

**Central Administrative Tribunal  
Jaipur Bench, Jaipur**

**O.A. No. 398/1996  
M.A. No.184/1997**

Reserved on: 11.07.2018

Pronounced on: 24.08.2018

**Hon'ble Mr. Suresh Kumar Monga, Member (J)  
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

D.M.Kala Son of Shri Moti Lal Kala, Retd. XEN (C), Sanganer, Jaipur and Ex. Inspector of Works, Western Railway, Rajkot Division. At present resident of House No.2239, Siwar Bakliwalon ka Rasta, Kishanpole Bazar, Jaipur.

...Applicant.

(By Advocate: Shri Arpit Jain and Ms.Akansha Jain for  
Shri Dinesh Kalla)

Versus

1. Union of India, through the Secretary,  
Government of India, Department of Railways,  
New Delhi.
2. General Manager, Western Railway,  
Church Gate, Mumbai.
3. D.R.M. (E), Western Railway,  
Rajkot Division, Rajkot.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

**Per Suresh Kumar Monga, Member (J):**

The pleaded case of the applicant herein is that he was initially appointed as AIOW in the pay scale of 150-225 with

(2)

effect from 20.07.1955. He was selected as IOW in the pay scale of 250-380 and was placed in the Selection List circulated by Memorandum dated 16.01.1964. It has further been averred that he was promoted as IOW in the pay scale of Rs.700-900 (Gr.I) vide order dated 19.03.1980. He was given paper promotion in the pay scale of 840-1040 with effect from 01.01.1984 vide order dated 14.08.1984. It has further been averred that the applicant was further promoted as AEN with effect from 15.07.1983 vide order dated 12.11.1986 and was placed at Sr.No.60 in the Seniority List. He was further promoted as XEN in the pay scale of 3000-4500 vide order dated 01.10.1992. The said order of promotion was further revised and his promotion was made effective from 28.11.1989 vide order dated 18.04.1994. The Seniority List of the Third Grade Employees, Engineering Department, Works Inspectors in the Grade of 250-380 was issued by the Divisional Manager, Ratlam on 07.12.1977, in which applicant's name figured at Sl.No.75. The applicant retired from services on 31.03.1993. His further case is that he was senior to one Shri Suresh Chandra Saxena, who was given the benefit of stepping up of pay, with all consequential benefits. Since Shri Suresh Chandra Saxena was junior to the applicant, therefore, he is entitled to similar relief of stepping of pay and promotion. It has further been averred that one Shri Ramanand Saxena had filed Original Application No.290/1980 before this Tribunal, which was allowed on

(3)

04.10.1993, with a direction that the cases of all the persons, who were senior to Shri Suresh Chandra Saxena, referred to from S.No.52 to 78, may be considered and, if they are otherwise found suitable, then the benefit extended to Shri Suresh Chandra Saxena may also be extended to all of them. The applicant has further averred that after coming to know about the benefit extended to Shri Ramanand Saxena, he made a representation before the respondents on 16.01.1996 with a request to grant him similar benefits, as extended to Shri Ramanand Saxena. The applicant has placed on record a copy of Seniority List dated 07.12.1977 wherein his name appeared at Sr.No.75, whereas, name of Shri Suresh Chandra Saxena appeared at Sr.No.79. It has further been averred that despite his representation dated 16.01.1996 and a notice of demand for justice dated 22.04.1996, the respondents have not taken any action over the same. His further case is that after issuance of direction in the case of Ramanand Saxena, the respondents were under obligation to grant similar benefits to all the persons placed at Sr.Nos. 52 to 78, which they had failed to do so. Feeling aggrieved, the applicant preferred the instant Original Application seeking a direction to respondents to give him promotion in the pay scale of 335-485(A)/550-750 (R) with effect from 14.02.1969 and further in the pay scale of 450-575(A)/700-900(R) with effect from 25.02.1970, with all the consequential benefits. A further direction has also been sought for issuance of revised promotion

(4)

orders and pay fixation orders and as a result thereof, revision of pay and the revision of pension accordingly.

2. After filing the OA, the applicant also filed a Miscellaneous Application No.184/1997 seeking condonation of delay in filing the OA. It has been averred in the said application that the benefit claimed by the applicant in the OA was given to Shri Ramanand Saxena vide order dated 19.09.1995 and this gave cause of action to him to claim the same benefit as he stands in the seniority between Ramanand Saxena and Suresh Chandra Saxena. It has further been averred in the said Miscellaneous Application that the applicant submitted his representation on 16.01.1996 after the benefit was granted to Shri Saxena and as such the OA is within limitation not only from the date of cause of action but also from the date of representation. The applicant retired from service on 31.03.1993 and he was not in touch with the office affairs and he had no knowledge of the litigation initiated by Shri Saxena. When the benefit was extended to Shri Saxena, the applicant acquired the knowledge for the first time. Though it has been pleaded that no delay has been caused in preferring the instant OA, but still a prayer has been made that in case the OA is found to be barred by time, then the delay be condoned.

3. The respondents by way of filing their joint reply have joined the defence and opposed the claim of the applicant by giving

(5)

detailed background of the case narrating therein that Shri Suresh Chand Saxena claimed and got promotion from the date when his junior Shri N.B.Rao was promoted. It has further been averred that Shri N.B.Rao did not belong to Open Line, but belonged to the Survey & Construction Department and the seniority of two units are different. The said seniority was merged as per order dated 13.03.1972 passed by the Railway Board. Prior to said order, Shri N.B.Rao was working in different cadre. Further case of the respondents is that Shri Suresh Chandra Saxena was not entitled for promotion and stepping up of pay vis-a-vis Shri N.B.Rao, but because of the incorrect presentation of the facts before the Allahabad Bench of this Tribunal, an order dated 27.05.1987 was passed in his favour. Thereafter, Ramanand Saxena preferred an OA No.298/90 before this Bench of the Tribunal and claimed the similar benefit of promotion, as was granted to Shri Suresh Chandra Saxena. While deciding the OA preferred by Shri Ramanand Saxena on 04.10.1993, this Tribunal directed that all the seniors to Shri Suresh Chandra Saxena, whose names appeared at Sr. Nos.52 to 78, be also considered and the same benefit be also extended to them, if they are otherwise found suitable. The Union of India preferred an SLP No.20535/94 before the Hon'ble Supreme Court against the order dated 04.10.1993 passed by this Tribunal. While dismissing the said SLP, the Hon'ble Supreme Court also observed that in case a review filed by the Union of India is

(6)

allowed and S.C.Saxena's case is set aside, the petitioner may seek revival of the petition. The operative part of the order passed by the Hon'ble Supreme Court is reproduced hereunder:

"Delay condoned.

Since the order passed by the Central Administrative Tribunal has been passed on the basis that S.C.Saxena was junior to the respondent and he has been granted promotion, we do not find any basis for interfering with the impugned order of the Tribunal at this stage. The SLP is therefore dismissed. The learned counsel for the petitioner prays to go for review of the decision of the Tribunal in Saxena case. In case review is allowed and S.C.Saxena's case is set aside, the petitioner may seek revival of the petition."

4. After the aforesaid order passed by the Hon'ble Supreme Court, no review petition was preferred in the case of Shri S.C.Saxena.

5. The respondents have come up with a plea that in OA No.298/90 filed by Shri Ramanand Saxena, the Office of the Divisional Railway Manager, Rajkot was not impleaded as party-respondent and that Division was not given any opportunity to contest the said OA. It is also mentioned by the respondents that the appropriate legal remedy was either to file a Contempt Petition under Section 17 of the Administrative Tribunals Act for non-compliance of the order or to initiate execution proceedings under Section 27 of the said Act. The respondents have also opposed the application on the ground of limitation with the assertions that the order in OA No.298/90 was passed on 04.10.1993 and the Original Application was presented in July

(7)

1996, which is barred by limitation. The respondents have also relied upon a speaking order passed by the General Manager, Western Railway pursuant to a direction issued by the Ahmedabad Bench of this Tribunal in OA No.213/98 wherein one Manohar J.Jaiswal was also declined the benefit, as claimed by the applicant herein. It has further been averred that the applicant's case is identical with that of Shri Jaiswal and as such he is not entitled to claim parity with Shri Ramanand Saxena and Shri Suresh Chandra Saxena. With all these assertions, the respondents have prayed for dismissal of the OA.

6. The instant Original Application was earlier dismissed by this Tribunal vide order dated 27.04.2001. However, on a DB Civil Writ Petition No.3834/2001 preferred by the applicant before the Hon'ble High Court of Rajasthan at Jaipur, the matter has been remitted back with the observation that the application for condonation of delay has not been taken into consideration while deciding the OA.

7. Heard learned counsels for the parties.

8. Learned counsel for the applicant contended that the applicant's name appeared at Sr.No.75 in the Seniority List. While referring to order dated 04.10.1993 passed in OA No.298/90 preferred by Shri Ramanand Saxena, learned counsel contended that by virtue of said order all those incumbents, whose names appeared in the Seniority List at Sl.No.52 to 78, are entitled to be

(8)

considered for promotion and the similar benefits, which were granted to Shri Suresh Chandra Saxena and Shri Ramanand Saxena are also required to be given to them. Learned counsel further argued that the Union of India preferred the SLP in the case of Ramanand Saxena, which came to be dismissed on 11.04.1994. Though a liberty was granted to the respondents to prefer a review application in Shri S.C.Saxena's case but still no review was filed and the judgment passed by this Tribunal attained finality. He thus submitted that the respondent no.3 is under obligation to grant all those benefits to the applicant, which were granted to Ramanand Saxena and Shri Suresh Chandra Saxena. In support of his Miscellaneous Application seeking condonation of delay in filing the OA, learned counsel contended that the OA preferred by Shri Ramanand Saxena was decided on 04.10.1993 against which, an SLP preferred by the Union of India was dismissed on 11.04.1994. The respondents extended the benefits to Shri Ramanand Saxena in terms of Tribunal's order dated 19.09.1995 and thereafter the applicant acquired the knowledge that he is also entitled to the similar benefits. He immediately gave a representation, which was followed by a legal notice dated 22.04.1996. Learned counsel thus argued that the delay in filing the OA deserves to be condoned.

9. *Per contra*, learned counsel for the respondents argued that Shri Ramanand Saxena was granted the benefit of promotion on



the basis of a judgment rendered by the Allahabad Bench of this Tribunal in the case of Shri Suresh Chandra Saxena. He argued that because of the incorrect presentation of facts before the Allahabad Bench of this Tribunal, an order was passed in favour of Shri S.C.Saxena. To substantiate his arguments, he further submitted that Shri S.C.Saxena had claimed and got benefit of promotion from the date of promotion of one Shri N.B.Rao. Shri N.B.Rao did not belong to Open Line but he belonged to Survey & Construction Division and the Seniority Lists of two were different. As per the Railway Board's order dated 13.03.1972, the Seniority was merged on 22.11.1977 and prior to that Shri N.B.Rao and Shri S.C.Saxena were working in different cadres. Learned counsel further argued that the benefit of Next Below Rule is only permissible to an employee with respect to his junior in the same Seniority Unit, but in the case in hand, the Seniority Lists were different. Since all these facts could not be brought to the notice of Allahabad Bench of this Tribunal, therefore, it led to passing a wrong order in the case of Shri S.C.Saxena. Learned counsel further argued that the OA is barred by limitation as no plausible reasons seeking condonation of delay in filing the same have been pointed out by the applicant in his Miscellaneous Application. He further argued that the cause of action accrued to the applicant way back in the year 1969 and 1970 as he is claiming promotion with effect from 14.02.1969 and 25.02.1970. Such an inordinate delay without any explanation, in any case,

(10)

cannot be condoned. Learned counsel further submitted that even Ramanand Saxena had preferred Original Application in the year 1990 but the applicant, who was in service at that time, did not choose to prefer the same and thus it cannot be believed that he acquired the knowledge about the case in the year 1995. Learned counsel thus submitted that such a belated OA cannot be entertained and the same deserves to be dismissed on the ground of limitation only.

10. Considered the rival contentions of learned counsels for the parties and perused the record.

11. A perusal of the order dated 27.05.1987 passed by the Allahabad Bench of this Tribunal in the case of Shri Suresh Chandra Saxena reveals that Shri Suresh Chandra Saxena was granted promotion from the date when his junior Shri N.B.Rao was promoted. Claiming parity with the said case, Shri Ramanand Saxena also preferred an Original Application No.290/1990 before this Tribunal in the year 1990 and the same was allowed on 04.10.1993. In the said case, while allowing the parity to Shri Ramanand Saxena, a further direction was issued that the cases of all the persons, who were senior to Shri Suresh Chandra Saxena, referred to from S.No. 52 to 78, may also be considered and if they are otherwise found suitable then the benefits extended to Shri Suresh Chandra Saxena be also

extended to all of them. The operative portion of the said order is reproduced hereunder:

"4. In the result, the OA is accepted. It is directed that the cases of all the persons who were senior to Mr. Saxena, referred to from S.No.52 to 78, may be considered and if they are found suitable otherwise, then the benefit extended to Mr. Saxena may be extended to all of them."

12. Aggrieved by the said order, the Union of India preferred an SLP before the Hon'ble Supreme Court, which was dismissed on 11.04.1994. However, while dismissing the said SLP, the Hon'ble Supreme Court observed that in case a review filed by the Union of India is allowed and the case of Shri S.C.Saxena is set aside, then the petitioner may seek revival of the petition. Though the Union of India was given liberty to prefer a review application in the case of Shri S.C.Saxena but still no such review application was filed and accordingly the orders passed in the cases of Shri S.C.Saxena as well as Shri Ramanand attained finality.

13. In view of the above, we are unable to accept the plea raised by the learned counsel for the respondents that since appropriate facts could not be pleaded before the Allahabad Bench of this Tribunal during the course of hearing in Shri S.C.Saxena's case, therefore, the applicant herein this OA cannot be allowed parity and this Tribunal cannot compel the respondents to comply with the order passed in Ramanand Saxena's case. Admittedly, the Original Application preferred by

(12)

Shri Ramanand Saxena was allowed only because of the reason his junior Shri S.C.Saxena was granted promotion by virtue of order passed by the Allahabad Bench of this Tribunal. While considering Shri Ramanand Saxena's case, this Tribunal also found that the incumbents at Sr.No.52 to 78 were also senior to Shri S.C.Saxena and, therefore, they are also entitled to be considered for promotion. The order passed by this Tribunal in the case of Ramanand Saxena has been affirmed by the Hon'ble Supreme Court. Thus, we hold that the applicant, who was at Sr No.75 in the Seniority List, ought to have been allowed the benefit of promotion pursuant to the direction issued by this Tribunal in the case of Shri Ramanand Saxena.

14. However, we cannot overlook the delay in filing the instant Original Application and we are constrained to examine as to whether a plausible reason has been given for not preferring the same within limitation. The applicant herein is claiming promotion with effect from 14.02.1969 in the scale of pay of 335-485 and further promotion with effect from 25.02.1970 in the pay scale of 450-575. On a plain reading, the first cause of action accrued to him in the year 1969-1970. However, in the case in hand, the whole claim has been based solely on the order dated 27.05.1987 passed by the Allahabad Bench of this Tribunal in the case of Shri S.C.Saxena. While claiming parity with said Shri S.C.Saxena, Shri Ramanand Saxena had preferred OA No.290/80 before the Jaipur

(13)

Bench of this Tribunal in the year 1990 and he succeeded in the said OA on 04.10.1993. Admittedly, the applicant was in service uptill 31.03.1993 when he retired after attaining the age of superannuation. It cannot be believed that he was unaware about the promotion given to Shri S.C.Saxena, who was eventually junior to all those persons, who were at Sr. No.58 to 78 in the Seniority List. In any case, when Shri Ramanand Saxena could file OA No.290/90 in the year 1990, the applicant could also have filed the same claiming parity with Shri S.C.Saxena. Furthermore, Shri Ramanand Saxena's OA was allowed on 04.10.1993 by this Tribunal but still the applicant did not come forward. Even the SLP against the order passed in the case of Ramanand Saxena was dismissed on 11.04.1994 by the Hon'ble Supreme Court but still he did not prefer the OA uptill the year 1996. The explanation given by the applicant seeking condonation of delay that he retired from service on 31.03.1993 and as such he was not in touch with the office affairs, in our considered view, cannot be construed to be a plausible reason to condone the delay in filing the OA. We cannot ignore the fact that the applicant was in service when Shri Ramanand Saxena had initiated his Original Application in the year 1990. He was in service when Suresh Chandra Saxena was given promotion. In the facts and circumstances of the case, we are unable to persuade ourselves to condone the unexplained delay in filing the OA. Thus, the

(14)

Miscellaneous Application seeking condonation of delay in filing the OA deserves to be dismissed.

15. Accordingly, MA No.184/1997 for condonation of delay in filing the OA is hereby dismissed. Since the Miscellaneous Application seeking condonation of delay has been dismissed, therefore, the OA also stands dismissed being barred by limitation. There shall be no order as to costs.

(A.Mukhopadhaya)  
Member (A)

(Suresh Kumar Monga)  
Member (J)

/kdr/