

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00157/2015

Friday, this the 11th day of January, 2019

CORAM:

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

K.P. John, aged 60 years, S/o. K.L. Poulose,
 (Retd. Chief Commercial Clerk Gr. III/Southern Railway/
 Aluva Railway Station/Trivandrum Division), Residing at :
 Kanjirathinkal House, Palachode, Padamugal, Kakkad PO,
 Pin – 682 030, Ernakulam District. **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town PO, Chennai – 600 003.
2. The Divisional Railway Manager, Southern Railway, Trivandrum Division, Thiruvananthapuram – 695 014.
3. The Divisional Personnel Officer, Southern Railway, Trivandrum Division, Thiruvananthapuram – 695 014.
4. The Divisional Commercial Manager, Southern Railway, Trivandrum Division, Thiruvananthapuram – 695 014. **Respondents**

(By Advocate : Mr. Sunil Jacob Jose)

This application having been heard on 07.01.2019 the Tribunal on 11.01.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“(i) Declare that the non-feasance on the part of the respondents to grant the applicant the benefit of regularization and seniority as Chief Commercial Clerk with effect from 17.9.1981 as ordered in A1 is arbitrary, discriminatory, contrary to law and unconstitutional;

(ii) Direct the respondents to grant the applicant the benefit of regularization as Commercial Clerk with effect from 17.9.1981 and direct further to grant the benefit of regularization and seniority as a consequence thereof within a time frame as might be found just, fit and proper by this Hon'ble Tribunal;

(iii) Direct the respondents to grant the applicant the benefit of promotion in the cadre of Commercial Clerk as if the applicant has been regularly appointed as a Commercial Clerk with effect from 17.9.1981 with all the consequential benefits including arrears of pay and allowances arising there from on par with the applicant's juniors appointed on or after 17.9.1981;

(iv) Direct the respondents to revise the applicant's pension and other retirement benefits in the light of declarations and directions above; and direct further to grant all arrears of pay and allowances and that of pension and other retirement benefits with interest calculated @ 9% per annum from the date the arrears fell due up to the date of full and final settlement of the same;

(v) Award costs of and incidental to this application;

(vi) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant who is a retired Chief Commercial Clerk Grade-III in PB-2 plus Grade Pay of Rs. 4,200/- is aggrieved by the erroneous assignment of his seniority and consequential denial of promotion and loss of retirement benefits. The applicant superannuated from service on 31.5.2014. Applicant was initially engaged a casual labour on 21.8.1970 in the Construction Organization of the Southern Railway. He continued without break up to 21.7.1976. Consequent upon the sudden death of applicant's father who was a Railway employee,

applicant was appointed on compassionate grounds as a Substitute Luggage Porter in the Transportation Department of Southern Railway with effect from 21.7.1976 followed by regularization as a Regular Luggage Porter. While so he was absorbed as a Commercial Clerk in Group-C in the then scale of Rs. 260-430/- against the 33 1/3% quota of vacancies reserved for Group-D staff. He was appointed as an adhoc Commercial Clerk w.e.f. 17.9.1981 and was regularized only on 25.5.1990. However, qualifying the in-service training course was not a pre-condition for regular appointment after the process of selection and therefore, the applicant should have been regularized as a Commercial Clerk with effect from 17.9.1981. This having not been done the applicant had to resort to litigation before the Central Government Labour Court at Ernakulam which was finally decided as ID No. 33/2003 in a common award dated 31.12.2005. In the said award it was held that the denial of regularization and seniority to the applicant with effect from the date of promotion as Commercial Clerk i.e. with effect from 17.9.1981 was illegal and unsustainable. It was directed that the applicant be regularized as Commercial Clerk w.e.f. 17.9.1981 with the benefit of seniority. On the basis of the above award the applicant submitted representations to the respondents and finally the respondents changed the applicant's date of promotion as 17.9.1981. However, the respondents have not assigned him the seniority in appropriate manner. Applicant submitted Annexure A6 representation. There is no response from the side of the respondents in this regard. The respondents are bound to grant the applicant the benefit of further promotions as Sr. Commercial Clerk, Chief Commercial Clerk Grade-III, Chief Commercial Clerk Grade-II, Chief

Commercial Clerk Grade-I etc. from the date of such promotion granted to persons who entered the cadre of Commercial Clerk after 17.9.1981 on par with applicant's juniors in the cadre of Commercial Clerk with reference to his regular appointment as Commercial Clerk w.e.f. 17.9.1981. On account of the refusal on the part of the respondents the applicant is subjected to substantial prejudice, irreparable injury and monthly recurring losses.

3. Notices were issued to the respondents. They entered appearance through Shri Sunil Jacob Jose who contended that the prayer made by the applicant in the OA is hit by the principles of limitation and is not fulfilling the requirements in Section 21 of the Administrative Tribunals Act, 1985. The applicant has not challenged any of the documents regarding his service on the basis of seniority granted to him in the cadre of Commercial Clerk from 26.5.1990. He has not challenged any of the orders promoting him in higher grades on the basis of his position as a Commercial Clerk w.e.f. 26.5.1990. After having accepted all the documents identifying him as a Commercial Clerk w.e.f. 26.5.1990, claiming the benefit of position in the post w.e.f. 17.9.1981 is heavily against him and is hit by estoppel and acquiescence. Further the applicant has not impleaded any of his juniors in the cadre above whom he is trying to make a mark on the basis of his position as a Commercial Clerk w.e.f. 17.9.1981. The applicant has not challenged any of the promotions of any of his juniors whom he thinks have got promotions above him. The applicant was posted as a Commercial Clerk w.e.f. 17.9.1981 but it was subject to a pass in the mandatory training. Without getting a pass in the training an employee cannot be given the

benefits of the post with seniority. The applicant was sent for training on different spells but he could not succeed the same and finally only on 26.5.1990 he got a pass in the training. Accordingly, the applicant is entitled for seniority in the post of Commercial Clerk w.e.f. 26.5.1990. Respondents pray for dismissing the OA.

4. In support of their contentions the respondents have relied upon the following judgments of the apex court as well as the Tribunal:

- i) ***Noharlal Verma v. District Co-operative Central Bank Limited*** – (2008) 14 SCC 445
- ii) ***C. Jacob v. Director of Geology & Mining Indus Est. & Anr.*** - 2008 (2) SCC (L&S) 961
- iii) ***R.C. Samantha v. Union of India*** – 1993 (3) SC 1418
- iv) ***Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors.*** - 2009 (2) SLJ 209
- v) ***Ramesh Chand Sharma v. Udham Singh Kamal & Ors.*** - 1999 (8) SCC 304
- vi) ***Mohan Dass & Ors. v. Union of India & Ors.*** - 2009 (2) AISLA (VI) Principal Bench, New Delhi
- vii) ***Francis Singh v. Union of India & Ors.*** - OA No. 328 of 2005, decided on 6.3.2007.

5. Heard Mrs. Kala T. Gopi and Shri T.C. Govindaswamy learned counsel appearing for the applicant and Mr. Sunil Jacob Jose, learned counsel appearing for the respondents. Perused the records. We have also gone through the written arguments filed by the applicant.

6. The grievance of the is that he should be given the benefit of regularization and seniority as Chief Commercial Clerk w.e.f. 17.9.1981 with consequential benefits and in support of which the applicant relied upon Annexure A1 award in Industrial Dispute No. 33 & 34 of 2003 (Central) dated 31.12.2005 in his favour of the Central Government Labour Court, Ernakulam. The relevant portion is extracted below:

“15. In these circumstances and for the above discussion I am of the view that the seniority of the promotees from Group-D to the post of Group-C should be the date of promotion and posting in Group-C. Therefore, the denial of regularisation and seniority to the employees Shri K.P. John and K.V. Venugopal in the workman informed in I.D. 33/03 and 34/03 (C) respectively of their promotion as commercial Clerk is not fair, proper and justifiable. Therefore, the management is directed to regularise and give seniority to K.P. John in the workman in I.D. 33/03(C) w.e.f. The date of promotion and posting and K.V. Venugopal the work in ID 34/03 (C) w.e.f. the date of promotion and posting in the Group-C posts.

In the result, a common award is passed holding that the denial of regularisation and seniority to the employees Sr. K.P. John and Sri K.V. Venugopal the workman involved in ID 33/03 and 34/03(C) promotion as commercial clerk is not fair, proper and justifiable and the management is directed to regularise and give seniority to Sri K.P. John workman in ID 33/03(C) w.e.f. From the date of promotion and posting as commercial clerk and Sri K.V. Venugopal workman in ID 34/03(C) w.e.f. the date of promotion and posting as commercial clerk.”

In the year 2012, the applicant made representation stating that he should be given benefit of the award as narrated hereinabove and the respondents while contesting the matter submitted that the present OA is hit by the Law of Limitation. The applicant has not challenged any document of seniority granted to him in the cadre of commercial clerk from 26.5.1990 and the further promotion to the higher grades. Now he is estopped from raising these issues.

7. As we have seen the award which is given in his favour by the Labour Court (Central) was in the year 2006, however, he made representation only in the year 2012 and filed the present OA in 2015. Therefore, it is certainly hit by the Law of Limitation. The Hon'ble apex court in *Noharlal Verma*'s case (supra) held as under:

“If a suit, appeal or application is barred by limitation, a Court or an Adjudicating Authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.”

8. Basically applicant wants that he should be given seniority retrospectively in terms of the award. The applicant should have gone for execution of the award and why he has abdicated his right in the year 2006, no explanation has been offered by him. Now even if he wants seniority from a retrospective date, he has to represent it before the respondents and on being unsuccessful for not revising the seniority list, he could have approached this Tribunal in time by making the affected seniors as party respondents. However, after a decade now he wants to unsettle the settled position of seniority in the cadre. He cannot be simply allowed to do so without giving opportunity of being heard to the affected parties and no adverse order could be passed against them. The apex court time and again observed that settled position of seniority shall not be unsettled by the drop of the hats. In *Ramchandra Shanker Deodhar and others v. State of Maharashtra* - AIR 1974 SC 259, considered the effect of delay in challenging the seniority list and held that any claim for **seniority** at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have

accrued to them during the intervening period. More so, the applicant has not explained the delay in approaching the appropriate authorities at appropriate time.

9. In view of the legal position stated hereinabove we are of the considered opinion that the present OA is devoid of merit and is hit by the Law of Limitation. Hence, dismissed with no order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

“SA”

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APPLICANTS' ANNEXURES

Annexure A1 - True copy of common award in ID Nos. 33/2003 and 34/2003 (Central) as published in Gazette of India dated 8.4.2006 Part II Section 3(ii).

Annexure A2 - True copy of representation dated 17.1.2007 submitted to the 3rd respondent.

Annexure A3 - True copy of representation dated 16.4.2007 submitted to the 3rd respondent.

Annexure A4 - True copy of representation dated 15.4.2008 submitted to the 3rd respondent.

Annexure A5 - True copy of provisional seniority list published under No. V/P.612/III/CC/Vol.IV dated 10.4.2012 issued from the office of the 3rd respondent.

Annexure A6 - True copy of representation dated 25.4.2012 submitted to the 3rd respondent.

RESPONDENTS' ANNEXURES

Nil

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