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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

O.A/350/1391/2018

Date of Order: 26.09.2019

Coram: Hon'ble Mrs. Manjula Das, Judicial Member
Hon'ble Mr. N. Neihisial, Administrative Member

Gopal Khairwar, son of Sri Shiv Lal Khairwar, aged about 58 years, working for gain as Chief Engineer/Construction- II (CE/CON/II/ER) Head quarters office, Eastern Railway, 14, Strand Road, NKG Building (4th Floor), Kolkata - 700001 and also residing at 2A, Hastings Park Road, Kolkata 700027.

---Applicant

Versus

1. Union of India, service through the Secretary, Railway Board, Rail Bhawan, New Delhi - 110001.
2. The Chairman, Railway Board, Rail Bhawan, New Delhi - 110001.
3. The Secreary, Department of Personnel and Training (DOPT), North Block, New Delhi - 110001.
4. The Member Staff, Rail Road, Rail Bhawan, New Delhi - 110001.
5. The Member Engineering Railway Board, Rail Bhawan, New Delhi - 110001.
6. The Appointment Committee of Cabinet (ACC) through Establishment Officer Department, North Block, New Delhi - 110001.
7. The General Manager, East Central Railway, Hazipur Zonal Head Quarters, Haziur- 844001.

---Respondents

For the Applicant(s): Mr. A. K. Gayen, counsel
Ms. A. A. Gayen, counsel
For the Respondent(s): Mr. K. Sarkar, counsel



ORDER (ORAL)

Per: Mrs. Manjula Das, Judicial Member:

Heard Mr. A.K. Gayen, Ld. Counsel appearing on behalf of the applicant, and Mr. K. Sarkar, Ld. Counsel appearing for the respondents.

2. The applicant has filed this application being aggrieved with the non listing of his name at the time of preparation of panel for SAG (Senior Administrative Grade) of IRSE Officers 1982 Exam Batch and, consequently, being deprived of promotion to HAG, preparation of panel for NF/HAG dated 04.11.2015, and for non-consideration of his representations dated 22.04.2004, 23.07.2007, 18.11.2015, 30.05.2018, 20.07.2018 and 23.07.2018.

3. Ld. counsel for the applicant submits that the applicant had joined in Railway service as IRSE (Probationer) and thereafter was promoted to Senior Scale Junior Administrative Grade (JAG) Selection Grade (SG). Subsequently, Railway prepared list of eligible candidates for next promotion to SAG. However, he came to know that his name has not been considered for the said post while other candidates of 1982 Batch Exams were being considered. Thereafter, he made several representations to the authorities for redressing his grievance but the same has not been considered. Being aggrieved, he has preferred this application.

4. Ld. Counsel for the respondents, on the other hand, submitted that the applicant was considered for empanelment to JAG along with his batch mates in JAG/IRSE panel approved on 02.08.1993. DPC found him not suitable for empanelment to JAG on the basis of totality of performance. He was again considered for JAG with 1983 Exam Batch officers on 30.05.1994 and was found fit for empanelment to JAG and was accordingly promoted to JAG with 1983 Exam Batch. Thus the applicant has lost seniority by one

batch in JAG. Since he was promoted to JAG along with 1983 batch, he was placed in Selection Grade with 1983 batch and he was eligible for consideration for SAG with 1983 Exam Batch officer. However, as the DPC found him not suitable for empanelment to SAG on the basis of totality of performance, he was again considered for SAG along with 1984 exam batch officer in the SAG/IRSE panel approved on 04.09.2004 and was found fit and promoted to SAG in Dec. 2004 with 1984 exam batch officer, thus he also lost seniority by one batch in SAG.

Ld. counsel for the respondents admits that vide order dated 04.11.2015 officers of 1982 exam batch have been granted Non-Functional upgradation in H.A. Grade, but the applicant, though originally belongs to 1982 Exam Batch, since he has lost seniority by two batches on the basis of his performance he was only eligible for consideration with 1984 exam batch officers. He further submits that the applicant was considered for empanelment in HAG in HAG/IRSE panel for 2018-19 approved by ACC on 21.09.2018 and findings of the Selection Committee in respect to the applicant have been kept in 'sealed cover' owing to pendency of the major penalty charge sheet issued to him on 30.05.2018.

5. We have heard Ld. Counsel for both the parties and perused the documents placed on record.

6. Section 21 of the Administrative Tribunals Act, 1985 provides for limitation of filing an OA 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 subsection (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."

Further, sub-section 3 of Section 21 of the said Act, provides as under:-

(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 the case of **Bhoop Singh vs Union of India & Others**, 1992 AIR 1414, the Hon'ble Supreme Court has observed as under:-

"... Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief."

7. The principle canonized in well common law maxim '*vigilantibus, non dormientibus, jura sub-veniunt*' meaning thereby that "law assists those who are vigilant not those who are sleeping over their rights" is applicable in this case. We find that the matter pertains to the year 1994 and any direction at this stage will be unsettling of a settled position after a long lapse of more than 25 years. Further, we do not find any sufficient reason to condone the delay as prayed for by the applicant. In our considered opinion, the case is hopelessly barred by limitation. Accordingly, the O.A is dismissed. No costs.

(N. Neihisal)
Member (A)

(Manjula Das)
Member (J)