as deemed fit may kindly be awarded.

8.6 The cost of this O.A. may kindly be awarded.”

4. The applicant has contended that the applicant was appointed on 21.01.1981 as a Casual Labour and granted temporary status w.e.f. 01.01.1984 and regularized as Khalasi w.e.f. 02.12.1985. Since 15.10.1985 he got no promotion whereas his juniors have been promoted twice. He has submitted that he was never called for promotion any trade test deliberately neglected by the dealing staff. However, he has submitted in Para 4.1 of the Original Application that he was working as Technician Grade III in pay scale of Rs.5200-20200/- in TFO Workshop and has retired on 31.12.2014.

5. The respondents have submitted in their reply that as per procedure, vacancies in allied category viz. Machinist Gr.III, Jeep/Truck Driver Gr.III, Black Smith Gr.III & Painter Gr.-III are filled up by calling willingness from Group D staff. Only those Group D staff who have submitted written willingness are called for trade test, in order of seniority amongst them, as per rule and extant policy issued by the Railway Board. The applicant was not

called in trade test as he had not submitted written willingness in any of the abovementioned category. The applicant is referring memorandum dated 18.10.1993 and 18.02.1992 which is more than 23 years old and same may not be accepted being time barred. The respondents have placed reliance on the judgment passed by the Hon'ble Apex Court in the matter of *Vijay Kumar Kaul and others* vs. *Union of India and others* (2012) 7 SCC 610. The applicant has challenged the order dated 06.11.2012 (Annexure A-1) wherein it has been stated that the applicant has already been granted 1st and 2nd financial benefit under MACP scheme in Grade Pay of Rs.1900/- and Rs.2000/- w.e.f. 01.09.2008. The applicant has been called for the trade test for the post of Tech-III P.B.Rs.5200-20200/- + Rs.1900/- vide office memo dated 14.09.2012. He further submitted that the application for condonation of delay is without assigning sufficient reasons, hence this Original Application is not tenable and is liable to be rejected as the same is hopelessly time barred under Section 21 of the Administrative Tribunals Act, 1985.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. The provisions regarding limitation for filing an Application before this Tribunal have been prescribed under Section 21 of the Administrative Tribunals Act.1985, which read thus:

“21. Limitation.-

(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;

(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-

(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 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.”

8. From perusal of the aforesaid section, it is clear that under the Act, the limitation has been prescribed for filing O.A. before this Tribunal within one year from the date of cause of action. The same can be extended by another six months from the date of filing of appeal if the same is not decided. It has further been stated that if the application is not filed within time as stipulated in Section 21 of the A.T. Act, then the applicant has to move a Misc. Application for seeking condonation of delay by explaining each day in not filing the Original Application within the limitation.

9. In the instant case, we find that the applicant has moved M.A.No.201/000130/2016 for condonation of delay wherein he has simply stated that no general notification orders were issued regarding trade test hence the applicant could not come to know about it. He further stated that the department has not issued any seniority list therefore he could not locate the various developments. Being a Group D employee he faced hardship in collecting information and documents hence has consumed lot of time in filing this O.A. But, the fact of the matter is that the cause

of action has arose in the year 1989 and 1993 and he has filed this Original Application in the year 2016 which is hopelessly time barred. It is seen that there is a gap of more than 23 years in filing of this O.A. Further, the Hon'ble High Court of Punjab and Haryana at Chandigarh in the matters of ***Mohinder Singh Vs. State of Punjab***, RSA No.2825 of 1995 decided on 01.07.2014, has held that "the denial of promotion would not give rise to recurring cause of action". Thus, the argument put forth by learned counsel for the applicant is not convincing. Accordingly, the MA is rejected.

10. On merits, we find that the applicant has challenged the order dated 06.11.2012 wherein it has been stated that the applicant has already been granted 1st and 2nd financial benefit under MACP scheme in Grade Pay of Rs.1900/- and Rs.2000/- w.e.f. 01.09.2008 vide office memo dated 16.12.2009. Hence, he is not entitled for any relief sought for in this Original Application as 1st and 2nd financial upgradation has already been granted to the applicant.

11. We find that the applicant is also challenging the promotion orders of the private respondents Nos.3 & 4 dated 13.03.1989 and

13.08.1993 and trying to unsettle the settled seniority positions after passing of more than of 23 years. It has clearly been stated in the case of *Vijay Kumar Kaul* (supra) wherein the Hon'ble Apex Court has held that it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties get ripened and further interference after enormous delay is likely to usher in a state of anarchy.

12. In this view of the matter not only the Original Application is hopelessly barred by limitation but the same is also without any merit.

13. In the result, the Original Application is dismissed, however, without any order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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