

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.78/2019

Date of Decision: 25.01.2019.

CORAM: R. VIJAYKUMAR, MEMBER (A)
R.N. SINGH, MEMBER (J)

Shri S.B. Sunchal, 61 years,
Retd. TCM, Signal & Telecommunication
Dept. of Divisional Railway Manager's
Office, Solapur Division, Central Railway,
Solapur – 413 001. Dist. Solapur.
R/at House No.200/201, Forest Area , Near
Wadia Hospital, Solapur 413 003.
(Advocate Shri D.N. Karande)

... *Applicant*

VERSUS

1. The Union of India,
Through the General Manager,
Central Railway, 2nd Floor of General
Manager's Office Bldg., CSMT
Mumbai 400 001.
2. Chief Personnel Officer, Central Railway,
1st Floor of G.M.'s Office Bldg., CSMT,
Mumbai 400 001.
3. Sr. Personnel Officer (SPO) (Reservation Cell),
Headquarter's Offie, Personnel Branch,
GM's Office Bldg., CSMT Mumbai 400 001.
4. Divisional Railway Manager, Solapur Division,
Central Railway, Modi Khana, Solapur 413 001.
5. Sr. Divisional Personnel Officer, Solapur Division,
Central Railway, DRM's Office, Solapur 413 001.
6. Sr. Divisional Signal & Telecommunication
Engineer, under DRM, Solapur, Divisional
Central Railway, Solapur – 413 003. ... *Respondents*

ORDER (Oral)
Per : R.N. Singh, Member (J)

Heard the learned counsel for the Applicant.

2. This Application has been filed on 27.08.2018 seeking the following reliefs:

“8.a) That this Hon'ble Tribunal may call for the records pertaining to the case of the applicant which led to issue the impugned orders.

8.b) This Hon'ble Tribunal may kindly quash and set aside the impugned orders (A-1 & A-2) which have been issued without taken into consideration for Constitutional Status of the NCSC and its order to promote the applicant from the year 2000.

8.c) This Hon'ble Tribunal may kindly declare that the refusals of the applicant to promotion dated 11.05.2000, 06.09.2002 and 25.06.2004 as invalid.

8.d) This Hon'ble Tribunal may kindly treat the period from 15.3.2000 to 18.07.2007 as promotion and direct the respondents to re-fix the applicant's pay, pension and pensionary benefits taking into the aspect of the deemed promotional pay.

8.e) That the respondents be directed to restore all the increments with all consequential benefits for re-computation of pay element for the pension and pensionary benefits of the applicant.

8.f) Cost of this OA may kindly be saddled on the respondents.

8.g) Any other relief that this Hon'ble Tribunal deem fit to be granted.”

3. The Applicant has filed representation to the respondents on 02.01.2003 (Annex. A-

4) and then has continued to file subsequent representations and he retired in July 2017. He has been approaching the National Commission for Scheduled Castes seeking intervention in his favour and when he did not get any relief, he has approached this Tribunal after 15 years. He has now impugned the reply of the respondents to the National Commission for Scheduled Caste in letter No.P/CR/HQ/EN/706/10/SBS dated 09.01.2017 as also letter of respondents No.P/CR/HQ/EN/706/10/SBS dated 07.11.2017 to the National Commission for Scheduled Castes explaining the position of the matter. He has not availed any legal remedies prior to this.

4. In terms of the ruling of the Hon'ble Apex Court in **S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10**, para 19 to 21 reads as under:

...19. The question for consideration is whether it should be disposal of one appeal or 'the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of sub-ss. (2) and (3) of s. 20 of the Administrative Tribunals Act. There, it has been laid down:

"20(2). For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievances; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S:21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the

application and power of condonation of delay of a total period of six months has been vested under sub- section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

It is settled law that repeated representations will not give fresh cause of action.

5. There is an application for condonation of delay which takes as basis, the impugned order but that is not the correct position on the matter since his representation mentioned therein as 24.04.2001 onwards which was considered and disposed of by the respondents and therefore, available time for him within the time of limitation were well within the relevant dates when he refused promotion on successive occasions and the last representation is mentioned as 22.05.2007 which is also disposed of by the respondents. MA No.57/2019 is, therefore, not maintainable and is dismissed.

6. In view of the above, we are of the considered view that the OA is barred by

limitation, delay and laches and misuse of process of law and accordingly the same is dismissed. However, keeping in view that the applicant is a retired person, we are restraining ourselves from imposing any cost.

(R.N. Singh)
Member (J)

(R.Vijaykumar)
Member (A)

dm.

ju
112