

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 607 of 1998
M.A. No. 636/98

New Delhi, this the 11th day of March, 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE SHRI N. SAHU, MEMBER (A)

KL Arora (Dr)
A-2/89, Janakpuri,
New Delhi-110058 (Ph: 559-2517) Applicant

(By Advocate: Shri G.K. Aggarwal)

Versus

Union of India through Secretary,
Deptt of Defence Research and
Development AND Scientific Adviser
to Defence Minister AND Director
General Research & Development
South Block, DHQ PO New Delhi-110011

2. The Chairman
DRDS Assessment Board for Sc-E to Sc-F
RAC, Lucknow Road, Timarpur,
Delhi-110054. Respondents

(By Advocate: Sh. K.C.D. Gangwani)

O R D E R (ORAL)

By Reddy, J. -

Heard Shri G.K. Aggarwal, learned counsel for
the applicant and Shri K.C.D. Gangwani, learned counsel for
the respondents.

2. This O.A. is filed for the following two
reliefs:-

(i) to set aside the provision for and powers
of Internal Screening Committee as unconstitutional; and

(ii) to order review of applicant's
non-promotion/non-consideration for promotion(s) since
1990 to date, by Boards on the basis of Interview alone or
Interview and bare statement of work forwarded by

VRP

14

Applicant through concerned officers for factual verification, and order his promotions from Sc-E to Sc-F and further, as and when he made the grade, with arrears and all consequential benefits.

3. Alongwith the O.A., an M.A.636/98 was filed to condone the delay in filing the O.A. It is stated in the affidavit filed in support of the O.A. that the applicant was under a disability to move the judicial forum earlier and that his consolidated representation dated 12.8.97 was entertained but rejected on merits by an order dated 15.9.97. Hence the O.A. filed in March, 1998 is within the period of limitation as stipulated under the Administrative Tribunals Act.

4. A reply is filed to the M.A. stating that the cause of action for the applicant arose in 1990 when his case for promotion was considered by the Screening Committee and in 1991 when the Screening Committee did not clear the applicant's name for assessment for promotion. 1992, 1993, 1994 and 1995 are stated to be the years when the applicant's case was considered for promotion. As the cause of action having been arisen initially in 1990 and as the applicant is seeking to challenge his non-promotion w.e.f. 1990, the O.A. filed in 1998 is awfully barred by limitation.

5. It is significant to notice that the applicant has already been superannuated, in 1998. On the eve of superannuation, the applicant has thought of filing the O.A. Learned counsel for the applicant strenuously contends that as his consolidated representation has been

CDA

15

considered by the higher authority in 1997 and disposed of, the application is within the period of limitation as it was filed within a period of one year from the date of disposal of the representation. It is further contended that the earlier representations made immediately after his grievance arose in 1990, have not been disposed of by the authorities. Hence the date of disposal of the last representation should be taken as the date of starting point for limitation to file the O.A. He also relies upon Section 21(1)(a) of the A.T. Act in support of his contention that an application will be within the period of limitation if it is filed within a period of one year from the date of disposal of representation. Learned counsel for the applicant also refers to the decision in the case of S.S. Rathore vs. State of M.P. - AIR 1990 S.C. 10.

6. The contention raised by the learned counsel for the applicant is wholly unacceptable. Admittedly, the cause of action arose in 1990 when the case of the applicant was considered by the Screening Committee which has not given him the promotion. The applicant prays for the relief for review of his non-promotion since 1990 and to set aside the provision for and powers of Internal Screening Committee which was constituted in pursuance of the DRDS Rules, as amended in 1990. Though the applicant submits that he has made several representations in 1990 against his non-promotion, no such averment has been made by him in the O.A. nor in the M.A. filed to condone the delay except stating that he filed a consolidated so-called consolidated representation of 1997 which was disposed of thereafter.

✓

7. It is not in dispute that if the date of disposal of the representation made in 1977 is taken into consideration as the starting point for the purpose of limitation under the Administrative Tribunals Act, 1985 the OA is not barred by limitation. It is, therefore, necessary to see whether the said date should be taken as the date when the cause of action arose. The original cause of action as per the applicant arose in 1990 when applicant's promotion was considered. Subsequently, as late as on 12.8.1997 the applicant made representation which was entertained but was rejected, by an order dated 15.9.1997. It is useful to extract the provisions of Section 21(1):

"(1) A Tribunal shall not admit an application,--

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

8. A reading of the section makes it clear that Section 21 mandates that the Tribunal shall not admit an application unless the application was made within one year from the date of passing the final order in connection with the grievance. If an appeal or representation has been made and a period of six months had expired the OA should be filed within one year from the date of expiry, even though if no order was passed

DRB

in pursuance of the representation. Section 20 deals with the nature of appeal or representation. It contemplates the final order being passed by the competent authority on an appeal provided under the rules rejecting such appeal or disposing of a representation made by the employee by such authority. A Constitution Bench of the Supreme Court in S.S. Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10) dealt with the question of limitation under the Act, as under:

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned. Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first

VRS

arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

9. It is, therefore, clear from the above decision that the date of original cause of action should be taken starting from the date of the adverse order passed. If an appeal or representation was made which was available to the delinquent under the Rules from the date of passing of the appellate order or disposing of the representation when no appellate order was passed or representation not disposed of, limitation starts running immediately after the expiry of six months from the date of preferring of the appeal or making of the representation.

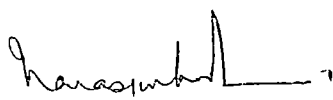
10. In view of the admitted fact that the application was filed long after the cause of action arose in 1990 when the applicant was not given promotion, we are of the view that the O.A. is barred by limitation. It is next to be seen whether there is sufficient cause for condoning the delay. In the application filed to condone the delay, a vague assertion was made that the applicant was in a disability to move this Tribunal. No tenable reason was given why he could not move the forum when his promotion was rejected in 1990. The applicant reiterates his contention that as the representation made in 1987 was entertained and rejected on merits covering the period 1990 onwards, he has a good case on merits. No reason, much less

CAB

satisfactory reason, was adduced to condone the delay.
In P.K.Ramchandran vs. State of Kerala & anr. JT
1997(8) S.C. 189, the Supreme Court observed as
follows:-

"Law of limitation may harshly effect a particular party but it has to be applied with all its vigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds."

11. Hence we have no hesitation in rejecting the application for condonation of delay. Consequently, the above O.A. is dismissed at the admission stage on the grounds of limitation.


(N. SAHU)
MEMBER(A)


(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/dinesh/