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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 22/99

New Delhi, this the 1st day of September, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Dr. S.K. Aggarwal,
S/o Sh. Triveni Prasad,
R/o 266, Aravali Apartments,
Kalkaji, New Delhi-110019.
aged 59 years, retired as
Director, Cabinet Sectt.
Bikaner House, Annex
Shahjahan Road,
New Delhi. Applicant
(By Advocate: Sh. J.K. Bali)

Vs.

Union of India through

1. The Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi.
2. The Secretary (R)
Cabinet Sectt.,
Bikaner House Annex
Shahjahan Road,
New Delhi.
3. Sh. H.N. Gupta
Joint Secretary (ED)
Cabinet Sectt.,
Bikaner House Annex
Shahjahan Road,
New Delhi. Respondents
(By Advocate: Sh. Madhav Panikar)

ORDER (ORAL)

By Mr. Justice V.Rajagopala Reddy,

Heard the counsel for the applicant and the
respondents.

2. The applicant was a Deputy Economic Adviser (Director) in the Cabinet Sectt. from 13.4.89. According to the R&AW Rules, 1975 for promotion to the post of Economic Adviser/Joint Secretary (Eco) minimum service of 5 years in the grade was essential. Accordingly, applicant would be

eligible for promotion in April 1994. However, the applicant made a representation in 1991 for relaxation in the eligibilities. He wrote for promotion from Dy. Economic Adviser to the Director/Jt. Secretary. The relaxation was refused. The applicant went on foreign assignment in March 1994 for a period of 3 years. In the meanwhile one Mr. H.N.Gupta, who is Resp. No.3, has been appointed on deputation in accordance with the recruitment rules as Economic Adviser/ Jt. Secretary. It is the case of the applicant that he had made representations from abroad that he should have been considered for promotion to the Economic Adviser as he was eligible for said promotion from 1994 itself. However, considering the case of the applicant the respondents filled up the post of Jt. Secretary by deputation. He has been making representations from November 1994. The present OA is, therefore, filed. The applicant has returned from foreign assignment in October 1997 and in December 1997 he retired from service. Thereafter he made representations on 12.11.97 requesting for over-due promotion orders immediately failing which he would approach the Central Administrative Tribunal for necessary redressal. The applicant filed the present OA to declare the appointment of Resp. 3 on 28.2.97 as Joint Secretary as invalid and to direct the respondents 1 & 2 to convene a DPC to determine the suitability of the applicant for the post of Jt. Secretary for the post of Economic Adviser/Jt. Secretary w.e.f. 1.2.95 and for payment of all consequential benefits.

3. Learned counsel for respondents raises preliminary objection as to the limitation. He also contends that the applicant have a procedure abroad for a period of 3 years was rightly not considered by the respondents for promotion and in

accordance with the recruitment rules. The post was filled up by deputation. No counter is filed by Resp. 3. We have given consideration to the contentions raised in this case. The first contention as to limitation has to be disposed of before we proceed to consider the merits of the case. The contention of the learned counsel for the respondents is that as the post has been filled up on 28.2.96 by deputation to which post the applicant has been seeking promotion. The starting point for limitation starts on the said date, namely, 29.2.96 it cannot be said that applicant is unaware of the appointment of Resp. 3. As has been making several representation right from 1994 claiming his right for promotion into the post. In his representation dated 29.8.96 he only says that as he was returning in March 1997 and as he was due to retire in December 1997 his case for promotion to the rank of Joint Secretary would be taken up at the earliest so that it could be processed before his return. It is, therefore, clear from this representation that he has not made any grievance of the appointment of Resp. 3 on deputation in March 1996. In his representation dated 28.7.97 he only requests for his case for promotion to the post of Joint Secretary should be taken at the earliest. As Resp. 3 has been appointed for a period of 3 years in 1996 the consideration of the applicant for promotion to the post would not arise till the expiry of the term of Resp. 3, i.e., in 1999. Thus, it is clear that though the cause of action for the applicant arose in 28.2.96 as the adverse order was passed by appointing Resp. 3 in the post into which he was claiming, the applicant should have filed the OA within the period of one and a half year from 28.2.96 that would expire by August 1997. No application for condonation of delay was filed by the applicant. Learned counsel for applicant, however,

relying upon the communication dated 25.10.96 where it was stated that the department would examine the possibility of considering him for promotion to the post of Joint Secretary after his reversion and as he returned to headquarters on 24.10.97 and subsequently made a representation on 12.11.97 he was entitled to wait for a period of 6 months thereafter and as there was no respondents he could have filed the OA in December 1998, the OA is within the period of limitation. We do not agree. In the communication dated 21.10.96 it was only stated that the possibility of considering his appointment to the post of Joint Secretary will be considered after his reversion to the Headquarters. It should be noticed that the post has already been filled up on 28.2.96 and the tenure was for a period of 3 years the question of considering the applicant after his reversion would not have arisen. The grievance of the applicant in this OA being that his name for appointment in the post of Joint Secretary in 1996 was ignored and it was filled up by Resp.3. The staring point for limitation was 28.2.96. Even if the representation made in August 1996, i.e. after the post was filled up, the applicant had made no grievance for appointment. In the circumstances the communication dated 25.10.96 would not give to the help of the applicant for saving the limitation. Section 21 of the AT Act categorically states that OA shall not be admitted by the Tribunal unless the applicant made it within the period of limitation. It is true as contended by the learned counsel for the applicant that the applicant may have his case on merits and that the dismissal of the application on the basis of limitation would cause hardship but it was clearly held in P.K.Ramachandran Vs. State of Kerala JT 1997 (8) SC 189 that law of limitation harshly affect a party, but it has to be applied with all its vigour when the statute so prescribe and

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the courts have no power to extend the period of limitation on equitable grounds. In the circumstances we cannot ignore the law of limitation as provided under the Act. The OA, therefore, fails and is accordingly dismissed on the grounds of limitation without going into the merits of the matter. No costs.

(GOVINDAN S. TAMPI)
Member (A)

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(V.RAJAGOPALA REDDY)
Vice Chairman (J)