

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A. No. 142/2015

Date Of Decision: 13th February, 2019.CORAM: R. VIJAYKUMAR, MEMBER (A).
RAVINDER KAUR, MEMBER (J).

Ashwani J. Sharma,
Ex-Deputy Chief Commercial Manager(Plg),
Western Railway, Headquarters Office,
Churchgate, Mumbai,
Residing at C-101, 1st Floor, Rajesh Nagar,
Near Sai Baba Nagar, Borivili(W),
Mumbai- 400 092.

C/o Noel Thomas Pinto,
Bombay High Court,
55, Shrikant Palekar Marg,
1st Floor, Room No.2,
Mumbai- 400 002.

....Applicant.

(By Advocate Shri T N Pinto)

Versus

1. Union of India,
Through the Secretary,
Railway Board, Rail Bhavan,
New Delhi- 110 001.
2. Chairman, Railway Board,
Rail Bhavan, New Delhi- 110 001.
3. General Manager, Western Rly.,
Headquarter's Office,
Churchgate, Mumbai- 400 001.

....Respondents

(By Advocate Shri S Ravi)

Reserved on : 01.02.2019
Pronounced on : 13.02.2019

ORDER
PER:- R. VIJAYKUMAR, MEMBER (A).

This application has been filed on 16.12.2014 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"A) (i) Set aside the grading of the applicant's APAR of year ending 2009 Part I which has been arbitrarily down graded from 'Very Good' to 'Good' by Competent Authority and the remark 'Not Yet Fit' in the said APAR of year ending 2009 Part I.

(ii) Set aside/Expung the Remark 'Falls marginally short for promotion' and 'unfit' by Departmental Promotion Committee (DPC).

(iii) Restore the grading of the APAR- for the year ending 2009 Part I to 'Very Good' and the remark 'Not Yet Fit' to 'Fit'.

B) Order as to the consequential benefits of Prayer A (i), (ii) & (iii) above to:-

(i) Regularize the applicant to post of JAG (Junior Administrative Grade) w.e.f. 29/04/2011 instead of 25/01/2013.

(ii) Consequent to (i) above Regularize the applicant to the post in the Non-Functional Selection Grade (NFSG) w.e.f. 01.01.2014 and by ipso facto of his All his APARs upto 2013 being Outstanding and Very Good and admission of Rly. Authority of the applicant's fitness to the said NFSG.

(iii) revisit and grant the remunerative and other retirement and pensionary benefits of the applicant in pursuant to the grant of the prays above.

(iv) Order as to the Interest of 18% p.a. on the payment of arrears of higher pension and other retirement benefits till the date of payment.

C) Any other or further order as to this Hon'ble Tribunal may deems necessary and fit in the circumstances of the case be granted.

D) The Cost of the Application be provided for."

2. The applicant was promoted to the 2001 batch of the IRTS. The applicant was conferred the Junior Administrative Grade (JAG) in the JAG/IRTS panel which was approved on 25.01.2013. However, his batch of 2001 was initially considered for JAG Scale in a panel that was approved on 29.04.2011 and for which the APARs for five years from April 2004 to March 2005 to April 2008 to March 2009 were considered. In this panel, the applicant was denied JAG as he was assessed as unfit and as a result, he lost one year when he finally obtained the JAG Scale in the panel approved in 2013. The

applicant had received the following grades for those years as recorded below:

2004-05	Part-I	:	Average and not fit.
	Part-II	:	Very Good and Fit.
2005-06	Part-I	:	Very Good and Fit.
	Part-II	:	Very Good and Fit.
2006-07		:	Good and Fit.
2007-08	Part-I	:	Very Good and Fit.
	Part-II	:	Very Good and Fit.
2008-09	Part-I	:	Good and not yet fit.
	Part-II	:	Good and Fit.

3. The applicant filed a representation against the impugned APAR for 2008-09 Part-I in his representation dt. 30.06.2009 requesting expunging of remarks made by the Accepting Officer who had recorded in the remarks columns: "The Officer needs initiative to improve upon the working. I grade him as 'Good' only". The representation was referred to the said Accepting Authority who communicated his views (Annex. H) on 03.07.2009 in reply to the note of the Department stating: "The remarks should remain as it is". The applicant thereafter, filed a further representation on

26.07.2010 to the General Manager, Western Railway, which was also referred to the same Accepting Authority in a note dt. 29.07.2010 (Annex. I colly) to which the Accepting Authority has stated that the adverse entries had already been communicated and his representation had been considered and entries confirmed. Hence, there was no point in making further representation. This reply was dt. 09.08.2010 and was communicated to the applicant on 12.08.2010 in Annexure-I colly. The applicant has then made further representations to the Secretary, Railway Board on 04.05.2011, 14.06.2011, 23.08.2011, 28.09.2011 and again through his superior officer on 24.11.2011, 05.12.2011, 24.03.2012, 17.08.2012 and on 24.07.2013 and also collected information regarding his case through RTI. On one of his representations, the Chief Operations Manager, Western Railway, has in letter dt. 29.07.2013 written to the Secretary, Railway Board that his case should have been considered by a review DPC. The respondents have replied stating that the

case of the applicant was properly considered and his representation on the impugned APAR was also duly considered and the comments has been confirmed in consequence. They have rejected the letter of the Chief Operations Manager dt. 29.07.2013 since the case has to be dealt with as per rules. They have assailed the issue of limitation in filing this application including the previously withdrawn application filed in OA No. 214/2014 which had been withdrawn by the applicant on 15.04.2014.

4. During arguments, the learned counsel for applicant reiterated all the above arguments. Learned counsel for the respondents referred to the need to consider the preliminary aspect of delay and referred to the judgments of the Hon'ble Apex Court in ***S S Rathore Vs. State of Madhya Pradesh[1990 AIR 10] in C.A. No. 207 of 1984 decided on 06.09.1989,*** that repeated representations cannot be counted for limitation. In this case, the applicant's representation was disposed on 03.07.2009 and he had filed a

further representation on 26.07.2010 and continued thereafter. Even this later representation was disposed and orders communicated to him on 12.08.2010. The applicant was required under law to file this application by July 2010 but he had actually filed it only in December 2014 and the delay of 4 $\frac{1}{2}$ years has not been explained by the applicant nor has any MA been filed for condonation of delay. In this regard, the learned counsel for respondents has referred to *Ramesh Chand Sharma etc. v. Udhamp Singh Kamal & Ors. in Appeal(Civil) No. 3119 of 1997 decided on 12.10.1999* where the application had been filed after three years of delay and no prayer was made for condonation of delay. The Hon'ble Apex Court held that no such plea could be entertained by the Tribunal which had erred in admitting an application barred by delay under Section 21 of the Administrative Tribunals Act, 1985.

5. We have heard the learned counsel for the applicant and learned counsel for the respondents and carefully considered the

facts and circumstances, law points and rival contentions in the case.

6. The preliminary issue of limitation has to be decided by this Tribunal in view of the provisions of Section 21 of the Administrative Tribunals Act, 1985. On the issue of limitation, it is apparent that there is a delay of nearly 1700 days and no attempt has been made by the applicant to explain the delay except by reference to his continued representations. He has also not filed any MA for condonation of delay which could become the basis for consideration if any serious injustice has been done to the applicant. In terms of the rulings of the Hon'ble Apex Court cited by the respondents, the applicant's case is devoid of merits and the OA is, accordingly dismissed on grounds of limitation without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

Ram.