

GAHC010012712014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3670/2014

GS. 154201F SRI DILIP KANTI BHATTACHARJEE
S/O- LT. DEBENDRA KR. BHATTACHARJEE, RESIDING AT BHUPEN DEKA
PATH, BAMPARBATIA TEZPUR, P.O.- TEZPUR, DIST.- SONITPUR, ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF SURFACE
TRANSPORT, BORDER ROAD DEVELOPMENT BOARD 'B' WING, 4TH
FLOOR, SENA BHAWAN, NEW DELHI- 110011.

2:THE DIRECTOR GENERAL
BORDER ROADS KASHMIR
HOUSE DHQ
P.O.- NEW DELHI- 110011.

3:THE UNDER SECRETARY
GOVT. OF INDIA
MINISTRY OF SURFACE TRANSPORT
BOARDER ROAD DEVELOPMENT BOARD
'B' WING
4TH FLOOR
SNA BHAWAN
NEW DELHI- 110011.

4:THE OFFICER-IN-CHARGE
GERF RECORD
DIGHI CAMP
PUNE- 15

Advocate for the Petitioner : MS.P SAHARIA

Advocate for the Respondent : ASSTT.S.G.I.

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 08.04.2024

Date of Judgment: 08.04.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Mahanta, learned counsel for the petitioner. Also heard Mr. S. K. Medhi, learned CGC, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present proceedings, has raised a grievance with regard to the denial to him, his due promotion to the rank of Charge Mechanic with effect from the year 1990 when persons similarly situated to the petitioner and even junior to him, were so considered for such promotion.

3. The petitioner was recruited as a Vehicle Mechanic in Border Roads Organization(BRO) on 09.01.1975 with the qualification: 9th Pass, on completion of Army tradesman with a Mechanic course. The petitioner was so appointed in terms of the provisions of the General Reserve Engineering Force Recruitment Rules, 1964. In terms of the provisions of the said Recruitment Rules of 1964, the post of Charge Mechanic was mandated to be filled-up by way of direct recruitment and by promotion from Fitters, Vehicle Mechanics, Engine Artificer, Machinists, and Turners, in the ratio of 50:50. The respondent authorities, thereafter, promulgated the General Reserve Engineering Force Recruitment Rules, 1982, repealing the earlier General Reserve Engineering Force Recruitment Rules, 1964. In terms of the qualifications as prescribed for

promotion to the cadre of Charge Mechanic; the petitioner along with many others were rendered ineligible for being considered for such promotion. Thereafter, the respondent authorities vide a communication, dated 12.09.1990, upon approval of the competent authority, was pleased to relax the provisions of the General Reserve Engineering Force Recruitment Rules, 1982, and proceeded to grant approval for the promotion of 39 GREF personnel belonging to various trades whose names were included in Annexure-1 to the said communication, for their promotion to the next higher grade as per their own turn without reckoning the qualifications as now brought into place in terms of the General Reserve Engineering Force Recruitment Rules, 1982.

4. The petitioner has contended that although he was eligible for being considered for such promotion, his case was not so considered and accordingly, the petitioner vide his representation, dated 20.05.1997, requested the respondent authorities to consider his case in terms of the communication, dated 12.09.1990, in-as-much as he is equally entitled like the others so included in the process for promotion to the next higher grade. The respondent authorities vide a communication, dated 09.10.1997, proceeded to reject the claim made by the petitioner on the ground that he was not eligible in terms of the qualifications as now specified under the provisions of the General Reserve Engineering Force Recruitment Rules, 1982. It was further contended that the case of the petitioner could not be considered for promotion in terms of the communication, dated 12.09.1990, in-as-much as his case was not forwarded to the Government through the Headquarter of Director General, Border Roads Organization, by his Unit/Project and accordingly, it was held that the petitioner was ineligible for being considered for inclusion for promotion along with others

in the communication, dated 12.09.1990. The petitioner being aggrieved; thereafter, again vide his representation, dated 03.01.1998, approached the authorities praying for relaxation of the provisions of the Rules in his case and for giving it a retrospective effect with effect from the date when the persons so included in the list enclosed to the communication, dated 12.09.1990, were so promoted.

5. The competent authority, on consideration of the said representation of the petitioner, was pleased vide the communication, dated 14.09.1998, by considering his case as a special case; to relax the provisions of the General Reserve Engineering Force Recruitment Rules, 1982, in his case and consider his case for promotion in the next higher grade in his own turn. The said relaxation was so extended to the petitioner on noticing that he was recruited during the regime of the earlier Recruitment Rules and with the coming into force of the General Reserve Engineering Force Recruitment Rules, 1982, he was rendered ineligible for such promotion. Accordingly, the petitioner was considered by the Departmental Promotion Committee(DPC) and was so promoted to the rank of Charge Mechanic w.e.f. 27.02.1999, vide the promotion-cum-posting order, dated 06.04.1999. The petitioner being aggrieved by the promotion as effected in his case, with prospective effect, again approached the authorities vide his representation, dated 29.04.1999, requiring the authorities to grant his promotion to the rank of Charge Mechanic with retrospective effect. The said representation of the petitioner was duly considered by the authorities and vide a communication, dated October, 1999; the same came to be rejected holding that the petitioner was granted his due promotion w.e.f. 27.02.1999 and the same did not mandate any interference. It is the contention of the petitioner

that he had again approached the authorities by way of filing representations, dated 02.11.1999 and 19.04.2000, praying for grant of retrospective effect to his said promotion. However, it is contended that the said representations were not responded to. Thereafter, the petitioner was allowed to proceed on retirement on VRS, basing on an application made in this connection by him, w.e.f. 30.06.2006. The respondent authorities having not granted retrospective effect to the promotion of the petitioner to the rank of Charge Mechanic with effect from the date when the persons included in the communication, dated 12.09.1990, were so promoted; the petitioner has instituted the present proceedings on 21.06.2014.

6. Mr. Mahanta, learned counsel for the petitioner, has submitted that the case of the petitioner was admittedly not considered by the respondent authorities for inclusion in the list of persons similarly situated and annexed to the communication, dated 12.09.1990, only on the ground that his name was not so forwarded for such inclusion by his Unit/Project.

7. Mr. Mahanta, learned counsel for the petitioner, has also submitted that the consideration of promotion being a fundamental right, the respondent authorities by not processing the case of the petitioner in the manner required, had caused a deprivation to him and the same having resulted in a non-consideration of his case for such promotion with effect from the year 1990, has resulted in the violation of the fundamental rights of the petitioner.

8. Mr. Mahanta, learned counsel, has further submitted that the petitioner

had been regularly approaching the authorities by way of filing representations, praying for grant of retrospective effect to his promotion to the rank of Charge Mechanic effected vide the order, dated 06.04.1999, and to make the same effective from the year 1990 along with all other consequential benefits.

9. Mr. Mahanta, has submitted that although the petitioner, after the rejection as made of his prayer, vide the communication, dated October, 1999; had approached the authorities vide his representations, dated 02.11.1999 and 19.04.2000; the competent authority had not considered the same and the prayers made by him, are still pending disposal.

10. Mr. Mahanta, has also submitted that the petitioner had retired from his services on VRS basis w.e.f. 30.06.2006, and thereafter, the petitioner had approached the authorities on numerous occasions to receive information as regards the status of consideration of his prayers for grant of retrospective effect to the promotion as given to him to the cadre of Charge Mechanic. However, the respondent authorities having not favourably replied to the representations as made by the petitioner, for reconsideration of the promotion as effected in his case to the post of Charge Mechanic and to effect the same with retrospective effect; the petitioner was constrained to approach this Court by way of instituting the present proceedings.

11. Mr. Mahanta, learned counsel, has also submitted that the petitioner having already retired from his services on VRS basis in the year 2006; the petitioner would now be only entitled to financial benefits, in the event, his

promotion to the rank to the post of Charge Mechanic is directed to be effected with retrospective effect.

12. Mr. Mahanta, learned counsel for the petitioner, has further submitted that persons junior to the petitioner were also promoted in the exercise as was carried-out by the respondent authorities in pursuance to the communication, dated 12.09.1990, and only on the ground that the name of the petitioner was not forwarded along with that of the persons in whose cases relaxations were granted for promotion to the next higher grade; the petitioner's promotion with effect from the year 1990, could not be effected. The learned counsel has further highlighted the fact that the respondent authorities having only contended that the case of the petitioner was not so considered in view of the fact that his name was not forwarded by his Unit/Project for inclusion in the list of persons in whose cases, the relaxation of the eligibility criterias as mandated in the General Reserve Engineering Force Recruitment Rules, 1982, were granted and the petitioner not being at fault with regard to the said issue; the respondents now cannot take advantage of their own mistake and deny to the petitioner his due financial benefits by granting retrospective effect to his promotion with effect from the date when the persons junior to him and included in the list as annexed to the communication, dated 12.09.1990; were so promoted.

13. Mr. Medhi, learned CGC, on the other hand, has submitted that the petitioner in terms of the relaxation as granted in his case by the competent authority vide the communication, dated 14.09.1998, was promoted to the next

higher grade vide the order, dated 06.04.1999, making the same effective from 27.02.1999; the petitioner had accepted the said promotion and was enjoying the diploma scale in pursuance to his such promotion to the rank of Charge Mechanic. It has been further submitted by the learned CGC that the representation submitted by the petitioner on 29.04.1999, was promptly disposed of by the respondent authorities vide the memorandum, dated October, 1999, and the petitioner was communicated the reasons as to why his promotion could not be granted with retrospective effect. The learned CGC has also submitted that the petitioner, thereafter, retired from his services on availing VRS, w.e.f. 30.06.2006. However, the petitioner had not, after issuance of the memorandum, dated October, 1999, assailed the same before this Court within a reasonable period of time thereof. It is also submitted that the petitioner after proceeding on VRS basis w.e.f. 30.06.2006, has approached this Court by way of instituting the present proceedings only on 21.06.2014 i.e. after 8 years from the date of his retirement on VRS basis and further, that the present challenge has been made only after 15 years from the date of the issuance of the memorandum, dated October, 1999. It is also contended by the learned CGC that the laches on the part of the petitioner has rendered the same liable to be dismissed *in limini*.

14. I have heard the learned counsels appearing for the parties and also perused the materials as brought on record.

15. The issue of delay and laches having been raised by the respondents in the present proceedings; this Court would like to consider the said issue before

proceeding to consider the issues raised by the petitioner on its merits.

16. It is seen from the materials available on record that the competent authority after coming into force of the General Reserve Engineering Force Recruitment Rules, 1982; had taken a decision to relax the same in cases of persons already in service prior to coming into force of the said Rules of 1982 and accordingly, vide a communication, dated 12.09.1990, sanction of the Government was accorded in respect of 39 GREF personnel of various trades whose names were included in the annexure to the said communication, dated 12.09.1990, for consideration of their cases for promotion to the next higher grade on their own turn by relaxing the eligibility criterias as prescribed in the said General Reserve Engineering Force Recruitment Rules, 1982, as a special case. Accordingly, the said persons whose names were included in the list annexed to the said communication, dated 12.09.1990, came to be promoted to the next higher grades although they were not qualified for such promotion in terms of the eligibility criterias as prescribed in the General Reserve Engineering Force Recruitment Rules, 1982. The petitioner, for the first time, vide his representation, dated 20.05.1997, approached the authorities praying for inclusion of his name in the list of the candidates as annexed to the said communication, dated 12.09.1990, and prayed that he be also considered for such promotion along with the persons similarly situated and included in the said list. The said representation of the petitioner was responded to by the respondent authorities vide a communication, dated 09.10.1997, and his such claim was rejected on the ground that while the petitioner did not fulfill the mandated eligibility criterias as prescribed under the General Reserve Engineering Force Recruitment Rules, 1982, for promotion to the rank of Charge

Mechanic; his case for inclusion in the list as annexed to the communication, dated 12.09.1990, was not possible in view of the fact that his case was not forwarded to the Government through the Director General, BRO, by his Unit/Project. Accordingly, it was held that until and unless the petitioner fulfills the eligibility criterias now in *vogue* in terms of the General Reserve Engineering Force Recruitment Rules, 1982; his case for promotion to the rank of Charge Mechanic, cannot be considered.

17. The petitioner, thereafter, made further representations and in terms thereof; the respondent authorities vide a communication, dated 14.09.1998, brought on record, the relaxation as now granted to the petitioner as a special case, facilitating the consideration of his case for promotion to the rank of Charge Mechanic by relaxing the eligibility criterias as mandated in this connection under the provisions of the General Reserve Engineering Force Recruitment Rules, 1982.

18. In terms thereof; it is seen that the case of the petitioner was so considered and he was promoted vide the order, dated 06.04.1999, w.e.f. 27.02.1999, to the rank of Charge Mechanic. Thereafter, the petitioner, vide his representation, dated 29.04.1999, again approached the respondent authorities and prayed that his promotion to the rank of Charge Mechanic, may be given retrospective effect with effect from the date when the persons included in the list annexed to the communication, dated 12.09.1990, were so promoted.

19. It is to be noted that the said representation of the petitioner, was, on

consideration; rejected vide the memorandum, dated October, 1999. The petitioner although being intimated about the reasons as to why his case for promotion was not considered with retrospective effect, had not challenged the same rather had submitted the representations, dated 02.11.1999 and 19.04.2000, against the same. At this stage; it is also to be noted that the petitioner on the basis of an application as made by him, was permitted to proceed on retirement on VRS basis w.e.f. 30.06.2000. The petitioner after proceeding on VRS, had not brought on record any material to demonstrate that he was pursuing the matter with the respondent authorities and the present proceedings was instituted before this Court after passing of around 8 years from the date after which the petitioner had proceeded on VRS.

20. The facts as narrated hereinabove, would demonstrate that the petitioner had an opportunity to approach this Court immediately on his case not being considered along with other similarly situated persons vide the communication, dated 12.09.1990. However, the petitioner failed to approach this Court. The petitioner had a further opportunity to approach this Court when the relaxation with regard to the eligibility criterias as specified in the General Reserve Engineering Force Recruitment Rules, 1982, was extended to him as a special case vide the communication, dated 14.09.1998, and thereafter, on his promotion being effected to the rank of Charge Mechanic vide the order, dated 06.04.1999 with prospective effect i.e. w.e.f. 27.02.1999. Thereafter, the petitioner had a further opportunity when his representation, dated 29.04.1999, was rejected by the respondent authorities vide the Memorandum, dated October, 1999. It is seen that the petitioner had not instituted any proceedings with regard to the said issues as arising from time to time before this Court in

his case. The only plea taken by the petitioner is that he was regularly approaching the authorities by way of submitting representations.

21. It is a settled position of law that the High Court can refuse to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India in case of persons who do not approach it expeditiously for relief and put forward stale claims and/or try to unsettle settled matters.

22. In this connection, the decision of the Hon'ble Supreme Court in the case of ***State of Uttaranchal & anr. v. Shiv Charan Singh Bhandari & ors,*** reported in ***(2013) 12 SCC 179***, is being referred to. The Hon'ble Supreme Court in the said case, in similar circumstances, after referring to the earlier decisions of the Court; proceeded to hold that even if 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 a representation to the competent authority does not arrest time. The Court also noticed that there can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability but the said relief has to be claimed within a reasonable period of time. It was further held that although there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet, ordinarily, a writ petition should be filed within a reasonable period of time.

23. In this connection; the relevant paragraphs of the decision rendered in the

case of ***Shiv Charan Singh Bhandari***(supra), is quoted hereinbelow for ready reference:

“19. From the aforesaid authorities it is clear as crystal that even if 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 arise time.

23. In State of T. N. Seshachalam, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 165)

“16..... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

24. This Court would now refer to the decision of the Hon’ble Supreme Court in the case of ***Union of India & ors. v. A. Durairaj(dead) by Lrs.***, reported in ***(2010) 14 SCC 389***, wherein, it has been held that if anyone who feels aggrieved by non-promotion or non-selection should approach the court/tribunal as early as possible. It was further held that if a person having a justifiable grievance, allows the matter to become stale and approaches the Court/Tribunal, belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to other employees. Further, it was held that where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim. Thereafter, it was reiterated that even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

25. The relevant observations of the Hon'ble Supreme Court in the case of **A. Durairaj**(supra) is extracted hereinbelow:

“13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the court/tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the court/tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action.

15. This Court had occasion to examine such situations in Union of India v. M. K. Sarkar and held as follows:(SCC p.66 paras 14-16)

“14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications.....

15. When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing ‘consideration’ of a claim or representation should examine whether the claim or representation is with reference to a ‘live’ issue or whether it is with reference to a ‘dead’ or ‘stale’ issue. If it is with reference to a ‘dead’ or ‘stale’ issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct ‘consideration’ without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

26. To further appreciate the issue of delay and laches; this Court would now

like to refer to the observations made by the Hon'ble Supreme Court in the case of ***C. Jacob v. Director of Geology and Mining & anr.***, reported in **(2008) 10 SCC 115**; wherein, the Hon'ble Supreme Court considered the case of a terminated employee who after decades, filed a representation which was decided after a decision was rendered on the representation. The terminated employee preferred an original application before the Tribunal and the same was entertained by passing an order. In respect of such belated representation, the Hon'ble Supreme Court in the above-cited case, has noted as under:

"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligation of parties. Little do they realize the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

15. The present case is a typical case of "representation and relief". The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9-4-2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the petitioner has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18-7-1982, by deeming that he was retired from service on that day. We fail to understand how the learned single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned single Judge could find fault with the Department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the Department in which the petitioner had worked had been wound up as long back as in 1983 itself and the new Department had no records of his service."

27. It is, thus, settled that anyone who feels aggrieved by his non-promotion or promotion which according to him, was made belatedly, should approach this Court as early as possible.

28. Applying the decisions of the Hon'ble Supreme Court in the above-noted cases to the facts involved in the present matter; it is found that the petitioner is found to be guilty of delay and laches, in instituting the present proceedings after the matter was settled by the decisions rendered therein by the respondent authorities at several stages and the last of which was so rendered vide the Memorandum, dated October, 1999. The petitioner not having challenged the said decisions as rendered in his matter by the respondent authorities at the relevant point of time, now cannot be permitted at such a distant point of time, to raise the said grievance and the grievance so raised in the present proceedings, has to be held to be hit by the principles of delay and laches. Accordingly, the writ petition on the ground delay and laches, is liable to be dismissed.

29. This Court, in view of the conclusions reached hereinabove that the present writ petition is hit by the principles of delay and laches, holds that the same is not called-upon to be adjudicated on merits. Accordingly, the prayer of the writ petitioner for being granted benefit of promotion with effect from the year 1990 in a writ petition filed in the year 2014; in the considered view of this Court, does not call for a consideration on merits on the ground of delay and laches.

30. The writ petition, in the above view of the matter; is held to be devoid of merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant