

(2019) 04 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 1138 Of 2013

Jagdish Chand

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0031

Hon'ble Judges : Nita Chowdhury, J; S.N. Terdal, J

Bench : Division Bench

Advocate : Vijay Pandita, Shailendra Tiwary

Final Decision : Dismissed

Judgement

1. When this case was taken up for consideration, Shri Vijay Pandita, learned proxy counsel appeared on behalf of Shri K.K. Patel, learned counsel for the applicant, and submitted that main counsel is not well and he has asked him to inform the Court that he has filed the written submissions on behalf of the applicant and requested that the same be taken into consideration while deciding this matter. Accordingly we perused the written submissions and also heard learned counsel for the respondents.

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

"(a) Call for the records of the case.

(b) Direct the respondents to consider the applicant for promotion from the date respondent No.3, 4 and 5 were promoted to the post of Master Craftsman.

(c) Direct the respondents to grant notional promotion to the applicant to the post of Master Craftsman along with all consequential benefits.

(d) Award exemplary costs of the proceedings.

(e) Pass such further order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

3. The grievance of the applicant is that he has not been considered for promotion to the post of Master Craftsman though he was eligible and senior than others who were promoted in the feeder cadre, i.e., Wireman Grade-I along with him. However, juniors were considered and promoted to the said post.

4. The respondents have filed their counter reply in which they have stated that applicant was appointed as Elect, Khalasi on 29.4.1977 and promoted as Wireman Gr.III on 13. 6.1988. As per the seniority list of Wireman-III issued under letter dated 5.10.1994, name of the applicant figured at S. No.79. The applicant was further promoted to the post of Wireman-II w.e.f. 1.3.1993 and his name was figured at S. No.61 in the seniority list of Wireman-II issued vide letter dated 8.8.1995 and he was further promoted to the post of Wireman-I issued vide letter dated 29.9.2011. The applicant was retired on superannuation w.e.f. 31.12.2012. During the entire service of Railways, he never represented against his seniority at the time as Wireman Gr.III, II and I. After his superannuation, he has filed this OA alleging that some juniors to him promoted as MCM whereas he was not promoted as MCM. The applicant pointed out in his representation that Shri Brahma Nand is junior to him and promoted as MCM whereas as per seniority list of Wireman-I, name of Shri Braham Nand is placed at Serial No.16 and name of applicant is at S.No.33. The applicant has never challenged this seniority list against the place of Shri Brahma Nand as junior employee. As such the claim of the applicant is concocted, frivolous and factious, which has no basis to rely upon, as he is not due for any promotion as claimed by him.

4.1 They also stated that promotion in the cadre of MCM/Wireman is granted on the basis of seniority list of Tec-I/Wireman. The name of the applicant is figured at S.No.33 whereas name of respondent no.5 is figured in the seniority list of Tec.I/Wireman. The respondent no.5 was promoted vide office letter dated 1.9.2011 as MCM/Wireman as per his placement in the said seniority list and found suitable for the said post as per available vacancies whereas the applicant was not promoted as MCM/Wireman as he was not in the zone of consideration for filling up the vacancies of MCM/Wireman.

5. In the written statement filed by the applicant, the applicant has given a tabulated statement of his facts and of his two juniors as follows:-

Name

Year of regular appointment in Railways

Wireman Grade-III

Wireman Grade-II

Wireman Grade-I

Jagdish Chand

13/1/72

13/6/88

01/03/93

12/06/96

Brahmanand

27/2/78

/09/88

01/03/93

13/06/96

Bhim Singh

02/03/78

28/02/86

01/03/93

10/01/96

The applicant has also annexed seniority lists of Wireman Grade-III, Wireman Grade-II and Wireman Grade-I and service record of the applicant showing date of promotion to Wireman Grade-I as 12.6.1996.

5.1 Applicant further submitted that a perusal of page 17 of the OA shows that the representation dated 13.10.2012 of the applicant for correction of his date of seniority in his service record duly received by the respondents. It is further stated that the said representation was submitted by the applicant to the official respondents when his juniors were promoted to the post of MCM. Thereafter, when no order or letter was received from the respondents, the case was filed within six months as prescribed under Section 19 of AT Act, 1985.

5.2 Applicant further submitted that in the reply the respondents made a wrong statement that the applicant had submitted any representation regarding his seniority and non consideration to the post of MCM before his retirement. Secondly they have stated that the name of Brahmanand had been placed at Sr. No.16 and applicant's name at Sr. No.33 in the seniority list of Wireman Grade-I is also wrong inasmuch as the applicant was promoted to the post of Wireman Grade-I on 12.6.1996 whereas Brahmanand who had changed his category from PED to Wireman and promoted to the post of Wireman Grade-I on 13.6.1996 was made senior and considered for promotion to the post of MCM. It is pertinent to mention that one Sant Ram/Chat S/o Shri Chat Ram was promoted as Wireman Grade-I on 23.8.1996 and made senior and considered for the post of MCM. Thirdly, Bhim Singh, Brahmanand and Jagdish Chand their results for Wireman Grade-I was declared on 30.5.1996 and were shown to be passed. Bhim Singh was promoted to Wireman Grade-II on the same day when

the applicant and Brahaanand were promoted to Wireman Grade-I vide letter dated 9.4.1995 and given benefit w.e.f. 1.3.1994 but in the seniority list, he has been shown to be promoted to the post of Wireman Grade-I on 10.1.1996 and made senior than the applicant and was also considered for promotion to the post of MCM.

5.3 Applicant further submitted that the respondents have to explain as to how the seniority of applicant, Brahmanand and Bhim Singh had been assigned when the date of regular appointment in Railways of the applicant is much earlier, Bhim Singh and Brahmanand were working in PED and their category was changed and as per Rules, they should have been assigned bottom seniority in the post, they joined as Wireman. Secondly, all three employees appeared and qualified on the same date to Wireman Grade-II and Wireman Grade-I but why Brahmanand and Bhim Singh has been shown senior and considered for the post of MCM.

6. Counsel for the respondents submitted that applicant was retired on superannuation w.e.f. 31.12.2012 and during the entire service of Railways, he never represented against his seniority at the time of promotion as Wireman Gr.III, II & I. After his superannuation, he has filed this OA alleging that some juniors to him were promoted as MCM whereas he was not promoted as MCM. The applicant pointed out in his representation that Shri Brahma Nand is junior to him and promoted as MCM, the respondent clarifies that whereas as per seniority list of Wireman-I, name of Shri Braham Nand is placed at Serial No.16 and name of applicant is at S.No.33. The applicant has never challenged this seniority list against the place of Shri Brahma Nand. As such the claim of the applicant is concocted, frivolous and factious, which has no base to rely upon and he is not due for any promotion as claimed by him.

6.1 Counsel for the respondents further submitted that it is a well settled principle in service jurisprudence that, if a person suffers a seniority position for long period without demur, and allows others to enjoy seniority over him for a long period, he cannot normally stake his claim, when the question of promotion to the next higher post is taken up.

7. We have heard learned counsel for the respondents and have carefully perused the material placed on record. It is admitted fact that placement of the applicant in the seniority lists, which pertain to Wireman Grade-II and Grade-I, is below the alleged juniors (private respondent nos.3, 4 and 5). The seniority list of Wireman Grade-III was issued in 1993, seniority list of Wireman Grade-II was issued in 1995 and seniority list of Wireman Grade-I was issued in 2007. However, by filing this OA the applicant has stated that he has filed representation on 13.10.2012 alleging that his junior, namely, Brama Nand has been promoted as MCM ignoring him whereas it is apparently clear that in the aforesaid seniority lists of Wireman Grade-I and Grade-II, the applicant is shown below to the alleged private respondents. The said seniority lists were issued in 1995 and 2007 and no action had been taken by the applicant for placement of

his position above his juniors. He has made representation on 16.10.2012 alleging that he ought to have been promoted instead of respondent no.3 to the post of MCM whereas it is admitted fact that promotions to the post of MCM were made on the basis of seniority list of Wireman Grade-I whereas the applicant was not promoted as MCM/Wireman as he was not in the zone of consideration for filling up the vacancies of MCM/Wireman. This Court observes that the legal position is clear that a settled seniority position cannot be disturbed after the passage of several years when others have already been granted the benefit of the seniority determined by the employing agency. 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 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, follows 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."

8. In the result, and for the foregoing reasons, we do not find any merit in the claim of the applicant and as such the present OA is dismissed. There shall be no order as to costs.