

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2287 OF 2014

M.A. Panagar	...Petitioner
Versus	
The Union of India and ors.	...Respondents

Mr. Abhiraj Parab for the Petitioner.
Mr. Suresh Kumar for the Respondents – Union of India.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 26.06.2018.

ORAL JUDGMENT

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 3.10.2012 made by the Central Administrative Tribunal (CAT), Mumbai dismissing the petitioner's O.A. No. 506 of 2012 seeking directions for the consideration of candidature of the petitioner for promotion to the post of Junior Administrative Grade (Ad-hoc) was illegal. The petitioner sought for constitution of a review DPC and

prayed for all consequential benefits.

4] Mr. Parab, learned counsel for the petitioner, submits that the CAT has basically dismissed the petitioner's O.A. on the grounds of bar of limitation and consequent delay. He submits that although the petitioner's supersession took place in October 2010, the petitioner, as required under the Service Rules, made the representations to higher authorities. The representations were rejected on 30.9.2011 and 25.1.2012. The O.A. was instituted in the year 2012 itself, i.e., well within period of one year from the date of both representations. Mr. Parab submits that the O.A as filed was not barred by limitation and the CAT, therefore, erred in rejecting the OA on the ground of bar of limitation.

5] Mr. Parab, however, submits that respondent No.3 Smt. Sangmitra Markam did not have minimum six years service as a Group - A Officer in Indian Railway Service. Therefore, the respondents were not at all justified in considering the case of respondent No.3 for Ad hoc promotion in preference to the case of the petitioner. Mr.Parab submits that in terms of the rules/executive

instructions, an officer with five years service as a Group – A officer may also be considered for ad-hoc promotion, provided, there was '*urgent need*'. Mr. Parab submits that there was no situation warranting any urgent need and in any case, since, the petitioner admittedly had over 7 years service as Group – A officer, even in case of urgent need, it is the petitioner should ought to have been promoted on Ad-hoc basis and not respondent No.3.

6] For the aforesaid reasons, Mr. Parab submits that the impugned judgment and order made by the CAT is liable to be set aside and the matter may be remanded to the CAT for fresh adjudication of the petitioner's O.A. on merits.

7] Mr. Suresh Kumar, learned counsel for respondent Nos.1 and 2, submits that the rules very clearly permit the promotion on Ad-hoc basis from out of the officers who have put in at least five years service as Group - A Officer in Indian Railway service. He submits that the rule of six years stands changed and five years is what is now prescribed as qualifying service. He submits that there is no dispute that respondent No.3 had put in five years service as a Group – A

Officer and further, she was seniormost amongst the Officer in the grade. He submits that there is absolutely no illegality in the Ad-hoc promotion granted to respondent No.3.

8] Besides, Mr. Suresh Kumar, submits that the OA was instituted by the petitioner was almost two years and seven months after retirement from his service. He submits that making of repeated representation does not extend period of limitation. He submits that there is nothing in the Service Rules which mandates the representations in such matters. He submits that the CAT has dismissed the petitioner's O.A. on ground of limitation as well as on merits and there is no case made out to warrant any interference.

9] The rival contentions now fall for our consideration.

10] In this case, we are concerned with Ad-hoc promotion to the post of Junior Administrative grade. The DPC has relied upon the orders of the Railway Board dated 28.11.2008, in which, the minimum requisite service of five years as a Group 'A' Officer is prescribed as condition for eligibility for promotion on Ad-hoc basis. There is no dispute

that respondent No.3 fulfills these conditions. There is also no dispute that respondent No.3 was otherwise senior to the petitioner. If the DPC, upon consideration of this twin aspects recommended respondent No.3 for promotion on Ad-hoc basis, we do not see any good ground to interfere with the impugned judgment and order, by which, the CAT has declined to revisit the issue of promotion of respondent No.3 on Ad-hoc basis.

11] In a matter of this nature, there are no Service Rules pointed out which mandate seeking of redressal by way of representation. In any case, nothing prevented the petitioner from instituting O.A. before the CAT within one year from the date of accrual of the so called cause of action, i.e., promotion of respondent No.3 on 14.10.2010. Admittedly, O.A. was instituted by the petitioner only in the year 2012 and that too, after a period of two years and seven months from the date of his retirement from the service.

12] In ***State of Uttaranchal and anr. Vs Shiv Charan Singh Bhandari and ors. - (2013) 12 SCC 179***, the

Hon'ble Supreme Court has held that repeated representations cannot furnish a fresh cause of action or revive a stale or dead claim. In fact, in this case, the Hon'ble Supreme Court has held that it is clear as crystal that even if the the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

13] In ***State of Orissa vs. Pyarimohan Samantaray - (1977) 3 SCC 396***, it has been opined that making of repeated representations is not a satisfactory explanation of delay.

14] There is neither any jurisdictional error nor any perversity in the view taken by the CAT in the impugned judgment and order.

15] For all the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order. This

petition is therefore, dismissed. Rule is discharged. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)