

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 26206 of 2016

Date of Decision: 19.12.2016

Jatinder Kumar

....Petitioner.

Versus

Union of India and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Amarbir Singh Salar, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner prays for issuance of a writ in the nature of certiorari for quashing the order dated 27.10.2016 (Annexure P-22) passed by respondent No.4-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”) dismissing the Original Application (OA) filed by the petitioner in limine being time barred. Further, a prayer has been made for quashing the orders dated 21.12.1999 (Annexure P-6), dated 27.10.2010 (Annexure P-8), dated 7.12.2010 (Annexure P-9), dated 13.5.2011 (Annexure P-10) to the extent showing respondent No.3 to have been promoted earlier to the petitioner, dated 1.1.2015 (Annexure P-11) by ignoring the claim of the petitioner and also the seniority list (Annexure P-12) showing respondent No.3 above the petitioner in the cadre of Technical Grade-I. Further, a writ of mandamus

has been sought directing respondents No.1 and 2 to revise the seniority and give promotion to the petitioner from the date, respondent No.3 was promoted to the post of Technical Grade-I and to consider his case before the promotion of respondent No.3.

2. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner was appointed as Khalasi on 15.1.1991 and was promoted as Helper on 1.3.1993. He was further promoted as Technical Grade-III on 10.10.2007 and after holding test, the petitioner was promoted as Technical Grade-II vide order dated 13.5.2011 (Annexure P-10). On 1.2.2015, he was promoted as Technical Grade-I. Similarly, respondent No.3 was appointed as Khalasi vide appointment letter dated 4.9.1987 (Annexure P-1) and was promoted as Helper vide order dated 1.6.1989 (Annexure P-2). On 27.4.1991, respondent No.3 absented from duty and had immigrated to Saudi Arabia and did not join duty for five years. However, on 1.5.1996, respondent No.3 moved an application for allowing him to join on duty and vide order dated 8.5.1996 (Annexure P-3), he was allowed to join the duty as Khalasi Helper pending enquiry. Respondent No.3 made a representation dated 27.12.1996 (Annexure P-4) for not downgrading one step below which was rejected vide order dated 21.1.1997 (Annexure P-5). Thus, respondent No.3 was allowed to be appointed as Khalasi, one step down than the helper whereas the petitioner was promoted as Helper on 1.3.1993. One Shri R.S. Aggarwal, acting for Chief Works Manager, Jagadhri vide order dated 21.12.1999 (Annexure P-6) ordered that respondent No.3 be promoted as Helper Khalasi by re-promoting him on his original post. Respondent No.3 was promoted as Technical Grade-III vide order dated 26.10.2009, after two

years of promotion of the petitioner on 10.10.2007 to the said post. However, the request of respondent No.3 was rejected vide order dated 10.10.2009 (Annexure P-7) and, therefore, the petitioner was senior to respondent No.3 in Technical Grade-III. Respondent No.3 applied and the Assistant Construction Manager, Kalak vide order dated 27.10.2010 (Annexure P-8) amended the order dated 26/28.10.2010 to the extent that respondent No.3 is granted promotion w.e.f. 31.3.2008 and he would not be entitled to salary. Further, the order, Annexure P-8, was revised vide order dated 7.12.2010 (Annexure P-9). In January, 2011, a test was held and on the basis thereof, the petitioner and respondent No.3 were promoted on the post of Technical Grade-II vide order dated 13.5.2011 (Annexure P-10). Respondent No.3 was kept senior to the petitioner. Further, respondent No.3 was promoted as Technical Grade-I vide order dated 1.1.2015 (Annexure P-11). However, the petitioner was promoted as Technical Grade-I vide order dated 1.2.2015. On the basis of the promotion orders, the respondents have made the seniority list (Annexure P-12). Thereafter, the petitioner sought various information under the Right to Information Act, 2005 which was provided to him vide letters dated 19.5.2016, 13.6.2016, 3.8.2016 and 9.9.2016 (Annexures P-13 to P-16, respectively). The petitioner moved a representation dated 27.2.2016 (Annexure P-17) followed by the reminders dated 15.2.2016 (Annexure P-18) and dated 1.4.2016 (Annexure P-19) against the seniority, but to no effect. Feeling aggrieved, the petitioner filed OA No. 060/00951/2016 on 29.9.2016 (Annexure P-20) before the Tribunal. Since the OA was barred by time, the petitioner also filed an application dated 19.10.2016 (Annexure P-21) for condonation of delay. The Tribunal vide order dated 27.10.2016 (Annexure P-22) dismissed the

OA in limine being time barred. The application for condonation of delay was also dismissed. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. The Tribunal has noticed that the petitioner had joined as Khalasi on 15.1.1991 and was promoted as Helper Khalasi on 1.3.1993 whereas respondent No.3 was appointed as Khalasi on 4.9.1987 and was promoted as Helper Khalasi on 1.6.1989. Thus, respondent No.3 joined as Khalasi and was also promoted as Helper Khalasi much prior to the joining of the petitioner as Khalasi and respondent No.3 was rightly described to be senior to the petitioner. Further, it was observed that vide order dated 21.1.1997 (Annexure P-5), the penalty was imposed upon respondent No.3 reducing him to lower post of Khalasi. As per the order, Annexure P-5, respondent No.3 was to be restored to the higher post of Helper Khalasi and as such restored vide order dated 21.12.1999 (Annexure P-6). Therefore, respondent No.3 regained his promotion and seniority as Helper Khalasi from the original date of his promotion, i.e. 1.6.1989 and was rightly shown as senior to the petitioner. Even the OA was time barred. According to the petitioner, there was a delay of 2363 days in filing the OA whereas in the OA, order dated 21.12.1999 (Annexure P-6) was also challenged and the limitation period to file the OA to challenge the order, Annexure P-6 was one year, i.e. upto 21.12.2000. The OA was filed on 13.10.2016 after a delay of almost 16 years after excluding the limitation period of one year. The plea of the petitioner that he was not aware of the orders (Annexures P-6, P-8 to P-10, respectively) was rejected by the Tribunal by recording that the petitioner and respondent No.3 had remained posted in Northern

Railway Workshop at Kalka throughout the relevant period and being posted at the same place in the same workshop, the petitioner could not be said to be unaware of the passing of the promotion orders of respondent No.3. Otherwise also, vide order dated 13.5.2011 (Annexure P-10), the petitioner as well as respondent No.3 were also promoted as Technical Grade-III. The relevant findings recorded by the Tribunal read thus:-

“7. We have carefully considered the matter. According to applicant's own version, he joined as Khalasi on 15.1.1991 and was promoted as Helper Khalasi on 1.3.1993 whereas respondent no. 3 was appointed as Khalasi on 4.9.1987 and was promoted as Helper Khalasi on 1.6.1989. It is thus evident that respondent no. 3 joined as Khalasi and was also promoted as Helper Khalasi much prior to the joining of the applicant as Khalasi and also much prior to his promotion as Helper Khalasi. Consequently, respondent no. 3 has been rightly depicted to be senior to the applicant.

8. Vide order dated 21.1.1997 (Annexure A-5), penalty was imposed on respondent no. 3 reducing him to lower post of Khalasi. But according to the penalty order, respondent no. 3 was to be restored to the higher post of Helper Khalasi. He was accordingly restored to the post of Helper Khalasi vide order dated 21.12.1999. Thus respondent no.3 regained his promotion and seniority as Helper Khalasi w.e.f. the original date of his promotion

as such i.e. 1.6.1989 and he has been rightly shown as senior to the applicant. Vide order dated 21.12.1999 (Annexure A-6), it was not original promotion of respondent no. 3 as Helper Khalasi. It was rather his re-promotion to his said original post. Thus it related back to his original promotion as Helper Khalasi on 1.6.1989. Thus the applicant cannot be said to be senior to respondent no. 3.

9. In addition to the aforesaid, the instant O.A. is hopelessly barred by limitation as well as delay and laches. There is no ground much less sufficient ground to condone the long and inordinate delay of 2363 days in filing the O.A. as mentioned in M.A. No. 060/01282/2106. However, in fact, the delay is not only of 2363 days, but is much more because order dated 21.12.1999 (Annexure A-6) is also under challenge in the O.A. Limitation period to file the O.A. to challenge the said order was one year i.e. upto 21.12.2000. The O.A. has been filed on 13.10.2016 i.e. after delay of almost 16 years after excluding the limitation period of one year. It cannot be said that the applicant was not aware of the impugned orders dated 21.12.1999 (Annexure A-6), 27.10.2010 (Annexure A-8), 7.12.2010 (Annexure A-9) and 13.5.2011 (Annexure A-10). He has falsely pleaded that he was not aware of the said orders. In this regard, it is significant to notice that the applicant and respondent

no. 3 have remained posted in Northern Railway Workshop at Kalka throughout the relevant period as is clear from the impugned orders and as also conceded by counsel for the applicant during the course of hearing. Being posted at the same place in the same workshop, the applicant could not have been unaware of the impugned orders passed qua promotions of respondent no. 3. Besides it, vide order dated 13.5.2011 (Annexure A-10), not only respondent no. 3 but also the applicant himself was promoted as Technical Grade-II. The applicant could not have been unaware of the said order of his own promotion. Thus palpably false plea has been taken by the applicant that he was unaware of the various impugned orders including order Annexure A-10 wherein admittedly respondent no. 3 has been shown to be senior to the applicant. However, inspite thereof, the applicant never challenged the seniority of respondent no. 3 over himself till filing of this O.A. on 13.10.2016. Besides it, on pointed query, counsel for the applicant could not state as to when seniority list depicting respondent no. 3 to be senior to the applicant was firstly circulated. Limitation period to challenge the said seniority of respondent no. 3 would have commenced from circulation of such seniority list for the first time. Normally seniority list is circulated every year. Consequently, respondent no. 3 must have been shown to

be senior to the applicant in all the seniority lists. In any event, all the impugned orders must have come to the knowledge of the applicant when the same were passed because the applicant and respondent no. 3 were posted in the same workshop. Order dated 13.5.2011 (Annexure A-10) particularly and pointedly came to the notice of the applicant because by the said order, he himself was also promoted. Thus there is no ground whatsoever to condone the long and inordinate delay in filing the O.A.”

5. No illegality or perversity could be pointed out by the learned counsel for the petitioner in the aforesaid findings recorded by the Tribunal, which may warrant interference by this Court. Further, no explanation has been furnished by the learned counsel for the colossal delay of 2363 days in filing the OA. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

December 19, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes