

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.1313 of 2016

This the 6th day of February 2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

1. Jagdish Prasad Jaiswal
S/o Late Sh. Chhedi Lal aged about 62 years
R/o Village and Post Rajawari
Distt. Gorakhpur, UP.-273165
2. Ram Kalp Barai S/o Sh. Jeevan Dhan Barai
Aged about 62 years
R/o Village and Post Mahen
Distt. Dearia, UP 274603
3. Dulare Prasad S/o Sh. Dhanesar
Aged about 53 years
R/o Vill. And Post Domra, Tola Bardihva
Tehsil & Dist. Maharajganj – 273165.
4. Lalji Prasad S/o Sh. Dhaneshwar Prasad
Aged about 57 years
R/o Vill. And post Domra, Tola Bardihva
Tehsil & Dist. Maharajganj-273165.
5. Swaminath S/o Sh. Chamru
Aged about 52 years
R/o Mohalla Laxmipur, Post Gorakhnath,
Distt. Gorakhpur, UP – 273015.
6. Mahesh Prasad Jaiswal S/o Late Sh. Chhedilal
Aged about 51 years
R/o Village and Post Jungle Kauriya
Distt. Gorakhpur, U.P. – 273007.

....Applicants

(None present)

VERSUS

1. Union of India through
The Chairman, Railway Board,
Rail Bhawan, New Delhi.
2. The General Manager,
(Commercial),
North-Eastern Railway,
Gorakhpur, U.P.
3. The Chief Commercial Superintendent
North-Eastern Railway,
Gorakhpur, U.P.

4. The Joint Director Traffic
(Commercial)
G.I. Railway Board,
Rail Bhawan, New Delhi.
5. The Divisional Rail Manager,
(Commercial)
North Eastern Railway,
Lucknow Division,
Lucknow, U.P.

.....Respondents

(By Advocate : Shri Shailendra Tiwary)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

On previous date of hearing, i.e., on 2.1.2019 this Tribunal passed the following orders

“The respondents raised their preliminary objection to the filing of this OA. It is the claim of the respondents that this matter has already been decided vide OA No. 1768/1999 which has also further been subject to the contempt proceedings which were finalized in CP No. 445/2003. Hence, it is the contention of the respondents that it is not open to the applicants of this OA to ask for their regularization at such a belated stage. Further he also points out to the jurisdiction aspect in this matter and states that this is an issue in which the applicants do not come within the jurisdiction of the Principal Bench, CAT. But despite the fact, no order on PT has been obtained, the matter is being sought to be agitated in this jurisdiction. He is directed to file a copy of the Contempt Petition in this matter.

Accordingly, the applicant is directed to address these two issues and is given two weeks' time to the same.

List the case on 06.02.2019 as PART HEARD.”

2. Today when this matter is taken up for hearing, again neither applicant has appeared nor has he filed any reply to the aforesaid two issues and hence, the present matter is

adjudicated as per Rule 15 of the CAT (Procedure) Rules, 1987 and accordingly, we heard learned counsel for the respondents.

3. By filing this OA, the applicants are seeking the following reliefs:-

- “(i) to allow the O.A. of the applicants and direct the respondents to regularize the services of the applicants in terms of the order dated 14.11.2000 passed by this Hon’ble Tribunal in O.A. No.1768/1999, whereby, this Hon’ble Tribunal had directed the respondents herein, to regularize the services of the applicants in the said O.A. No.1768/1999, which includes the present applicants also, in terms of various orders passed by the Hon’ble Supreme Court of India particularly, the order dated 03.12.1997 passed in W.P. No. 196 of 1986 the seniority of the applicants may be fixed from their initial appointment i.e. 08.02.1988 in place of 30.01.2004 and all the retirement benefits and pension may kindly be granted to the applicants accordingly in the interest of justice;
- (ii) Pass such other/further order/direction which this Hon’ble Tribunal may deem fit and proper in the interest of justice.”

4. The factual matrix of the case, which are necessary to mention, are that the applicants, who were petitioners along with others in Writ Petition (C) No.523/1997 before the Hon’ble Supreme Court, in earlier point of time filed OA No.1768/1999 seeking directions to the respondents to treat them as regular Commission Vendors and Commission Bearers. The Tribunal, vide order dated 14.11.2000, disposed of the said OA, with the consent of the learned counsel for the respondents, directing the respondents that till the applicants are regularized and not absorbed against the available

vacancies they would be paid minimum of the revised pay scale on the basis of 5th CPC's recommendations and the other allowances except increment. This was on the strength of an order passed by the Apex Court in WP(C) No.523/97. RA No.8/2001 preferred by the respondent in the OA was disposed of on 28.03.2001 clarifying that though the order in the Writ Petition was passed in relation to the South Eastern Railway the same has to be followed.

4.1 CWP-523/97 filed by the respondents before the High Court of Delhi was disposed of on 07.11.2001, setting aside the orders passed in RA with a fresh consideration by the Tribunal. In pursuance thereof, the following directions were issued:-

“5. In view of the above, the OA is allowed and the respondents are directed to faithfully implement the memorandum dated 13.12.1976 to absorb the applicants wherever the vacancies are available within a period of 8 months subject to availability of vacancies from the date of receipt of a copy of this order. For the absorption of the applicants they will follow the direction given by the Hon'ble Supreme Court issued from time to time. OA stands disposed of with the above directions. No costs.”

4.2 Being aggrieved with non-compliance of the above directions of the Tribunal, the applicants preferred a Contempt Petition bearing CP No.445/2003 in OA No.1768/1999. The Tribunal, after having considered the arguments advanced on either side, disposed of the Contempt

Petition vide Order dated 11.3.2004 with the following observations:-

“15. As regards regularization is concerned, we find that the claims of most of the vendors/bearers have been rejected for non-fulfilling the educational qualification and their being over-age. We find that the recruitment rules also contain a provision for relaxation and the fact that applicants had been working through a commission basis for the last 20 years and as the Apex Court has directed regularization, subject to availability of vacancies by adhering to the age limit and educational qualifications and the fact that respondents own letter dated 14.9.1999 prescribe selection process which has already been undertaken before 04.12.1998 the educational qualifications would not be adhered to and the fact that this is not a selection and only a process of regularization, we observe that the aforesaid two issues be re-considered by the respondents sympathetically with the object insight, i.e. to regularize these commission vendors/bearers.”

4.3 In compliance of the directions of the Hon'ble Supreme and of the Tribunal, after screening the commission vendor/bearer, they have been posted in the Railway Service in accordance with the Rules and instructions issued by the Railway Board vide order dated 30.01.2004.

5. The sole issue raised by the applicants in this OA is that their services be regularized with effect from their initial appointment i.e. 08.02.1988 and not from 30.01.2004 with all consequential benefits.

6. The respondents have filed the counter reply and submitted that the instant OA is barred by limitation on the ground that if the applicants were aggrieved with Order dated 30.01.2004 or that they were of the view that the compliance

of judicial verdict has not been done in true letter and spirit, they could have filed the Contempt Petition before the Tribunal within the stipulated time. Since they were sleeping over their right, as alleged by them, for the last 12 years, they cannot get the issue of retrospective seniority re-opened at this belated stage. Moreover, they have not explained the delay by filing appropriate application. The respondents have also submitted that the applicants not only filed the instant case belatedly but have concealed the material facts from the notice of this Tribunal. The respondents have also submitted that since the applicants have been taken in the Railway Service, they have neither any cause of action nor the OA is maintainable.

7. Heard the learned counsel for the respondents and perused the material on record.

8. It is noticed that the directions of the Hon'ble Supreme Court and the Tribunal passed in aforesaid OA and CP, have been complied with and the services of the applicants have been regularized way back in 2004. It is also noticed that since the date of their regularization, the applicants remained silent over the subsisting claim, if any, for about 12 long years and woke up only in 2016 seeking a direction to the respondents to fix their seniority w.e.f. 08.02.1988 and not from 30.01.2004, which is not tenable in the eyes of law, as it is settled that if a litigant is not vigilant to his claim, courts cannot help him. Moreover, in the matter of seniority and

promotion, it is a settled position that it cannot be unsettled after a considerable period and the Hon'ble Supreme Court repeated the ratio in catena of judgments that seniority once settled cannot be unsettled.

9. We also find that the directions of the Tribunal were to consider regularization of the applicants subject to availability of vacancies. It is not in dispute that the applicants have already been regularized, as admitted by them, w.e.f. 30.01.2004. Therefore, we are of the view that nothing remains in this OA.

10. Insofar as the issue of seniority is concerned, as already observed above, it has been raised belatedly without explaining any reason thereof and further it is well settled by various decisions of the Supreme Court that seniority questions cannot be permitted to be agitated after a lapse of a number of years. We may in this connection refer to the decision of the Supreme Court in the case of **Govt. of Andhra Pradesh v. M.A. Kareem**, 1991 (2) SLJ 15= 1991 (2) SLJ 14 (SC) where the Apex Court had observed that the Courts and Tribunals should be slow in disturbing the settled affairs in a service for such a long period. **In P. Sadasiva Swamy v. State of Tamil Nadu**, AIR 1974 SC 2271, the Supreme Court had observed that it would be a sound and wise exercise of discretion for the Court to refuse extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand-by and allow things to

happen and then approach the Court to put forward claims and try to unsettle settled matters. ***In K.R. Mudgal and Ors. v. R.P. Singh***, AIR 1986 SC 2086= 1987(1) SLJ 221 (SC) the Supreme Court had referred to weighty observations made by Constitution Bench of that Court in ***Malcom Lawrence Cecil D'Souza v. Union of India***, (1975) Supp. SLR 409, that raking up old matters, like seniority after a long time is likely to result in administrative complications and difficulties. It would therefore appear to be in the interest of smoothness and efficiency of service that such matters should be given quietus after a lapse of some time. Hence, the issue of seniority cannot be looked into in the facts and circumstances of this case at this belated stage and the present OA is accordingly, dismissed being barred by limitation as well as on merit. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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