

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

O.A. NO.3211 of 2016

Orders reserved on 22.8.2019

Orders pronounced on 27.08.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Shri Hari Narain Tripathi
S/o Late Ram Nanehi Tripathi
Ex-Mobile Booking Clerk,
Railway Station Achhalda under SR DCM,
North Central Railway, Allahabad
R/o 553/405, Gali Shivpuri,
West Sagarpur, New Delhi.

....Applicant

(By Advocate : Shri H.K. Bajpai for Ms. Meenu Mainee)

VERSUS

Union of India: Through

1. Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
North-Central Railway
Allahabad.
3. Divisional Railway Manager
North-Central Railway,
Allahabad

.....Respondents

(By Advocate : Shri Shailendra Tiwari)

ORDER

By filing this OA, the applicant is seeking the following
reliefs:-

“8.1 That the Hon'ble Tribunal may be graciously
pleased to allow this application and direct the

respondents to give all the benefits like screening, regularization, seniority, promotion and fixation of pay as has been done in case of other colleagues of the applicant and re-calculate the retirement benefits of the applicant also.

- 8.2 That the Hon'ble Tribunal may further graciously be pleased to direct the respondents to pay the entire amount of promotions and fixation of pay with interest @ 12% per annum from the date of amount was due till the date the amount is actually paid.
- 8.2 That the Hon'ble Tribunal may be pleased to pass any other or further order as may be deemed fit and proper on the facts and circumstances of the case.
- 8.3 That the Hon'ble Tribunal may further be graciously be pleased to grant costs against the respondents and in favour of the applicant."

2. Today when this matter was taken up for consideration, although proxy counsel appeared but main counsel for the applicant did not appear despite the fact that on previous date of hearing, it was made clear that no further opportunity would be given for this purpose. In such view of the matter, we proceed to hear the learned counsel for the respondents by invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987. However, the applicant was given permission to file written submission, if she so desires, during the course of the day.

3. Counsel for the respondents submitted that as per order dated 28.6.2013 and 10.12.2013 issued by the competent authority, the applicant was granted seniority and pay fixation with all consequential benefits from the date of

completion of three years of service from the date of initial appointment in Grade Pay Rs.5200-20200 + Grade pay Rs.2800 at par with his junior Shri Mukta Prasad on performa basis from 4.3.2004 to the post of Senior Booking Clerk.

3.1 Counsel further submitted that in compliance of the order dated 21.4.1997 passed by this Tribunal in OA 1777/1993, all the applicants in the said OA were granted seniority, promotion and pay fixation as per rule during their service tenure. Counsel also submitted that eight employees were granted promotion to the post of Chief Booking Clerk in Pay Band Rs.9300-34800 + Grade Rs.4200 from 16.9.1995 because they were in service on the said date but the applicant was already retired from Railway service on 30.4.2015 and thus he could not be granted promotion after retirement as per rule. Counsel further submitted that 30 years service have not been completed by the applicant, as such he was not given the benefits of 3rd MACP as before the completion of 30 years service, he had retired.

4. Although permission was granted to the applicant to file written submission but after waiting for two working days, no such written submission had been filed by the applicant, hence, the OA is now being adjudicated. After hearing the learned counsel for the respondents and perusal of the pleadings available on record, it is observed that applicant in

his rejoinder has not refuted the aforesaid contentions of the respondents. In his rejoinder filed on 1.5.2018, he has only restated that he be given the same benefit which have been given to persons in compliance with the Tribunal's order in OA 1777/1993 dated 21.4.1997. As clarified by the respondents and noted in para 3.1 above, eight employees other than the applicant were granted promotion to the post of Chief Booking Clerk from 16.9.1995 but as the applicant had retired before completion of 30 years of service on 30.4.2015, thus, he could not be granted promotion after retirement as per rules.

5. It is also noted that respondents had also opposed any relief by way of this OA to the applicant as he has filed this OA for the relief based on an order passed by this Tribunal in OA 1777/1993 dated 21.4.1997, which was passed 19 years ago. We note there is extra ordinary delay in seeking the said reliefs by way of this OA, which is not sustainable in the eyes of law as held by the Apex Court in catena of judgments as follows:-

A four-judge bench of the Supreme Court laid down the following principle in **Malcom Lawrence Cecil D'Souza v. Union of India** (1976) 1 SCC 599 :-

"8. The matter can also be looked at from another angle. The seniority of the petitioner qua Respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 Rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition

was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in 1971, in pursuance of the decision of this Court in Karnik case would not clothe the petitioner with a fresh right to challenge the fixation of his seniority qua Respondents 4 to 26 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years. It is essential that anyone who feels aggrieved with an administrative decision affecting one seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is no doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress."

In **B.S. Bajwa v. State of Punjab** (1998) 2 SCC 523, the Hon'ble Supreme Court held as under:-

"7. ...It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under [Article 226](#) and to reject the writ petition."

Further in **Bimlesh Tanwar v. State of Haryana** (2003) 5 SCC 604, wherein a delay of 5 years was held to disentitle the petitioner to any relief, the Apex Court made the following observations :-

"54. Furthermore, it is now well settled that a settled seniority position should not be unsettled. The respondents had already been posted to the post of

Additional District Judge. As would appear from the report of the Sub-Committee that the seniority list was published in the year 1992. Representations were, however, made only in the year 1997 which was rejected by the High Court on 22-8-1997. The writ petition was filed in March 1998 which was dismissed by reason of the impugned judgment dated 18-8-1999."

The recent decision in **Akshya Bisoi v. AIIMS** (2018) 3 SCC

39, the Apex Court followed the same line of reasoning:-

" 18. In holding that an unexpected delay on the part of the petitioners would disentitle them to relief, we place reliance on a judgment of this Court in State of Uttaranchal v Shiv Charan Singh Bhandar, i(2013) 12 SCC 179. The learned Chief Justice, after adverting to the settled position of law in that regard, observed thus:

"27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled..the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer." (Id at page 185) "28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court." (Id at page 186)

There has to be an element of repose and a stale claim cannot be resuscitated."

Although this Tribunal found that this is a very stale claim, however, we have examined it also on merit and do not find any merit in the same.

6. In view of the above, for the foregoing reasons, we dismiss it being devoid of merit. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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