

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO.2214/2002
M.A. NO.1802/2002

This the 24th day of July, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

No.13649814-Stenographer (Grade-III)
Civilian

Amar Singh Rawat S/O Gopal Singh Rawat,
Military Hospital, Agra Cantt.
R/O House No.P-15, Sainik Nagar,
Rajpur Chungi, Agra (UP).

... Applicant

(By Shri D.N.Sharma, Advocate)

-versus-

1. Union of India through
Secretary to the Government of India,
Ministry of Defence,
South Block, New Delhi.

2. Director General of Medical Services (Army)
{DGMS-3(b)} Adjutant General's Branch,
Army Headquarters, D.H.Q. Post Office,
New Delhi.

3. Commandant,
Military Hospital,
Agra Cantt.

... Respondents

(By Ms. Pratima K. Gupta, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant was initially appointed as Stenographer Grade-III at Parachute Regimental Centre, Bangalore on 22.6.1972. He was confirmed on this post on 1.4.1974. He was upgraded on 14.8.1982 at Parachute Regimental Centre, Bangalore. He was subsequently posted as Stenographer Grade-III and further upgraded as Stenographer Grade-II w.e.f. 1.11.1992 on upgradation of the Centre Commandant from Colonel to Brigadier. He was transferred to Military Hospital, Agra as Stenographer

Grade-III on the basis of his application and option certificate for his compassionate posting (Annexure-I dated 9.11.1995 and Annexure-II dated 11.5.1996 to the counter-affidavit). Applicant has alleged that despite vacancy of Stenographer Grade-II being available at Military Hospital, Agra, applicant was placed at the bottom seniority in his initial post of Stenographer Grade-III as he had come on transfer on compassionate ground. He has challenged Annexure A-1 dated 13.8.1999 which is a communication from Director General to Military Hospital, Agra stating that posting on compassionate ground is permissible only to the post/grade/pay scale in which direct recruitment is made. Stenographer Grade-II is a promotional post which can be filled by promotion only. Applicant could be taken against the post of Stenographer Grade-III under the existing government instructions on the subject. Applicant has stated to have made representation on 8.5.1996. The learned counsel of applicant has relied on *K.A.Balasubramanian v. Union of India*, ATR 1988 (1) CAT 120 (Madras) and *N.Kumaresan v. Commandant DSSC Wellington*, 1988 (3) SLJ (CAT) 73 (Madras).

2. On the other hand, the learned counsel of respondents took exception to the OA on the ground of limitation. He stated that applicant had become eligible for promotion to the post of Stenographer Grade-II in 1982. He had been transferred on compassionate ground to his initial post at bottom seniority under the existing instructions. The learned counsel stated that though his past service could be counted for eligibility for

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ⁱⁿ promotion in 1982, applicant could not have been promoted at the new station where he had come on transfer on compassionate ground on a lower post. He could be upgraded again on promotion on the basis of recommendations of DPC. The learned counsel stated that no DPC was held and applicant was ultimately promoted to Grade-II in February, 2003.

3. This OA is certainly barred by limitation. Cause of action for applicant had arisen immediately after he was put at the bottom seniority of the lower post. He is stated to have made his representation on 8.5.1996. In MA No.1802/2002 seeking condonation of delay applicant has stated that he remained in waiting for further reply on his representation from the Army Headquarters. It only means that applicant kept sleeping over his rights, if there were any. It is established law that parties have to pursue their rights and remedies promptly and not sleep over their rights. If they choose to sleep over their rights and remedies for an inordinately long time, as has happened in the present case, the court may decline to interfere in its discretionary jurisdiction. In this view of the matter, the application is certainly barred by limitation. In Union of India v. C.N.Poonnappan, C.A. No.1221 of 1987 with C.A. Nos.529 of 1989 and 2320 of 1995 decided on 5.12.1995, it was held that an employee who is transferred from one unit to another on compassionate ground and as a result is placed at the bottom of the seniority list can count his service in the earlier unit for purpose of promotion. Clearly, the service in the

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previous unit can be counted as experience for purpose of eligibility for promotion at the place where the employee has been transferred. That service cannot be counted for any other purpose, such as seniority etc. Ratio in this case has an overriding effect on judgments relied upon by the learned counsel of applicant.

4. In the present case, applicant's service has been counted for assessing his eligibility for purpose of promotion. He has been promoted vide order dated 28.2.2003 filed by the learned counsel of applicant at the time of arguments w.e.f. 28.2.2003. In the light of the ratio in the matter of Poonnappan (supra), we do not find any infirmity in the action of respondents in allocating seniority to applicant in the unit where he was transferred on compassionate ground and also not considering him for promotion without holding a DPC.

5. Having regard to the discussion made and reasons stated above, not only that this OA is barred by limitation, it has to fail even on merit. Dismissed accordingly. No costs.

S. Raju

(Shanker Raju)
Member (J)

V. K. Majotra

(V. K. Majotra)
Member (A)

/as/