

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1230/99
M.A.No.724/2000

HON'BLE SHRI JUSTICE V.RAJAGOPALA REDDY, VC(J)
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

New Delhi, this the 15th day of May, 2000

Narinder Pal Sharma
S/o. Late Shri S.R. Sharma
R/o. 79/8, Leela Ram Building
Kotla Mubarakpur
New Delhi - 110 003. Applicant

(By Shri K.K.Patel, Advocate)

vs.

Union of India through :

1. Secretary
Ministry of Water Resources
Government of India, Shramshakti Bhawan
New Delhi.

2. Chief Engineer and Member
Central Ground Water Board
NH-IV, CGO Complex
Faridabad.

3. Director (Admn.)
Central Ground Water Board
NH-IV, CGO Complex
Faridabad.

4. Chairman
Central Ground Water Board
NH-IV, CGO Complex
Faridabad. Respondents

(By Shri A.K.Bhardwaj, Advocate)

O R D E R (Oral)

By Reddy. J.

The applicant was working as Assistant Engineer in the Central Ground Water Board under Ministry of Water Resources in 1982. The next higher post for promotion to the applicant is the Assistant Executive Engineer. According to the applicant, on 6.10.1982 the DPC was convened for filling up of 21 posts in the grade of Assistant Executive Engineer and the applicant was one of such candidates but was not recommended for promotion. The grievance of the applicant, however, is that he was not promoted as the DPC has not properly considered his case and that the action of the DPC is wholly illegal. The

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consideration of the DPC was not in accordance with the statutory rules of Assistant Executive Engineers Recruitment Rules, 1981. The applicant's juniors have been promoted ignoring the applicant's valid claim for promotion. The applicant was only, promoted w.e.f. 10.4.1986. However, the applicant has not made any representation, against the promotion of his juniors. Subsequently, on 17.8.1994 a draft seniority list of the Assistant Executive Engineers has been circulated. Aggrieved by the same, the applicant had made a representation on 15.9.1994. It was rejected on 5.10.1995.

2. The applicant submits that in Civil Appeal No.4839 of 1991 in Shri Manmohan Singh Dhillon Vs. Union of India & Ors., the Hon'ble Supreme Court considering the Judgment of the Chandigarh Bench of this Tribunal in T.A.No.359/86 which was filed by another employee junior to the applicant, by its order dated 13.9.1994 allowed the appeal and set aside the order of the Tribunal and declared that the appellant therein was senior to the respondents therein, at all the stages and was entitled to all the consequential benefits. Relying upon the judgment the applicant has now filed this OA stating that he was also entitled for his promotion w.e.f. 1982 for the post of Assistant Executive Engineer.

3. The respondents have taken the stand that the Judgment of the Supreme Court has no application to the facts of the case. According to the learned counsel, the Supreme Court has taken the view that the DPC which met on 6.10.1982 had taken into consideration the adverse remarks since expunged and that the consideration of the applicant by the DPC was

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not in accordance with law and on that basis the case of the appellant was favourably considered and his appeal was allowed.

4. Learned counsel also submits that the OA is barred by limitation as the grievance of the applicant arose in 1982 when the applicant's juniors have been promoted and hence the applicant should have filed the OA within the period of limitation from the said date. Even taking the order of SC as the starting point for limitation, even then, the OA was barred by limitation.

5. We have given careful consideration to the pleadings as well as the arguments advanced by either side. First, we will have to dispose of the objection as to limitation. From the averments made by the applicant in the OA itself, it is clear that the OA is barred by limitation. The applicant says in the OA that though he was considered for promotion by the OPC which met on 6.10.1982 he was illegally not promoted but his juniors have been promoted. Thus, the adverse order in this case should be the date of promotion of his juniors, i.e., 25.10.1982 (the date given by the learned counsel for the respondents). The applicant has not made any grievance against his non-promotion. It is therefore, implicit that the applicant was not aggrieved for his ignoring of promotion in 1982. It is therefore not open now for the applicant to file the OA seeking the relief of promotion w.e.f. 1982. The learned counsel for the applicant, Mr. K.K.Patel, however submits that as the seniority list has been published on 17.8.1994, he made his representation immediately thereafter and as it was rejected on 5.10.1995, he made representation to the respondents

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on the basis of the Judgment of the Supreme Court in the case of Mr. Manmohan Singh Dhillon (Supra). Even assuming that the date, 5.10.1995, i.e. ~~the~~ date of rejection of his representation as the starting point, the OA was still not within the period of limitation. However, he placed reliance upon the proceedings dated 17.6.1999 issued by the respondents stating that his representation dated 11.6.1997 was being reexamined and submits that there was no response to the said representation, the applicant after awaiting for six months has filed the present OA. The OA is therefore within the period of limitation. We do not agree. By the time the representation made on 11.6.1997 the period of limitation expired as stated supra and the subsequent representation dated 11.06.1997 would not revive the period of limitation already expired.

6. Even on merits the Judgment of the Supreme Court, ~~we are of the view that~~ in the case of Mr. M.M.Dhillon (Supra), has no application to the facts of the present case. The Supreme Court held that when the cases of the appellant was considered for promotion, because of the adverse remarks, he was down graded and the respondents should have promoted him once the adverse remarks were expunged, there was no longer an impediment to consider the claims of the appellant. It is therefore clear that as the court found the appellant was illegally over looked for promotion for 1982, he was entitled to be considered as senior to the respondents. In the present case, the facts are entirely different. The applicant has been considered for promotion in 1982 and there were no adverse remarks in his case by which he could be said to have been ignored. No such allegation is made. Hence, there is no parity in the facts or law.

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in the two cases. We are therefore of the view that the ratio of the Supreme Court in the above case is not applicable.

7. Thus, the OA is dismissed on grounds of, both on limitation as well as on merits. No costs.

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(SMT. SHANTA SHAstry)
MEMBER(A)

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(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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