

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 15737 of 2015
Date of decision: 03.08.2015

Prem Nath Singh and others

....Petitioners

Versus

The Central Administrative Tribunal and others

.... Respondents

CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Satish Goel, Advocate
for the petitioners.

P.B. Bajanthri, J.

The petitioners aggrieved by the instructions No.206/2000E/(MPP)/99/1995, dated 28.11.2000 issued by the Director (MPP) Railway Board, sought for direction to the respondents to grant the financial benefits of re-deployment of surplus staff to them, as per consolidate instructions dated 28.11.2000 on par with the employees of where their seniority was to be fixed as per circular and instructions. Their O.A. No.060/00159/2014 before the CAT Chandigarh Bench, Chandigarh (for short 'Tribunal') has been dismissed vide order dated 28.10.2014,

aggrieved by the order of the Tribunal, they are before this Court.

The petitioners were Grade III Artisans staff and were working in Blacksmith shop Jagadhari workshop. Among others, they were held to be surplus due to review of the cadre. Consequently, they were re-deployed and allotted to various revised trades and shops. The aforesaid exercise was undertaken on 26.02.2001. Total 123 persons were rendered surplus, 36 persons were re-deployed in other shops and trades, 87 persons have been re-deployed, but they have not been given their seniority in trades and shops where they were re-deployed. Union of the trades opposed for assigning seniority to the surplus staff in their respective trades and shops. The same was taken into consideration and decision was taken that those re-deployed staff will get their seniority in the original cadre of Blacksmith. The respondents and Union held a meeting on 17.08.2001 relates to seniority and promotion of the surplus and re-deployed employees and a decision was taken that they were not entitled to seniority. As it adversely affected the rights of the petitioners, some of them being aggrieved by the decision dated 17.08.2001 i.e. petitioners at Sl. No. 2, 4, 6, 7, 9, 10, 12, 17, 18, 22, 29, 31, 37 approached the Tribunal questioning the validity of the decision dated 17.08.2001. O.A. No.512/HR/2004 filed by the aforesaid petitioners came to be dismissed and so also Review Application. They did not pursue the decision of the Tribunal before this Court. In other words, they accepted the verdict of the Tribunal.

When things stood thus, the petitioners approached the authorities seeking for the benefit of seniority, promotion and monetary benefits consequent upon re-deploying them to various cadres. At this stage,

it is relevant to note that the petitioners were declared surplus and instead of removing them from service they have been accommodated, thus they are not held entitled for seniority and other service conditions. Subsequent representation of the petitioners dated 09.07.2013 was rejected on 05.09.2013 in which it was specifically stated that petitioners are not entitled for the benefits sought by them. Aggrieved by the order dated 05.09.2013 petitioners approached Tribunal. The Tribunal rejected their claim both on merits as well as technicalities. An extract of the order is reproduced herein:-

“5. It is further stated that the issue involved in the present OA is no longer res-integra. The decision dated 17.08.2001 which is later in point of time , has been considered and held intravires in Jasmer Singh (supra). Applicants at SI. Nos.2, 4,6,7,9,10,12,17,18,20,22,28,29,31 and 33 in the present OA were also applicants in OA No. 512/HR/2004 and this material information has been concealed which calls for serious action against them besides dismissal of the the OA with exemplary costs. Seniority list dated 11.08.2011, as on 11.08.2011 (Annexure A-6), not under challenge, nor the same can be challenged as much water has flown in between and in view of the law laid down that settled seniority position cannot be unsettled at such a belated stage as various promotions have taken place during this

period. The OA is also barred by the principal of res-judicata in as much as similar controversy has already been adjudicated upon by this Tribunal in Jasmer Singh (supra). Hence the OA deserves to be dismissed with costs. The OA also suffers from the vice of delay and laches. Obliquely the applicants have raised the issue of seniority on their re-deployment, having been declared surplus, way back on 26.02.2001. (Annexure A-2). Seniority is not a vested or accrued or neither fundamental rights, nor the same is continuing and recurring cause. There is no cause of action and no application for condonation of delay. The representation dated 09.07.2013 (Annexure A-7) claiming relief qua instructions dated 28.11.2000, which stand superseded on 17.08.2001 and are not in existence, as held in Jasmer Singh (supra) is not sustainable and the OA deserves outright dismissal.”

Learned counsel for the petitioners submitted that the petitioners are declared as surplus employees and consequently they were re-deployed to different cadres/trades and consequently they were entitled for seniority, promotion and monetary benefits. The petitioners have discharged duties in particular trade but due to review of the cadre that they were declared surplus and were adjusted against alternate posts in public interest. Thus, they are entitled for the relief sought. The Tribunal did not appreciate the aforesaid facts and rejected the O.A. which is not justified.

It is further contended by the petitioners' counsel that as per the policy decision of the respondents they are entitled to the financial benefits etc.

We have heard learned counsel for the petitioners and perused the record. Insofar as petitioner Nos. 2, 4, 6, 7, 9, 10, 12, 17, 18, 20, 22, 28, 29, 31 and 33 are concerned they have already suffered an order before the Tribunal which has attained finality in O.A.No.512/HR/2004 and dismissal of Review Applications. Therefore, principle of res-judicata is applicable. Consequently, their application before the Tribunal has rightly been rejected without going into merit. In fact, in the O.A.No.60/00159/2014, the aforesaid petitioners failed to disclose the fact that they had earlier approached the Tribunal by filing O.A. 512/HR/2004 and suffered an order. Even on this ground also, the aforesaid petitioners are not entitled for the relief sought. Thus, there is no infirmity in the order of the Tribunal dated 28.10.2014. Insofar as other petitioners are concerned, those who have not approached earlier in the year 2004, the cause of action accrued in 2000-2001, the date on which declaration of surplus employees were re-deployed. There is enormous delay of more than a decade. On this count only, they are not entitled for relief so also the application before the Tribunal is not maintainable being time barred. In the aforesaid O.A. in para No.3 they have stated as follows:-

3. Limitation

The applicant further declare that the Original application is within limitation period as prescribed period in Section 21 of the Administrative Act, 1985 as

the applicants have suffering recurring financial loss”

They have sought for the quashing of instructions No.206/2000E/(MPP)/99/1995 dated 28.11.2000 issued by the Director (MPP) Railway Board. It is evident from the prayer that they are challenging the validity of an order dated 28.11.2000 in the year 2014 before the Tribunal. Under Section 21 of the Administrative Tribunal Act, an aggrieved person has to approach the Tribunal within one year from the date of order which is under challenge and if there is any delay, he has to file application for condonation of delay under Section 21 of Administrative Tribunal Act, 1985. In the present case, there is a delay of nearly 13 years. However, the petitioners have not submitted any application for condonation of delay. On the contrary, they have made a declaration in the original application that the application is within the stipulated period under Section 21 of the Administrative Tribunal Act, 1985 and further contended that financial loss caused to them is a recurring cause of action. Since the petitioners are challenging the validity of instruction dated 28.11.2000 for which a formal application for condonation of delay is mandatory. Repeated representations are made and delay has not been explained.

The Supreme Court in ***Ramesh Chand Sharma Versus Udham Singh Kamal*** (1999)8 SCC304 while interpreting Section 21 of Administrative Tribunal Act, 1985 held as follows:-

“4. The respondent No. 1 Udham Singh Kamal on 2nd June, 1994 filed Original Application (O.A.) before the Himachal Pradesh Administrative Tribunal. This O.A. was admittedly beyond the prescribed period of limitation of three years as provided under Section 21 of the Administrative Tribunals Act, 1985. As regards the

limitation in paragraph 5, the first respondent has stated as under :

"The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985."

This averment clearly indicates that the first respondent was all along asserting that he had filed O.A. within limitation but it was not so. The appellants in both these appeals have raised a contention that the O.A. was beyond three years and, therefore, the same was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Despite this objection raised by the appellants, the first respondent did not file any application for condonation of delay. Section 21 (3) of the Act gives power to the Tribunal to condone the delay if sufficient cause is shown."

For the reasons afore-stated, we hold that the petitioners are not entitled to any relief on the ground of res-judicata as well as acquiescence and/or the claim being time-barred. Having regard to the facts and circumstances, the petitioners have not made out a case so as to warrant us to interfere with the order of the Tribunal. Accordingly, writ petitions are dismissed.

No order as to costs.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

03.08.2015
pooja saini