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Central Administrative Tribunal, Principal Bench

Original Application No.905 of 2002  
M.A.No.719/2002

New Delhi, this the 3rd day of April, 2002

Hon'ble Mr. Justice Ashok Agarwal, Chairman  
Hon'ble Mr. S.A.T. Rizvi, Member (A)

V.K. Jambholkar  
Superintending Engineer (Elect)  
CPWD, Vidyut Bhawan, New Delhi-1  
r/o A-3/71, Sector-III  
Rohini, Delhi-85

- Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

1. Union of India through  
The Secretary  
Ministry of Urban Development  
and Poverty Alleviation  
Nirman Bhawan, New Delhi-11
2. The Secretary  
Union Public Service Commission  
Shahjahan Road  
New Delhi-11

- Respondents

O R D E R (ORAL)

By Hon'ble Mr. S.A.T. Rizvi, Member (A)

The applicant who was promoted as Executive Engineer (Electrical) in the C.P.W.D. in 1978, was considered for further promotion to the post of Superintending Engineer (in short 'SE') by the DPC in 1989. His candidature was cleared by the DPC. However, before he could be promoted as SE, a chargesheet was served on him on 13.8.89 which led to a major penalty being imposed on him in 1996. The effect of the penalty lasted ~~for~~ three years i.e. upto 1999. He was to be considered for promotion to the post of SE thereafter. However since the promotion was delayed, the applicant came up before the Tribunal through OA No.496/98 which ended in a direction being issued to the respondents to hold the DPC after opening the sealed cover maintained in the department in respect of the applicant.

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The DPC was accordingly held and the applicant was promoted as SE on 15.1.2002.

2. By the present OA, the applicant makes a prayer for a declaration to be issued rendering the memo of charge and the order of penalty as ab initio null and void. The further prayer made is for a direction that the applicant's date of promotion should be amended so as to provide for his promotion as SE from the date on which his next junior namely Shri A.K.Morarka was promoted. Consequential benefits in terms of seniority and further promotions have also been prayed for.

3. We have considered the submissions made by the learned counsel and have perused the application for condonation of delay (M.A.No.719/2002) filed by the applicant in order to get-over the problem of limitation. We find therefrom that the same applicant had approached this Tribunal earlier in 1998 by filing OA No.496/98. It appears from the aforesaid application that at that time he was content to raise just one issue namely that of opening of the sealed cover for giving effect to the recommendations of the DPC. He could, in our view, at that very time raise the very same issues and seek the same remedies which he has now <sup>seeks</sup> ~~prayed~~ by filing the present OA. In the circumstances, in our judgement, the present OA is barred on account of <sup>k</sup>application of a rule akin to rule 2/  
/order II of Civil Procedure Code, <sup>k</sup>relevant portion of which reads as under:

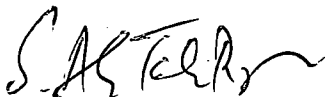
2. "Relinquishment of part of claim - (2) Where a plaintiff omits to sue in respect of or

intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Omission to sue for one of several reliefs -

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

4. In view of the aforesaid rule position, we find that the grounds taken in the aforesaid application for condonation of delay are the least convincing. The said application, therefore, fails and for the same reason the OA also fails and is dismissed in limine.



( S.A.T. Rizvi )  
Member(A)

  
( Ashok Agarwal )  
Chairman

/dkm/