

Chief Justice's Court

Case :- WRIT - A No. - 19202 of 2023

Petitioner :- Jhanna Lal

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Abhishek Srivastava, Vinay Kumar Srivastava

Counsel for Respondent :- A.S.G.I., Vijay Kumar Mishra

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. Impugned in the present proceedings at the instance of Jhanna Lal son of Sri Kamta Prasad (in short 'writ petitioner') is an order of the Central Administrative Tribunal (in short 'Tribunal') dated 25.08.2023 passed in Original Application No.922 of 2018 (Jhanna Lal v. Union of India and 5 others) whereby the original application preferred by the writ petitioner challenging the order dated 30.07.2018 of Pramukh Mukhya Karmik Adhikari, Diesel Locomotive Works (D.L.W.), Varanasi, sixth respondent and the order dated 05.04.2000 passed by the Assistant Personnel Officer in the office of General Manager (P), Diesel Locomotive Works (D.L.W.), Varanasi insofar as it accords posting to the writ petitioner as *Khalashi* in the Electrical Department of the Railways while according seniority from 29.03.2000 instead of 19.09.1991 has been rejected.

2. The facts of the case as projected by the writ petitioner before the Tribunal are that the father of the writ petitioner, Shri Kamta Prasad while working in the Railways died in harness. The writ petitioner preferred an application for grant of compassionate appointment on 03.06.1991 thereafter the General Manager (P), Diesel Locomotive Works (D.L.W.), Varanasi issued a communication dated 02.07.1991 requiring the writ petitioner to appear in the suitability test scheduled to be held on 11.07.1991. The writ petitioner claims to have cleared the suitability test and thereafter an appointment order came to be issued on 22.08.1991 according appointment to the writ petitioner on the post of *Khalashi* in the

pre-revised pay scale of Rs.750-940/- on probation of two years in the Marketing Department of the Railways. The writ petitioner services stood confirmed by order dated 07.10.1993.

3. According to the writ petitioner since neither service book of the writ petitioner was being prepared in the Marketing Department nor seniority list was published so the writ petitioner preferred an application in the year 1993 with a request to transfer him from Marketing Department to the Mechanical/ Electrical Department of the Railways. The said request remained unheeded. However, on 23.01.1998, the writ petitioner claims to have made another request before the General Manager (P), Diesel Locomotive Works (D.L.W.), Varanasi, second respondent that he may be transferred in the Workshop Division of the Railways. It is also the case of the writ petitioner that on 10.08.1999, an order came to be passed on behalf of the General Manager (P), Diesel Locomotive Works (D.L.W.), Varanasi surrendering four posts of *Khalasi* including that of writ petitioner who was posted and working in the Marketing Office of the Railways while absorbing the writ petitioner and the three other incumbents on the post of *Patravahak*. As per the writ petitioner without giving any heed to the earlier request made on 23.01.1998, an order came to be passed on 05.04.2010 by the Assistant Personnel Officer in the office of General Manager (P), Diesel Locomotive Works (D.L.W.), Varanasi, second respondent whereby the writ petitioner was accorded joining/ posting in the Electrical Department of the Railways on the post of *Khalasi* while granting him the benefits w.e.f. 29.03.2000 in the pay scale of Rs.2550-3200/-. The writ petitioner claims to have preferred a representation in the year 2011 requesting for assignment of seniority w.e.f. 16.09.1991 instead of 29.03.2000. Since, according to the writ petitioner, nothing happened on his representation so he preferred a representation on 12.06.2017 before the General Manager (P), Diesel Locomotive Works (D.L.W.), Varanasi and being aggrieved against non-disposal of the same, preferred Original Application

No.330/987/2017 (Jhanna Lal v. Union of India and 5 others) before the tribunal, in which on 05.03.2018, the following orders were passed:

“Heard Shri V.K. Srivastava, learned counsel for the applicant and Shri R.K. Rai, learned counsel for the respondents.

2 Learned counsel for the applicant submitted that the applicant had filed representation on 12.06.2017 which has not yet been disposed of by the competent authority.

3. Learned counsel for the applicant submits that the grievance of the applicant will be redressed if a direction is given to the respondent No. 2/Competent Authority to decide the representation of the applicant by a reasoned and speaking order which is pending before the respondents.

4. Learned counsel for the respondents has no objection if such direction is given.

5. In view of the above, without commenting on the merits of the case, we direct respondent No.2/competent authority to decide the representation of the applicant dated 12.06.2017 by passing a reasoned and speaking order within a period of two months from the date of receipt of certified copy of the order.

6. OA is disposed of accordingly. No order as to costs.”

4. Thereafter on 30.07.2018 in compliance of the order of the Tribunal as noted above, the Pramukh Mukhya Karmik Adhikari, Diesel Locomotive Works (D.L.W.), Varanasi proceeded to pass an order dated 30.07.2018 negating the claim of the writ petitioner.

5. Assailing the order dated 30.07.2018 of Pramukh Mukhya Karmik Adhikari, Diesel Locomotive Works (D.L.W.), Varanasi as well as the order dated 05.04.2000 passed by Assistant Personnel Officer in the office of General Manager (P), Diesel Locomotive Works (D.L.W.), Varanasi, the writ petitioner preferred Original Application No.922 of 2018 (Jhanna Lal v. Union of India and 5 others). The said original application was contested by the Railways while filing response. The Original Application No.922 of 2018 came to be rejected by the Tribunal by order dated 25.08.2023.

6. Questioning the said orders, the writ petitioner has filed the present writ petition.

7. Shri Vinay Kumar Srivastava, learned counsel for the writ petitioner has sought to argue that the orders impugned in the writ petition cannot be sustained for a single moment inasmuch as the Tribunal has misconstrued

the entire controversy and has adopted an incorrect approach. Elaborating the said submission, it has been submitted that the writ petitioner came to be appointed on compassionate appointment as *Khalasi* in the Marketing Department of the Railways on 22.08.1991 and he was confirmed on the said post on 07.10.1993 and since neither the service record of the writ petitioner was prepared nor seniority list was published so the writ petitioner preferred an application on 23.01.1998 requesting that he may be transferred to the Workshop of the Railways. Despite there being a recommendation of the higher authority recommending his transfer to the Workshop, nothing has been done and in the meantime on 10.08.1999, the four post of *Khalashi* in the Marketing Department of the Railways stood surrendered including that of the writ petitioner and without there being any notice or consent of the writ petitioner, he was absorbed as *Patravahak*. However, unilaterally on 05.04.2000, an order came to be passed by the Assistant Personnel Officer, D.L.W., Varanasi whereby the writ petitioner has been assigned seniority w.e.f. 29.03.2000 instead of 16.9.1991 while according absorption in the Electrical Department as *Khalashi* in the pay-scale of Rs.2550-3200/-. Aggrieved against the same, the writ petitioner preferred representation in the form of a protest letter in the year 2011 followed on 12.06.2017 and since the same was not being decided, he was compelled to file Original Application No.330/987/2017 and on the direction of the Tribunal in the said Original Application on 05.03.2018 now the claim of the writ petitioner has been negated by virtue of the order dated 30.07.2018.

8. Submission is that the vested right of the writ petitioner could not have been divested in a unilaterally manner that too detrimental to the interest of the writ petitioner, particularly, when his seniority stands altered from 16.09.1991 to 29.03.2000. Contention is that finding recorded by the Pramukh Mukhya Karmik Adhikari, Diesel Locomotive Works (D.L.W.), Varanasi, sixth respondent in its order dated 30.07.2018 that the writ petitioner had sought for transfer on his request is patently

misconceived, particularly, when the request made on 23.01.1998 for transfer to the Workshop Department was not acceded to and the same cannot be made a basis for passing an order on 05.04.2000. Reliance has been placed upon the decisions in the case of *Haribans Misra v. Railway Board and others*, 1989 SCC (L&S) 273, *Paluru Ramkrishnaiah and others v. Union of India and another*, 1989 (2) SCC 541, *D. Vishnu Murthy v. Government of Andhra Pradesh and others*, 2017 AIR SC 1708 and *The State of Odisha v. Chandra Nandi*, 2019 (4) SCC 357 so as to contend that the right of an employee in relation to seniority is very vital and once the seniority list has been prepared contrary to the rules and the directions issued by the appropriate authority seriously affecting an officer then the same is liable to be set aside. It is thus prayed that the writ petition be allowed in *toto* and the orders impugned be set aside.

9. Countering the submissions of the learned counsel for the writ petitioner, Shri Vinay Kumar Mishra who appears for the respondent-Railways has submitted that the order of the Tribunal needs no interference in the present proceedings. It is submitted that the Tribunal has meticulously analysed the facts and the law on the subject and has recorded a finding which cannot be faulted in any manner whatsoever. Submission is that the writ petitioner is seeking to raise an issue which is stale and belated, particularly, when the writ petitioner is questioning an order dated 05.04.2000 of the Railways in the year 2018. Contention is that in case according to the writ petitioner, he was wrongly accorded seniority while being absorbed in the Electrical Department of the Railways w.e.f. 29.03.2000 instead of 16.09.1991 as *Khalashi* in the pay-scale of Rs.2550-3200/- then at that point of time, it was open for the writ petitioner to challenge the said order, however, merely because a representation in the form of a protest was filed in the year 2011 and after an inordinate delay of six years another representation came to be filed on 12.06.2017 which was directed to be decided by virtue of the order of the Tribunal and the said claim of the writ petitioner stood decided on

30.07.2018 would not in any manner whatsoever give a right to the writ petitioner to reopen an issue which has attained finality at a belated stage, particularly, when the grievance of the writ petitioner is for according seniority w.e.f. 16.09.1991 that too in absence of impleading the affected parties whose rights would be affected in case the claim of the writ petitioner stands endorsed. Reliance has been placed upon the decisions in ***Shiba Shankar Mohapatra and others v. State of Orissa and others, 2010 (12) SCC 471, Dr. Akshya Bisoi and another v. All India Institute of Medical Sciences and others, 2018 (3) SCC 391*** so as to contend that the issue of seniority should not be reopened after the lapse of reasonable period. While deriving force from the decision in ***Vijay Kumar Kaul and others v. Union of India and others, 2012 (7) SCC 610***, it is contended that in absence of impleading the affected parties the challenge would be unsustainable. It is, therefore, prayed that the writ petition be dismissed and the order of the Tribunal be confirmed.

10. We have heard the learned counsel for the parties and perused the record carefully.

11. Facts are not in issue. It is not dispute that the father of the writ petitioner who was working in the Railways died in harness. It is also not in dispute that the writ petitioner preferred an application on 03.06.1991 for grant of compassionate appointed, he was subjected to suitability test and after clearing the same, he was accorded joining on 22.08.1991 on the post of *Khalashi* in the pre-revised pay-scale of Rs.750-940/- on probation for a period of two years in the Marketing Department of the Railways and ultimately confirmed on 07.10.1993. Records reveal that on 23.01.1998, the writ petitioner preferred an application for transferring him to the Workshop owing to his grievances regarding non-preparation of the service book and laxity on the part of the Railways in not publishing the seniority list. The said request letter is stated to have been forwarded with the recommendation of the higher authorities. In the meantime, as apparent from the records on 10.08.1999, four posts of

Khalashi in the Marketing Department stood surrendered including that of the writ petitioner and he was absorbed in the cadre of *Patravahak*. However on 05.04.2000, the Assistant Personnel Officer of the DLW issued an order whereby the writ petitioner was absorbed and granted posting as *Khalashi* in the Electrical Department of the Railways while granting him seniority, pay-scale and other benefits w.e.f. 29.03.2000 in the pay-scale of Rs.2550-3200/-.

12. The bone of contention is whether the writ petitioner could have been absorbed and granted posting in the Electrical Department while according seniority and other benefits w.e.f. 29.03.2000. According to the writ petitioner, he is entitled to be accorded seniority w.e.f. 16.09.1991. Though the writ petitioner was accorded absorption and joining in the Electrical Department of the Railways as a *Khalashi* along with seniority and other benefits w.e.f. 29.03.2000 by virtue of the order dated 05.04.2000 but as per the own saying of the writ petitioner, he preferred an objection/ representation for the first time in the year 2011 and thereafter on 12.06.2017 after a period of six years and being aggrieved against the non-disposal of the representation, the writ petitioner approached the Tribunal while filing Original Application No. 330/987/2017 which came to be disposed of requiring the competent authority to decide the representation of the writ petitioner within a period of two months. The same led to passing of the order dated 30.07.2018 which came to be challenged in Original Application No.922 of 2018.

13. The first and foremost question which falls for our consideration in the present proceeding is whether it is open for the writ petitioner to question an order dated 05.04.2000 in the year 2018 that too after a lapse of a period of 18 years.

14. We find from the pleadings that there has been no explanation worth-consideration offered by the writ petitioner showing any plausible reasons in not approaching the Court of law within the reasonable time. It is not the case of the writ petitioner that he was not aware about the order

dated 05.04.2000 as rather contrary on the basis of the said order joining was accorded to the writ petitioner. The Hon'ble Supreme Court in the case in ***Shiba Shankar Mohapatra and others*** (*supra*) had the occasion to consider the import and impact of belated challenge to the seniority and it was observed as under:

"18. 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 Shankar Deodhar v. State of Maharashtra 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, 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: (Tilokchand case, SCC p. 115, para 7)

"7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

19. This Court in Ramchandra Shankar Deodhar case also placed reliance upon its earlier judgment of the Constitution Bench in Rabindranath Bose v. Union of India, wherein it has been observed as under: (Rabindranath Bose case, SCC p. 97, para 33)

"33.... 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."

20. In R.S. Makashi v. I.M. Menon 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 M.P. v. Bhailal Bhai, 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: (R.S. Makashi case 16, SCC pp. 398-400, paras 28 & 30)

"28... '33. ... we must administer justice in accordance with law and principles 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. '**

30... 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 22-3-1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed."

21. 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 R.P. Singh. The Court held as under: (SCC pp. 532 & 536, paras 2 & 7)

"2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. ...

7. ... Satisfactory service conditions postulate that there should 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 anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications 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)

22. While deciding K.R. Mudgal case, this Court placed reliance upon its earlier judgment in Malcom Lawrence Cecil D'Souza v. Union of India, v. wherein it had been observed as under: (Cecil D'Souza case, SCC p. 602, para 9)

"9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. 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 a quietus after lapse of some time."

(emphasis added)

23. In *B.S. Bajwa v. State of Punjab* this Court while deciding the similar issue reiterated the same view, observing as under: (SCC p. 526, para 7)

... "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."

(emphasis added)

24. In *Dayaram A. Gursahani v. State of Maharashtra* 21, while reiterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under Article 226 of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained."

15. In ***Dr. Akshya Bisoi and another*** (*supra*), the Hon'ble Apex Court held as under:

"19. The Court is confronted in the present case with a situation in which recruitment to the post of Additional Professor was carried out in 2005. That was well over 12 years ago. The petitioners have instituted these proceedings under Article 32 in November 2017 to question the order of ranking made by the Selection Committee on 12-9-2005. There is no cogent explanation for this belated recourse to legal remedies. The petitioners cannot legitimately explain the delay on their part merely by contending that they were representing to the first respondent to remedy their grievances. The petitioners may have believed in good faith that the AIIMS administration would pay heed to their grievances.

20. 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 Bhandari*. The learned Chief Justice, after adverting to the settled position of law in that regard, observed thus: (SCC pp. 185-86, paras 27-28)

"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....

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."

16. The effect of non-impleading of proper and necessary parties who would be effected in case challenge to the seniority list is sustained, the

Hon'ble Supreme Court in *Vijay Kumar Kaul and others (supra)* observed as under:

“36. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.

37. In this context we may refer with profit to the decision in Indu Shekhar Singh v. State of U.P. wherein it has been held thus: (SCC p. 151, para 56)

"56. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority."

38. In Public Service Commission v. Mamta Bisht this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10)

“9. ... in Udit Narain Singh Malpaharia v. Board of Revenue¹³, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and Sarguja Transport Service v. STAT.)

10. In Prabodh Verma v. State of U.P. and Tridip Kumar Dingal v. State of W.B., it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.”

17. Applying the proposition of law as culled out in the above noted decisions in the facts of the case in hand an irresistible conclusion stands drawn that reliefs are not to be accorded to a party who was in deep slumber and not vigilant towards its rights and had approached the Courts of law after an unexplained and inordinate delay in the service matter that too without impleading being proper and necessary party who would be effected in case challenge is accepted. In the present case, we find that there has been no explanation worth-consideration offered by the writ

petitioner in questioning an order dated 05.04.2000 in the year 2018. Less to say about non-impleading the proper and necessary parties.

18. So far as the judgments relied on by the learned counsel for the writ petitioner in the cases of *The State of Odisha (supra)*, *Haribans Misra (supra)*, *Paluru Ramkrishnaiah and others (supra)* and *D. Vishnu Murthy (supra)* are concerned, there is no quarrel to the proposition of law that seniority is a vital right and once the same is illegally prepared *dehors* the rules then in appropriate cases subject to challenge reliefs can be granted. However, in the present case, we find that the said judgments would not apply and come to the aid to the writ petitioner, particularly, when there has been unexplained inordinate delay and further none of the parties who would be affected have been joined in the proceedings.

19. Viewing the present case from the four corners of the law, we are of the firm opinion that the writ petitioner has miserably failed to show any legal infirmity committed by the Tribunal in passing the orders which have been impugned in the present proceedings so as to warrant interference in the present proceedings.

20. Resultantly, the writ petition is **dismissed**.

Order Date :- 5.11.2024

A. Prajapati

(Vikas Budhwar, J.) (Arun Bhansali, C.J.)