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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1168/2018 & CM No.4863/2018 (exemption)**

ANIL KUMAR

..... Petitioner

Through: **Mr.Sameer Shrivastava & Mr.Rohit
Rathi, Advocates**

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: **Ms.Suman Chauhan, CGSC for UOI
with Mr.Brajesh Kumar, Advocate**

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

08.02.2018

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1. The petitioner is aggrieved by the order dated 10.10.2017, passed by the Tribunal dismissing his O.A, praying *inter alia* for quashing and setting aside the seniority list of Senior Section Engineers (Sig), Section Engineers (Sig), JE-Ist (Sig) & JE-II (Sig) declared by the respondents/Northern Railway, as long back as on 24.07.2007 and for setting aside the letter dated 20.11.2013, informing the petitioner that his representation had been rejected.

2. The petitioner is also aggrieved by the letter dated 27.03.2014, issued by the respondents informing him that his representation for stepping up of his pay was not maintainable on the ground that it is not admissible to employees appointed in different seniority groups and he cannot seek any

parity with employees who were given step up of pay, as they belong to another seniority group. Apart from the aforesaid orders, the petitioner has laid a challenge to the replies dated 14.07.14 and 17.09.15, furnished to him by the respondents, through RTI route.

3. By the impugned order, the Tribunal has dismissed the petitioner's O.A. on the ground that it is barred by limitation, as the orders challenged by him relate back to the years 2007, 2013, 2014 and 2015 and even after the petitioner's claim for seeking stepping up of pay was rejected by the respondents for the first time on 20.11.2013, instead of seeking legal recourse, he kept on submitting representations before the respondents which could not extend the period of limitation. The second observation made by the Tribunal for dismissing the petitioner's application was that he was seeking seniority over his alleged juniors, but had filed the OA without impleading them as parties.

4. Learned counsel for the petitioner submits that the seniority list declared by the respondents on 24.07.2007 did not come to the knowledge of the petitioner due to which he did not make any representation against the same and that he gathered knowledge of the said list only in the year 2013. It is noteworthy that the petitioner did not offer any explanation in his application moved before the Tribunal as to how and from which source did he gather knowledge of the seniority list declared on 24.07.2007.

5. Further, since it is not denied that the seniority list was displayed by the respondents on the notice board, the contention of the petitioner that even though an opportunity was granted by the respondents to all the employees to submit a representation against the said seniority list, if there were errors, within 30 days, the petitioner did not take any steps to file a representation.

In fact, a perusal of the order dated 24.07.2017 issued by the respondents reveals that directions were issued for the list to be given wide publicity amongst the concerned employees.

6. The submission of the learned counsel for the petitioner that though the petitioner is senior to several employees, he has been deprived of his right of claiming seniority over them and this being a continuing wrong, there is no question of limitation applying in the present case, is found to be devoid of merits. It is not a case where the petitioner is seeking the benefits of ACP or MACP or pension etc. Had that been so, no doubt it would fall in a category of a continuing wrong and he would then be entitled to seek a legal recourse even at a later date. Here is a case where the entire seniority list, declared in the year 2007, is sought to be challenged by the petitioner after a decade by approaching the Tribunal in the year 2017, with a grievance that he has been superseded by his juniors.

7. Given the aforesaid position, reliance placed by learned counsel for the petitioner on the decisions in Union of India & Ors. Vs. Tarsem Singh, reported as (2008) 8 SCC 648 and A. Sagayanathan & Ors. Vs. Divisional Personnel Officer, S.B.C. Division, Southern Railway, Bangalore, reported as (1992) SCC 172, cannot be of any assistance, as the fact situations in both the cases are entirely different.

8. In the case of Tarsem Singh (supra), the respondent was seeking disability pension from the appellants and in those circumstances, the Supreme Court had observed that an exception can be carved out to the rule that a belated service related claim must be rejected on the ground of delay and laches. The examples given in the aforesaid case where an exemption can be made, relate to payment or re-fixation of pay or pension etc. as has

been noted by us above. In fact the above judgment relied on by the learned counsel for the petitioner states in clear terms that if the claim relates to seniority or promotion etc., affecting others, the delay would render the said claim stale and the doctrine of delay and laches will apply. Para 7 of the said judgment is reproduced below:

*"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. **If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.**" (emphasis added)*

9. Similarly, the decision in the case of A.Sagayanathan (Supra) relates to a fact situation where the respondent therein did not dispute the contention of the appellants therein that those juniors to them had been promoted. In the present case, the respondents have categorically denied the petitioner's

claim of seniority over his juniors by informing him on 20.11.2013 that his seniority list was entirely different from those with whom he was making a comparison for seeking stepping up of his pay.

10. In the above facts and circumstances, we do not see any error in the impugned order for interference.

11. The present petition is accordingly dismissed *in limine*, as devoid of merits, along with the pending application.

HIMA KOHLI, J.

PRATIBHA RANI, J.

FEBRUARY 08, 2018

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