

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1496 of 2015**

1. Union of India Through the General Manager, South East Central Railway Headquarters' Office Revenue/Civil District Bilaspur.
2. The General Manager South Eastern Railway Garden Reach, Headquarters' Kolkata.
3. The Chairman, Railway Board Rail Bhawan, New Delhi 110001

---- Petitioners**Versus**

R. Brahmanandam S/o Late Shri Nagabhushanam Aged about 75 years, Retired Dy. Chief Electrical Engineer (C) S.E.Rly, (Now S.E.C. Railway) Bilaspur, R/o Flat No. G-2, Pooja Gardens, Behind Govt. Women's Polytechnic Dargamitta, Saraswati Nagar, Nellore, Dist. Nellore (AP) Pin 524003

---- Respondent

For Petitioners	:	Shri H.S.Ahluwalia, Advocate.
For Respondent	:	Shri B.P.Rao, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****29/06/2015**

1. Learned Counsel for the Petitioners prays for leave and is permitted to delete Respondent No. 2.
2. We have heard Learned Counsel for the Petitioners and Respondent.
3. The present writ application assails order dated 13.1.2015 passed by the Central Administrative Tribunal, Jabalpur Bench in Original Application No. 291 of 2013. It set aside the orders refusing to grant selection grade to the Respondent, holding that he was entitled to the same from 2.8.1993 when his juniors were so granted the grade. Consequential orders for re-fixing pay of the Respondent as on 2.8.1993 has also been ordered along with directions for arrears of pay, pension and other retiral benefits as per rules.

4. Learned Counsel for the Petitioners submits that the claims of the Respondent was highly belated and stale. The Tribunal should not have entertained such a stale claim. The Tribunal grossly erred in holding that filing of representations was sufficient explanation for delay and that the Petitioners were also answerable for the delay. The Respondent superannuated on 31.8.1996 as Deputy Chief Electrical Engineer (Construction) Bilaspur. The cause of action accrued to the Respondent in 1993 when his juniors were given selection grade. The Respondent represented first on 11.9.1995 and then 22.12.1995. No legal remedy was pursued when the representation did not evoke the desired response. The Respondent then represented after superannuation on 18.2.1998 followed by repeated representations till 17.8.1999 after which he gave another representation 10 years later on 18.9.2009 followed by further representations till 14.3.2011. He then claimed to have obtained certain information under the Right to Information Act (hereinafter referred to as RTI) and then filed O.A. No. 460 of 2011. The Petitioners had objected to the same as barred by gross and inordinate delay. The Tribunal upheld the objection but disposed the application with certain directions. The authorities after consideration in light of the observations rejected his claim by order dated 19.4.2012 as communicated to the Respondent on 23.4.2012. The Tribunal erred in holding that the order in the previous Original Application was no bar to the maintainability of the fresh Original Application after disposal of the representation. Reliance has been placed on 2013 Supreme (SC) 52216 (State of Uttaranchal v. Sri Shiv Charan Singh Bhandari).

5. Learned Counsel for the Respondent opposing the writ application submitted that the order of the Tribunal is well considered and reasoned. It calls for no interference. The wrong done to the Respondent by recording incorrect date of birth was corrected and the seniority list revised only on 14.7.2009. The Tribunal has adequately considered the manner in which the Respondent was pursuing the matter by filing repeated representations. O. A. No. 460 of 2011

was disposed on the concession of the Petitioners in view of the letter dated 29.3.2010 that his case was under consideration. Reliance has also been placed on the master circular issued by the Government of India, Ministry of Railways (Railway Board) clause 22.1 that representations against selection should be dealt on merits without any restriction of time limit for submission.

6. We have considered the submissions on behalf of the parties.

7. Delay has always been considered vital in service matters and especially when they related to grant of promotion. The reason being that in the meantime, others who may have marched ahead stand to be prejudiced because of the delay and laches occasioned by another who will then stand to benefit from his own negligent conduct.

8. The Respondent was appointed on 22.8.1963. His juniors were granted selection grade in 1993. The Respondent represented in 1995. He superannuated in 1996. Repeated representations were thereafter filed till 17.8.1999. He then went to sleep for ten long years and filed another representation on 18.9.2009 followed by repeated representations till he filed O.A. No.460 of 2011. The Respondent was aware in 1993 itself that his juniors had been granted selection grade. The cause of action had accrued to him. Yet he took recourse to no legal remedy for redressal of his grievance. The submission that the error with regard to entry of his date of birth committed by the Railway Board led to denial of selection grade to him and which has been corrected only in 2009 leaves us unimpressed. Nothing prevented the Respondent from pursuing legal remedies and ascertaining the reasons for denial of selection grade to him 1993 even while his juniors had been granted the same. The submission that representation was made again on 29.3.2010 after certain information was made available to the Respondent under the RTI Act leaves us unimpressed. The information obtained by him under the RTI Act may have been evidence in support of the cause of action which accrued in

1993 but did not give him fresh cause of action. If the Respondent could have filed repeated representations, there has to be some explanation why he did not pursue any legal remedy. The Government or any department is not obliged to give reply to each and every representation especially when they are filed in a highly belated manner with regard to service matters with no explanation for the delay.

9. The law stands well settled that mere filing of repeated representations is no explanation for delay unless a legal remedy was being pursued. Delay in matters of promotion has always been considered very vital. The filing of repeated representations could not be explanation for delay was considered in (1977) 3 SCC 396 (State of Orissa v. Pyarimohan Samantaray) holding :-

“6.....There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in *Rabindra Nath Bose v. Union of India* the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay. The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances. In the meantime a number of other appointments were also made to the Indian Administrative Service by promotion from the State Civil Service, some of the officers received promotions to higher posts in that service and may even have retired. Those who continued to serve could justifiably think that as there was no challenge to their appointments within the period prescribed for a suit, they could look forward to further promotion and higher terminal benefits on retirement. The High Court therefore erred in rejecting the argument that the writ petition should be dismissed because of the inordinate and unexplained delay even though it was “strenuously” urged for its consideration on behalf of the Government of India.”

10. Considering the entire conspectus of the matter, including the information given to the Respondent under the RTI Act on 29.3.2010, the Tribunal in O. A. No. 460 of 2011 rightly took the view that the application was barred by inordinate delay. The observation made therein with regard to the communication of the Petitioners dated 29.3.2010 may appropriately have been eschewed thereafter rather than making any observation based on an erroneous concession by Counsel for the Railways. The observation in any event cannot be said to have an overriding effect over the conclusion of the Tribunal that the

application was barred by gross delay and laches. The Tribunal simply left the Respondent to his own fate notwithstanding its reluctance to entertain the Application on the ground of delay. If the Respondent got relief, that would have been his fate. The Tribunal in the impugned order has therefore completely misinterpreted and misconstrued the earlier order of the Tribunal in holding that in the earlier order, the Tribunal had not held the application to be not maintainable because of delay. This finding to our mind is completely perverse in view of the clear speaking order passed by the Tribunal on the earlier occasion.

11. The Tribunal, in the impugned order arrived at the finding that it is true that the applicant should have submitted the representation for correction of the date of birth in the seniority list when it was published in the year 1984 itself. Curiously, it then speculates that the Respondent may not have had the occasion to see that the Railway Board had recorded his date of birth erroneously. Surely, when he was denied consideration for selection grade in 1993, he had a bounden duty to make further investigation and take necessary steps for protection of his interest.

12. We do not consider it necessary to cite precedents on the aspect of delay in the matters relating to grant of selection grade and legal consequences of the nature of the order passed by the Tribunal in the earlier Original Application No. 460 of 2011 in view of Shiv Charan Singh Bhandari (supra) relied upon by the Petitioners which notices the entire conspectus of the legal position from paragraph 13 to 21 and consider it appropriate to extract the conclusion at para 22 as follows :-

"22. 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. There may not be unsettlement of the settled position but, a pregnant one, 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. Any one who sleeps over his right is bound to suffer. As we perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. 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. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

13. The submission that under the Railway circular no time had been prescribed for submission of representations and that they were required to be considered on merits does not impress us. If no time was prescribed for filing of representations, nonetheless it had to be done within reasonable time. We find it difficult to hold in the facts of the present case that the Respondent acted within reasonable time. The order of the Tribunal dated 13.1.2015 is held to be not sustainable. It is set aside.

14. The writ application is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE