

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A. No. 880 of 2011

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
 Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Sashibhusan Tripathy, aged about 45 years, S/o Jhasaketan Tripathy, At/PO – Manoharpur, Bolangir, Dist. – Bolangir, At present working as Electrician HS.
2. Hrudananda Biswal, aged about 39 years, S/o Janaka Biswal, At/PO – Nagaon, Via – Loisingha, Dist. – Bolangir, At present working as Electrician HS.
3. Akshaya Kumar Sahoo, aged about 40 years, S/o Late haladhar Sahoo, At/PO – Deogaon, Dist – Bolangir.
4. Saroj Kumar pradhan, Aged about 46 years, S/o Bishnunath pradhan, At – Dangarmuli, PO – Kikia, District – Bolangir.

.....Applicants.

VERSUS

1. Union of India, represented through the Secretary, Ministry of Defence, Rakshya Bhawan, New Delhi – 1.
2. Ordnance Factory Board, represented through the Director General, Ordnance Factory-cum-chairman, Ayudh Bhawan, 10-A, Saheed Khudiram Bose Road, Kolkata – 700001.
3. Ordnance Factory, Badmal, represented through its General Manager, At/PO/OF – Badmal, District – Bolangir.
4. Udhab Patel, HS.
5. Tapan Kumar Mandal, HS now CM/T.
6. B.K.S.Deo, HS.
7. S.S.Nath, HS.
8. M.Swain, HS.
9. R.M.Sarangi, HS.
10. J.B.Patel, HS.
11. P.K.Sahu, HS.
12. N.Khandir, HS.
13. D.C.Patel, HS.
14. N.C.Mallick, HS.
15. D.Hui, HS.
16. H.K.Majhi, HS.
17. N.K.Pradhan, HS.
18. B.Badamundi, HS.
19. S.C.Sarkar, HS.
20. B.N.Mishra, HS.

Sl. Nos. 4 to 20, From U.Patel to B.N.Mishra,
Tapan Kumar Mandal,
All are C/o General Manager, Badmal,
At/PO/OF – Badmal, District – Bolangir.

.....Respondents.

For the applicant : Mr.D.Mishra, counsel

For the respondents: Mr.G.R.Verma, counsel

Heard & reserved on : 16.4.2019

Order on : 29.4.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This Original application (in short OA) was filed under section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

"It is, therefore, humbly prayed that this Hon'ble Tribunal may graciously be pleased to issue notice for show cause and call for the records and on perusal of causes shown and upon insufficient causes shown be pleased to direct the respondents to :

- (I) hold and declare that the applicants are senior to the private respondents 4 to 20;
- (II) hold and declare that the impugned gradation list dated 1.1.2010 is illegal, unconstitutional and contrary to 1994 rules;
- (III) consequentially direct the official respondents to place the applicants at appropriate places above the private respondents in the gradation list;
- (IV) restrain the official respondent No.3 from promoting private respondent Nos. 4 to 21 in electrician trade ahead of the applicants and HS Grade – I prior to the promotion of the applicants to the electrician HS Grade – I."

The MA No. 1090/2011 has been filed by the applicants to allow the applicants to file the OA jointly. It is seen that this MA has not been disposed of. Since all the applicants have a common cause of action, the MA No. 1090/2011 is allowed permitting the applicants to jointly pursue this OA.

2. The applicants are aggrieved by action of the respondents to fix their seniority in the gradation list below the private respondent no. 4 to 20 who were appointed after the applicants. It is stated in the OA that the applicants had filed representation before the authorities way back in 1996, but till 29.3.2011 no action was taken by the respondents to correct the situation in spite of series of representations to the authorities, for which the applicants have filed this OA jointly with the MA No. 1090 of 2011 under the rule 4(5) of the CAT (Procedure) Rules, 1987. It is seen that this MA has not been disposed of. In this OA, since the cause of action and relief prayed for by the applicants are same, the MA No.1090 of 2011 is allowed permitting the applicants to jointly pursue the OA.

3. The applicants have been recruited for the post of the Wireman/semi-skilled in 1996 after qualifying in the examination. The applicants joined the said post in January, 1996. On 25.9.1996, the respondents invited applications for persons working in trades like Wireman for transfer as Electrician by transfer or re-designation. The applicants could not participate in the process since they did not fulfil the requirement of 2 years of experience specified in the circular dated 25.9.1996. The applicants' case is that as per the circular dated 25.9.1996, (Annexure-3), they should have been re-designated as Electrician in 1996. It is stated in the OA that the representation dated 7.10.1996 was filed by the applicants for re-designation as

Electrician/semi-skilled, but it was not considered on wrong notion that the representation was for designation as Electrician skilled grade. It is further stated that the 1994 rules make there-designation of Wireman grade to the Electrician grade. It is stated in the OA that the merger of the Wireman trade with Electrician trade took place on 8.9.2005 and it was also decided at that point of time that the date of entry to semi skilled grade will be taken for seniority as electrician.

4. Counter filed by the respondents states that by letter dated 25.9. 1996 (Annexure A/3), the respondents invited applications from the Wireman/semi-skilled for re-designation to the post of Electrician. The applicant could not participate since they did not have two years of experience. 21 Wireman were re-designated as Electrician vide order dated 17.10.1996 (Annexure-4). Then vide letter dated 8.9.2005 (Annexure R/2), appointment of the existing employees of Wireman trade to Electrician by transfer-designation was allowed by the respondents. Thereafter, the applicants were invited by circular dated 17.2.2006 for a competency test for Electrical Trade (Annexure-R/3). The applicants applied and after the test, they were successful and vide order dated 30.12.2006 (Annexure-R/5), the applicants were re-designated as Electrician/skilled. It is further stated that the applicants thereafter, were promoted to the highly skilled grade in Electrician grade in the year 2008.

5. The applicants subsequently filed the MA No.26/2015 enclosing the order dated 9.2.2012 (Annexure-11 to the MA No. 26/2015), by which his representation was rejected on the ground that the applicants have filed the representation jointly, through the MA No. 26/2015. After the MA was allowed vide order dated 13.5.2015 of this Tribunal, the applicant filed the consolidated OA on 3.5.2018.

6. We have heard learned counsel for the applicants and respondents. The applicants' counsel argued that although the Wireman and Electrician trades are inter-changeable as per the 1994 rules, the respondents delayed re-designation of the Wireman to Electrician trade. It was further submitted that the seniority should have been decided based on the date of entry to semi-skilled category of trade. The applicants' counsel has also filed his written note of submissions subsequently.

7. Learned counsel for the respondents opposed the submissions and stated that although the earlier representation of the applicants was rejected, but the same rejection order has not been challenged in this OA. It was also submitted that the applicants are trying to unsettle a settled issue as far as the seniority of the applicants vis-a-vis the private respondents are concerned.

8. Learned counsel for the applicant in his written note of submission has stated that the applicant submitted representation for re-designation as Electrician semi-skilled on 18.11.1996 vide copy of such representation at

Annexure A/8 to the OA, on which no action was taken by the respondents. It is further mentioned in the written submission that on 10.6.1998 the applicant was promoted as Wireman Skilled from semi-skilled. Thereafter, successive representations were also made for re-designation, but no action was taken till 30.12.2006 when the applicant was re-designated as Electrician. It is further stated in the written submission by the applicant that 1994 Rules stated that 80 % vacancies will be filled up by transfer/re-designation failing which by direct recruitment. It is submitted that 80% vacancies ought to have been filled up by re-designation in terms of 1994 rules. Instead of doing that, the respondents had gone ahead with the direct recruitment of the private respondents. Regarding the issue of delay, it is stated in the written submission that the respondents have never communicated any decision with regard to their prayer for re-designation in 1996 and there was no legally valid reason as to why the applicants were left out and why no decision was taken by the respondents on this application for re-designation.

9. Learned counsel for the respondents has also submitted a written note of submissions, reiterating the stand taken in the Counter. It was stated that the earlier representation of the applicants regarding inter-se-seniority was rejected vide order dated 6.12.2005 (Annexure-R/8 series to the Counter). The said orders have attained finality. It is stated that the respondent no. 4 to 20 were appointed directly to the Electrician Trade in the year 1997. The applicants were re-designated as Electrician vide order dated 30.12.2006 (Annexure-R/5). Having been appointed as Electrician in 2006 and promoted to skilled category in 2008 compared to initial recruitment as Electrician in 1997 and promotion as skilled category in 2003 for the private respondents, the applicants cannot be assigned higher seniority than the respondents No. 4 to 20. It is stated that the applicants have been promoted to Highly Skilled grade in Electrician Trade on 16.11.2008, whereas the respondent no. 4 to 20 were promoted to Highly Skilled grade of Electrician in the year 2003.

10. We have considered the pleadings on record as well as the submissions by the counsels for both the parties. The issue to be decided in the case is whether contention of the applicants that their seniority should be counted from the date of entry to service as semi skilled category in 1996 and that this should be above the respondents No. 4 to 20 in the seniority list, can be accepted or not.

11. It is stated in the Counter that the applicants could not be re-designated as Electricians in the year 1996 in terms of the circular dated 25.9.1996 (Annexure-3) since the applicants did not have 2 years of experience as Wireman. The applicants on the other hand, have averred for automatic re-designation. But for such a contention no guidelines or rules have been furnished. The applicants did not raise any dispute before Tribunal challenging

the requirement of 2 years of experience as Wireman for re-designation and they have accepted the decision of the respondents not to re-designate then as Electricians in 1996. They were finally re-designated as Electrician vide order dated 30.12.2006 (Annexure-R/5 to the Counter) which was accepted by the applicants. The decision to re-designate from 30.12.2006 has not been challenged by the applicants before any competent forum before filing this OA.

12. Regarding fixation of inter-se-seniority between the applicants and respondent no. 4 to 20, it is stated in para 17 of the Counter as under:-

"That in reply to the averments made in para 4.12 it is submitted that the seniority of incumbents in the Electrician trade has been correctly indicated in the seniority list as on 1.1.2010. The employees under Sl. No. 34 to 49 have been shown senior to the applicants at Sl. No. 50 to 53 since their date of holding HS grade is earlier than the applicants. Further, the employees under Sl. No. 34 to 49 were continuing in their parent Electrician trade while the applicants in Wireman trade availing the promotional avenues as per the sanctioned strength of respective trades till 30.12.2006 when both the trades have been merged horizontally. It is a fact that while the above private respondents have got promoted to higher grades earlier based on the vacancies available in their trade, the applicants could not for want of vacancies in their parent Wireman trade. Hence, comparison of the applicants belonging to erstwhile Wireman trade with the incumbents of Electrician trade when both had different grade wise sanctioned strength before merger is without any basis and not tenable. The applicants could be included in the seniority list of Electrician trade only after their merger into the grade and as per their date of holding the post in HS grade."

13. From above averments of the respondents, it seems that the seniority of the applicants have been placed below the respondent no. 4 to 20 in the seniority list on 1.1.2010, since they had been promoted to Highly Skilled grade in 2003 compared to 2008 for the applicants. The applicants pointed out the stipulation in order dated 30.12.2006 that their seniority was to be counted from the date of entry to service as semi-skilled category (i.e. 1996 for the applicants). But this was not implemented by the respondents. There is no rule or executive instructions placed by the applicants to substantiate their claim that they should be placed above the respondents No. 4 to 20 treating their seniority from the date of entry to service as Wireman semi-skilled in 1996. In view of the averments in para 17 of the Counter, it is clear that the applicants were placed in the seniority list dated 1.1.2010 below the private respondents. The applicants have not mentioned if they had objected to the seniority list dated 1.1.2010, which has not been impugned in this OA. The applicants' promotion to Highly Skilled grade w.e.f. 2008 compared to 2003 for the respondent no. 4 to 20 has also not been challenged by the applicants since 2008.

14. It is mentioned in the order dated 30.12.2006 (Annexure-R/5) that the seniority in semi-skilled grade Wireman after re-designation will be counted from the date of entry in the semi-skilled grade. But when it was not implemented and the respondents No. 4 to 20 were shown at higher position than the applicants in the seniority list, the applicants did not raise any

dispute within the time stipulated under law. The respondents had rejected the claim of the applicants for seniority from the date of holding semi-skilled grade vide letter dated 15.7.2005 and 6.12.2005 (Annexure-R/8 series) which are not challenged in the OA. The reasons for not challenging the combined seniority list in which the applicants have been shown below the seniority of the respondents No. 4 to 20 and the rejection orders in Annexure R/8 series in this IOA have not been explained in the pleadings of the applicants in this OA.

15. In the written submissions, the learned counsel for the applicant has cited the judgments in the following cases regarding the delay in filing the OA :

- (i) Ram Chandra Shankar Deodhar & Ors. -vs- State of Maharashtra & Ors. [(1974) 1 SCC 317]
- (ii) Raj Kumar & Ors. -vs- Shakti Raj & Ors. [AIR 1997 SC 2110]

The case of Ram Chandra Shankar Deodhar (supra) was a petition under Article 32 of the Constitution of India before Hon'ble Apex Court, in which one of the prayer was for re-fixation of the seniority. While examining the preliminary objection on the ground of delay and laches, it was found that there was a delay of about 10-12 years in filing the petition. It was argued that because of the delay the petitioner could not be given any relief under Article 32 of the Constitution. This contention was not accepted by the Hon'ble Supreme Court, with observation that for the purpose of the case under Article 32, delay and laches should not be a relevant consideration. It is seen that Hon'ble Apex Court did not consider applicability of the Section 21 of the Administrative Tribunals Act, 1985, under which the subject to the provisions present OA has been filed seeking reliefs under Section 19 of the said Act. Section 21 of the Act states as under :

"21. Limitation.—

(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the

case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

In view of above provision under law, the Tribunal cannot admit or adjudicate a service dispute unless it is filed within the stipulated time as provided under Section 21 of the Act. In view of the specific provisions regarding delay, the cited judgment will not be helpful for the applicant.

16. Similarly other judgment in the case of Raj Kumar (supra) cited by the applicants' in the written note of submission, the procedure adopted for selection was found to be arbitrary and illegal since the Government did not call the names from the Employment Exchange and after selection, the names of selected candidates were called from the Employment Exchange. Clearly, the cited case is factually distinguishable from the present OA.

17. One of the ground mentioned in the applicants' written note of submission was that the applicants were constantly representing for their re-designation since 1996, but no decision was communicated by the respondents. In such cases, the Section 21(1)(b) extends the limitation period by six months. There is no provision that repeated representations would extend the limitation if no decision of the respondents is communicated. By not raising the dispute within stipulated time after 1996 and after applicants' representation for seniority was rejected on 15.7.2005 and 6.12.2005 (Annexure R/8 series), the OA is hit by limitation under Section 21 of the Act. Having remained silent on the issue since 1996 and 2006, it was necessary on the part of the applicant to have explained the delay and to file an application for condoning the delay in filing this OA under Section 21(3) of the Act.

18. The cause of action for applicants in this OA arose in 1996, when the applicants were not allowed to apply for re-designation as per the letter dated 25.9.1996 (Annexure-3 of the OA) and when the respondent no. 4 to 20 were recruited in 1997 as Electrician and were given higher seniority than the applicants. The applicants remained silent after rejection of their representations vide orders in Annexure R/8 series to counter. Hon'ble Apex Court in the case of **Shiba Shankar Mohapatra & Ors vs State Of Orissa & Ors.** [AIR 2010 SC 706] has held as under:-

"16. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in [Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors.](#) AIR 1974 SC 259, considered the effect of delay in challenging the promotion and 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. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in [Tilokchand Motichand v. H.B. Munshi](#), AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-

"A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court."

17. This Court also placed reliance upon its earlier judgment of the Constitution Bench in [R.N. Bose v. Union of India & Ors.](#) AIR 1970 SC 470, wherein it has been observed as under:-

"It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years."

18. In [R.S. Makashi v. I.M. Menon & Ors.](#) AIR 1982 SC 101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in [State of Madhya Pradesh & Anr. v. Bhailal Bhai](#) etc. etc., AIR 1964 SC 1006, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under [Article 226](#) of the Constitution can be measured. The Court observed as under:-

"We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years..... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed." (Emphasis added)

19. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in [K.R. Mudgal & Ors. v. R.P. Singh & Ors.](#) AIR 1986 SC 2086. The Court held as under:-

"A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity..... Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches." (Emphasis added)

.....

29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."

19. Applying the judgment in the case of Shiba Shankar Mahapatra (supra), to the present OA, it is seen that the applicant has raised the question of his seniority belatedly without any satisfactory explanation for such delay and after failing to challenge the inaction or wrong decision of the respondents within time as stipulated under Section 21 of the Administrative Tribunals Act, 1985. Further, the orders, by which the representations of the applicants were rejected in 2005 and 2006 (Annexure R/8 series of the counter) have not been challenged in this OA. The seniority list by which the applicants have been placed below the respondents No. 4 to 20 has also not been challenged in this OA. No rule or executive instructions have been furnished by the applicants in support of their claim for automatic re-designation as Electrical (semi-skilled) w.e.f. their date of joining in service as Wireman (semi-skilled) in January, 1996.

20. For the reasons discussed in the preceding paragraphs, we are of the considered view that this OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and that there is no merit in the OA. Accordingly, this OA is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath