

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**OA No. 867 of 2016 &
OA No. 722 of 2017**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

OA No. 867/2016 - Prafull Kumar Mohapatra, aged about 56 years, S/o Late Narendra Nath Mohapatra, at present working as Deputy Secretary (Public Grievance), East Coast Railway, Q.No.G-4, East Coast Railway Quarter, Rail Kunja, Chandrasekharpur, Bhubaneswar, Dist. – Khurda, Odisha.

OA No. 722/2017 - Nirakar Das, aged about 53 years, S/o Bhikari Charan Das, at present working as Sr. Public Relation Officer (Eco. Rly) Bhubaneswar now residing at Quarter No. J/2 Rail Kunj Chandra Sekharpur, Bhubaneswar, Dist. – Khurda.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary, Department of personnel & Training, Sastri Bhawan, New Delhi.
2. Chairman, Railway Board, Rail Bhawan, New Delhi – 110001.
3. Secretary, Railway Board, Rail Bhawan, New Delhi – 110001.
4. Director Estt (GO), Room No. 365, Ministry of Railway, Rail Bhawan, New Delhi – 110001.
5. General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Khurda.

.....Respondents.

For the applicants: Mr.M.K.Mohanty, counsel (OA 867/2016)
Mr.S.B.Mohanty, counsel (OA 722/2017)

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 20.2.2019

Order on :

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Both the OAs are taken up for consideration together with the request of the counsels for both the sides as in both the OAs the main dispute involved is similar as the applicants in both the OAs are aggrieved since a number of senior level promotional posts were taken away from the Public Relations Department to Commercial Department by virtue of an Executive order of the Railway Board for which the applicants cannot be promoted to next higher rank in spite being eligible since long. The applicant in OA No. 867/2016 is

aggrieved for not being promoted to the post of Senior Public Relation Officer (in short Sr. PRO) and the applicants in OA no. 722/2017 who are working as Sr. PRO, are aggrieved for not being promoted to the next higher post of Chief Public Relation Officer (in short CPRO). Issues being similar, both the OAs were heard together with consent of both the parties and these are being disposed of by this common order.

2. In this background, the reliefs prayed for by the applicants in both the OAs are as under:-

OA No. 867/2016

- “(a) To quash the order dated 5.7.2014 at Annexure A/3 series in not considering the representation of the applicant in the manner of this Hon’ble Court directed in earlier Original Application.
- (b) To direct the opp. parties not to declare the promotional post ought to be filled up by the applicant which has been de-cadred since long and has been en-cadre in commercial department.
- (c) That, to direct the respondents to strictly adhere the principle laid down in Indian Railway Public Relation Department (Group A and Group B post) Recruitment Rule 1982 published in the gazette of India.
- (d) To convene the DPC on its proper prospective by DOPT enabling the applicant to participate in the same for promotion to the cadre of Sr. PRO and thereafter.
- (e) To direct the respondents to give promotion to the applicant to the cadre of Sr. PRO for which he is eligible and otherwise entitled since more than nineteen years.
- (f) To pass any other relief the petitioner otherwise entitle in the interest of justice.”

OA No. 722/2017

- “(i) To admit the original application.
- (ii) To direct the respondents (Railway Board) to restore Group ‘A’ posts under Public Relation Department in the Ministry of Railways in reference 1982 recruitment Rules by segregating/separating from Commercial Department (illegally merged) in view of judgment of the Hon’ble Supreme Court rendered in the case of Union of India –vs- M.Sanmugnam bearing Civil Appeal No. 4967/94 vide judgment dated 15.10.98.

Further steps be taken to fill up the post of Group A of P.R. Department as per the procedure laid down under 1982 Recruitment Rules.

And pass such other order/orders and/or direction/directions as the Hon’ble Tribunal deems fit and proper.”

3. The facts relevant for both the OAs are that the applicants are the employees under the Public Relation Department under the respondents and they are governed by the Indian Railway Public Relation Department (Group ‘A’

and Group 'B' Posts) Recruitment Rules, 1982 (in short Rules, 1982), which specify the number of posts of Sr. PRO and CPRO in the cadre. It is averred in both the OAs that ignoring the Rules, 1982, the Railway Board issued an order dated 4.5.1989 (Annexure-A/2 in the OA No. 867/2016) by which a number of posts of Sr. PRP and CPRO have been removed from the cadre under Public Relation Department and taken to Commercial department. The contention of the applicants is that an administrative instruction cannot override the statutory rules and in this regard the law is well settled. It is further averred that in a similar case (Union of India vs. M. Sanmugham) in Civil Appeal No. 4967 of 1994, Hon'ble Apex Court upheld the order of the Tribunal restoring one post of senior scale to the Public Relation Department. It is further averred in the OAs that the same principle should be applicable for the applicants in both these OAs and the applicants, being similarly placed as M. Sanmugham, will be entitled for the similar benefit for their promotion to the next higher rank. It is alleged that the respondents are not applying the judgment of Hon'ble Apex Court in M. Sanmugham's case for the applicants who are similarly placed employees. It is also stated that the respondents have not taken the concurrence of the UPSC for the amendments to the Rules, 1982 by reducing the number of posts as specified in the Rules, 1982. The applicants averred that different Benches of the Tribunal have disposed of cases of similar employees allowing the OAs following the judgment in the case of M. Sanmugham (supra). Two orders of the Tribunal in similar cases decided by the coordinate Benches (Calcutta and Jaipur Bench) are placed in Annexure-A/4 series of the OA No. 867/2016. The applicant in OA No. 867/2016) had submitted a representation which was rejected by the respondents by a speaking order dated 5.7.2014 (Annexure-A/3) and this rejection order has also been challenged in this OA.

4. The respondents have filed Counter in both the OAs mainly with the following averments to oppose the OAs:-

(i) Validity of the cause of action which arose in year 1989 with issue of Railway Board circular dated 4.5.1989 about which the applicants knew since long and it is challenged now even though being a settled issue. Hence, the OAs are barred by limitation.

(ii) In the case filed by M. Sanmugham (OA No. 1013/1991) before Madras Bench set aside the circular dated 4.5.1989 which removed 7 posts of Sr. PROs from different Railways to encadre it in Commercial Department, as far as the post of Sr. PRO in Southern Railway was concerned. This judgment of the Tribunal was upheld by Hon'ble Apex Court vide order dated 15.10.1998. Accordingly, the circular dated 4.5.1989 was withdrawn as far as the post of

Sr. PRO in Southern Railway was concerned vide order dated 17.6.1999 (Annexure-R/1 to the OA No. 722/2017). But the post of Sr.PRO in other Railways stood transferred to Commercial Department vide order dated 4.5.1989.

(iii) The applicant in OA No. 867/2016 was posted first time as Sr. Public Relation Inspector on 12.5.1993 on promotion from Sr. Clerk and he entered service after issue of order dated 4.5.1989. The applicant in OA No. 722/2017 was also inducted to the Public Relation Department after 1989 when he joined as Sr. Publicity Inspector on 24.12.1992. At that time there were 3 posts of Sr. PRO in the cadre. He was promoted to Chief Public Relation Inspector and was posted to the East Coast Railway on transfer and on 27.5.2000 and also promoted to the senior scale on ad-hoc basis.

(iv) The policy decision was taken by Railway Board on 4.5.1989 with consent of all the existing employees except M. Shanmugham. The applicants in the OAs being later entrants, cannot challenge the order dated 4.5.1989, which has become final.

5. The applicants in both the OAs have filed Rejoinder mainly reiterating the stand in the OAs and denying the averments in the counter.

6. We heard learned counsels for the applicants and respondents in both the OAs and also carefully perused the documents as well as the pleadings placed on record. The applicants' case stands on two main arguments. First argument is that the Railway Board cannot reduce the number of Sr. PRO posts in the cadre under the Public Relation Department in contravention to the Rules, 1982. Second argument is that the judgment of Hon'ble Apex Court in the case of M. Shanmugham (supra) is binding and being similarly situated employees as M. Shanmugham, the applicants are also entitled for same benefits as per the judgment in the case of M. Shanmugham (supra).

7. Before proceeding further in the matter, it is seen from the copy of the Rules, 1982 annexed to the Annexure-A/2 of the OA No. 722/2017 that the number of posts of CPRO and Sr. PRO has been specified in the column 2 of the Schedule to the Rules, 1982. Out of these posts specified in the Schedule to the Rules, 7 posts of Sr. PRO were removed from the cadre and included in the cadre under the Commercial Department vide Railway Board order dated 4.5.1989 (Annexure-A/3 to the OA No. 722/2017). In para 4.4 of the OA No. 722/2017, it is averred that the decision to de-cadre a number of posts through executive instruction was not based on any amendment of the Rules. In reply, the respondents have not contradicted the fact that the decision to de-cadre the posts was through the executive order dated 4.5.1989. Nothing has

been mentioned in the Counter filed by the respondents if any amendment of the Rules, 1982 was carried out to implement the decision to de-cadre the posts as per the order dated 4.5.1989. On the same ground, the respondents had lost the case in M. Shanmugham, as the following extract from the judgment of Hon'ble Apex Court dated 15.10.1998 (Annexure-A/4) would show:-

"The Tribunal further found that as a result of the policy decision taken on the administrative side, the Management or the Railways had violated the existing rules governing the cadre of Senior Public Relations Officer. According to the Tribunal, such transfer, if at all, can be carried out by appropriate amendment to the recruitment rules and not by administrative instructions. In support of that conclusion, the Tribunal placed reliance on certain judgments of this Court. The Tribunal also accepted the contention put forward on behalf of the respondent that the order impugned before the Tribunal deprived him of his avenue of promotion totally without giving the aggrieved party an opportunity to put forward his case. The Tribunal as found that it was not the mere chances of promotion which had been affected by the impugned order but the very right to be considered for promotion was also taken away without giving the aggrieved party an opportunity of being heard. On the basis of the materials placed before it, the Tribunal found that the impugned order was as a result of arbitrary and whimsical exercise of power prejudicially affecting the existing condition of service of a Government servant and violative of Article 14 of the constitution. On these findings, the Tribunal allowed the application and set aside the order made in proceedings No. 89-E9GC-1-15 dated 4.5.1989 in so far as it related to the post of Senior Public Relations Officer, Southern Railway."

8. It is noticed that there is no averment of the respondents in the OAs that amendment to the Rules, 1982 has been carried out to give effect to the decisions to de-cadre some posts vide order dated 4.5.1989 in the statutory Rules, even after the judgment of Hon'ble Apex Court dated 15.10.1998 (Annexure-A/4 to the OA No. 722/2017) upholding the finding of the Tribunal that the order dated 4.5.1989 is a violation of the Rules, 1982. There is nothing on record to show that the Rules, 1982 have been amended to reflect the reduced number of posts in the cadre under the Public Relation Department. As per the judgment of Hon'ble Apex Court dated 15.10.1998, the order dated 4.5.1989 continues to violate the statutory Rules, 1982 and hence, it cannot be held to be sustainable under law.

9. The respondents have raised the issue that the applicants have tried to unsettle a settled issue to de-cadre the posts vide order dated 4.5.1989 and have filed the OAs belatedly. In the case of **State of U.P. & Ors vs. Arvind Kumar Srivastava & Ors reported in (2015) 1 SCC (L&S)191**, Hon'ble Apex Court after reviewing the law on the issue of delay and laches in different judgments has held as under:-

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by

extending that benefit. Not doing so would amount to discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see [K.C. Sharma & Ors. v. Union of India](#) (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

10. Applying the ratio of the judgment of Hon'ble Apex Court as extracted above, the averments of the respondents to oppose the OAs on the ground of limitation are not convincing because of the finding that the order dated 4.5.1989 violated the statutory Rules, 1982 which holds good as long as the Rules are not amended or order dated 4.5.1989 is modified as per the Rules, 1982. The order dated 4.5.1989 was set aside only for the post of Sr. PRO in Southern Railway in the case of M. Shanmugham (supra). Had the Rules, 1982 been amended after the judgment dated 15.10.1998, then the argument of delay would have had some force. As long as the Rule, 1982 are not amended in line with the order dated 4.5.1989, the finding that the order dated 4.5.1989 violates the Rules, 1982 is valid and such finding is in rem, for which, the claim based on such violation would not be barred by limitation. The fact that the order dated 4.5.1989 violates the statutory Rules, 1982 has not been contradicted by the respondents and such violation cannot be neutralized with passage of time. Hence, the issue of limitation or delay will have no force for this case.

11. Coming back to the main arguments advanced by the applicant, the first being the order dated 4.5.1989 of the Railway Board violating the Rules, 1982, it is seen from the discussions in the preceding paragraphs that such argument is correct since the order dated 4.5.1989 violates the Rules, 1982.

Hence, this argument of the applicant has force in the light of the judgment dated 15.10.1998 of Hon'ble Apex Court. The second argument about applicability of the judgment of Hon'ble Apex Court dated 15.10.1998 in the case of M. Shanmugham (supra) to the present OAs, has also to be decided in favour of the applicant since the respondents' averment of its non-applicability on the ground of delay is not acceptable as discussed in paragraph 10 of this order.

12. For the reasons mentioned above, both the OAs deserve to succeed. The respondents are directed to take appropriate action to promote the applicants in both the OAs as per law, ignoring the order dated 4.5.1989 of the Railway Board to de-cadre some of the posts of Sr. PRO in violation of the Indian Railway Public Relation Department (Group 'A' and Group 'B' Posts) Recruitment Rules, 1982. The OA No. 867/2016 and OA No. 722/2017 are allowed to the extent as above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath