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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 669/1998

New Delhi: this the 9th day of APRIL, 2000

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Rakesh Kohli,
S/o Shri C.N. Kohli,
R/o 10-D, DDA Flats, Block 'B',
Vivek Vihar,
Phase-II,
Delhi-95

....Applicant

(By Advocate: Shri G.D. Gupta)

Versus

1. The Administrator, Union Territory of Delhi/
Governor,
Govt. of NCT of Delhi,
Raj Niwas,
Delhi.
2. Govt. of NCT of Delhi
through its
Chief Secretary, 5,
Sham Nath Marg,
Delhi-54
3. The Secretary-Cum-Commissioner of
Industries,
Govt. of NCT of Delhi,
CPO, Building,
Kashmeri Gate,
Delhi-6
4. The Secretary (Services),
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi-54.
5. Union Public Service Commission,
through its Secretary,
Dholpur House,
Shahjehan Road,
New Delhi-3
6. Shri O.P. Sachdeva,
Deputy Director of Industries,
Office of the Commissioner of Industries,
Govt. of NCT of Delhi,
Kashmeri Gate,
Delhi-6

7. Shri A.K. Madan,
Deputy Director of Industries,
Office of the Commissioner of Industries,
Govt. of NCT of Delhi,
Kashmeri Gate,
Delhi-6

..... Respondents.

(By Advocate: Shri Rajendra Pandita)

ORDER

S.R. Adige, VC(A):

Applicant impugns respondents' order dated 27.3.95 (Annexure-A4) promoting R-6 and R-7 as Deputy Director of Industries (DDI(T)). He seeks a declaration that the new Recruitment Rules for DDI(T) promulgated vide Notification dated 29.5.97 are prospective in operation and therefore the 3 posts of DDI(T) which fell vacant between 1992 and 1994 were arbitrarily filled up by R-6 and R-7 and were required to be filled up as per existing RRs. He seeks a declaration that he was entitled to be promoted against one of the 3 posts from July, 1995 when he became eligible for promotion as DDI(T) on regular basis and that the new entrants in the feeder grade for promotion as DDI(T) are junior to the incumbents already eligible for promotion as DDI(T). Consequential benefits are also prayed for.

2. Applicant was appointed as ADI(T) on 17.8.90 (Annexure-A1 Copy) in Industries Commissioner's Office, Delhi on the basis of selection through open competition conducted by UPSC. Recruitment Rules for the post of ADI(T) (Annexure-A2) require the post to be filled up through direct recruitment for which essential qualifications prescribed as per RRs are Degree in Engineering/Technology

from a recognised University or equivalent. The next higher post is that of DDI(T) and as per the RRs of 1981, the post of DDI(T) is a selection post and is required to be filled up by promotion failing which by direct recruitment. Promotion was required to be made inter alia from amongst ADI(T) with 5 years regular service in the grade. The qualifications required for the method of direct recruitment were Degree in Engineering/Technology from a recognised University or equivalent.

3. It is not disputed that respondents by order dated 27.3.95 (Annexure-A4) promoted S/Shri T.P.Singh, R-6 O.P.Sachdeva and R-7 A.K.Madan to the post of DDIs(T) on purely emergent and adhoc basis for a period of 6 months or till regular arrangement was made whichever was earlier. Applicant states in the OA that he has no grievance in regard to adhoc promotion of Shri T.P. Singh as DDI(T) vide order 27.3.95 as Shri Singh was senior to him in the seniority list of DDIs issued on 01.1.92 but he states that he is aggrieved by promotion of Shri O.P.Sachdeva-R6 and Shri A.K.Madan R-7 as DDIs(T) vide order dated 27.3.95 on the ground that Shri O.P. Sachdeva was a non-graduate Diploma Holder and had not possessed Degree in Engineering/Technology for the post of ADI(T) as prescribed in the RRs, and similarly Shri A.K. Madan was appointed against the post of ADI(Enforcement) in 1989 which was created on temporary basis in 1982 for Quality Marking Scheme of domestic Electrical appliances which was later made permanent and the department had never framed any recruitment rules for the said posts.

4. In this connection R-6 Shri O.P.Sachdeva had filed an OA in the Tribunal in early 1992 for providing promotional avenues to him for his post of ADI(Electrical) and in reply

24

to the said OA, respondents had taken a plea that a proposal was sent for amending the RRs for the post of DDI(T) for providing promotional avenues for ADIs (Electrical & Enforcement) and once the said proposal for amendment was approved by the UPSC, a common seniority list of ADIs (Technical, Electrical & Enforcement) and Agricultural Engineer who had been redesignated as ADI, had been drawn up and the inter se seniority had been settled. Applicant states that the Tribunal disposed of the said OA vide order dated 2.4.93 (Annexure-A5) with a direction to official respondent No.1 i.e. Delhi Administration to pursue the matter, as averred by them in para 3 of their reply, preferably within 6 months from the date of receipt of a copy of the order but as a matter of fact no such proposal was pending before the UPSC at that time. Applicant contends that it was by taking the shelter of Tribunal's orders that the respondents sought the approval of various authorities and moved the proposal to UPSC for amendment of RRs of DDI(T) which might have not gone through for the basic reason that Class I gazetted post could not be filled up by a non-graduate. Applicant further states that when he came to know that the department had moved a proposal for amendment of the RRs for DDI(T) by lowering down the requirement of essential qualification from a degree in Engineering/Technology to that of Diploma in Engineering, applicant alongwith other ADIs(T) represented on 15.4.94 (Annexure-A6). Applicant further states that while the proposal for amending the RRs for the post of DDI(T) was still under process, respondents gave adhoc promotions/appointments to S/Shri T.P.Singh, O.P.Sachdeva and A.K. Madan vide order dated 27.3.95 (Annexure-A4) against the post of DDI(T) which had fallen vacant between the period

1992-94 but inspite of having become eligible for promotion to the post of DDI(T) on 24.7.95 he was not promoted against one of the three posts of DDI(T) against which S/Shri T.P.Singh, O.P.Sachdeva and A.K.Madan were promoted on adhoc basis.

5. Meanwhile applicant states that recruitment rules for the post of DDI(T) were replaced by amended RRs notified under Article 309 of Constitution of India on 29.5.97 (Annexure-A10) according to which 7 years regular service in the grade of ADIs has been made a required eligibility qualification for promotion to the post of DDI(T). It is stated that other modifications have also been made, and the department is now regularising the appointments of S/Shri O.P.Sachdeva and A.K.Madan as DDI(T) on the basis of amended rules compelling applicant to file the present OA.

6. Respondents in their reply challenge the OA. Apart from raising the preliminary objection of limitation, the OA has also been challenged on merits. It is contended that post of DDI fell vacant during the years 1992 and 1994 but applicant was not eligible for the said post because as per his own averment he became eligible only on 24.7.95. By that time a proposal had already been app-roved by the Govt. for amendment in the RRs for the post of DDI. It is stated that S/Shri T.P.Singh, O.P.Sachdeva and A.K.Madan were promoted as DDI(T) on adhoc basis keeping in view the concurrence of Govt. for amendment of RRs. In this connection it is stated that UPSC had given their concurrence vide letter dated 25.7.95 suggesting certain modifications in RRs. The said letter of UPSC was received on 27.7.95 and while modifications were being considered by the Govt. of NCT of Delhi, Govt. of India in March, 1996 had also revised

the pay scale of Gr.I(DASS) from 1640-2900 to 2000-3200.

The officers of Gr.I(DASS) were also appointed as ADI by services department as they were members of organised cadre. In the light of changed situation, the proposed amendments were re-examined and thereafter the amended RRs were finally notified on 29.5.97 under which ADIs with 7 years' regular service were to be considered eligible for promotion to the higher post of DDI(T).

As on 27.3.95 applicant was not eligible even for adhoc promotion as DDI as he had not completed the requisite number of years as ADI as prescribed in the RRs, he was not promoted. It is stated that applicant became eligible for consideration for promotion on 24.7.97 and after having completed 7 years' regular service as ADI, a proposal for consideration for promotion as DDI(T) of applicant along with other ADIs was sent to UPSC. It is stated that in OA No.2693/92 decided on 2.4.93 by CAT PB, respondents were bound to pursue the proposal for amendment in RRs to make the post of ADIs as feeder post for promotion to the post of DDI(T), and in compliance of said commitment in CAT, a comprehensive proposal was sent to UPSC on 30.1.95 for grant of concurrence to the proposal for making the post of ADI(Elec) and ADI(Enfor) as feeder post for promotion to the post of DDI(T) with a view to open promotional avenues to them also along with officers working as ADI(T).

7. Applicant had filed rejoinder in which he has challenged respondents' assertion contained in their reply and reiterated his own.

8. We have heard both parties.

9. Applicant's cause of action for promotion in accordance with 1991 RRs, before they were amended vide notification dated 29.5.97, arose on 27.3.95 when

(27)

S/ Shri T.P. Singh, O.P. Sachdeva and A.K. Madan were promoted as DDI(T) on adhoc basis and again on 17.8.95 when he completed 5 years of regular service as ADI(T). He represented for the first time on 27.8.96 for promotion to the post of DDI(T), and even if we count the period of limitation to run from that date i.e. 27.8.96 and not from earlier dates i.e. 27.3.95 or 17.8.95, the present OA filed on 1.4.98 is squarely hit by limitation under section 21 AT Act. The Hon'ble Supreme Court in S.S. Rathore Vs. State of M.P. AIR 1990 SC 104 held that repeated unsuccessful representations not provided by law do not enlarge the period of limitation, which has to be taken to run from the date the cause of action initially arises. Under the circumstance, the representations filed by applicant after 27.8.96 do not extend the period of limitation. Indeed we find that applicant had challenged respondents' proposal to amend the RRs even earlier i.e. on 15.4.94 (Annexure-A6) and if applicant's cause of action is deemed to run from that date, the present OA filed on 1.4.98 would be even more severally hit by limitation.

10. In the present case, we find that no explanation has been given by applicant for delay in approaching the Tribunal and indeed there is not a prayer for condoning the delay. In State of Karnataka & Ors. Vs. S.M. Kottrayya & Ors 1996 SCC(L & S) 1488 the Hon'ble Supreme Court held that the Tribunal was wholly unjustified in condoning the delay in the absence of any explanation under sub-sections (1) and (2) of Sec.21 AT Act as to why those applicants could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-sections (1) and (2).

A

28

11. In P.K.Ramchandran Vs. State of Kerala & Ors.

JT 1998(7) SC 21, the Hon'ble Supreme Court has held that the Law of Limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was thus neither proper nor judicious, and the order condoning the delay could not be sustained.

12. That apart when we examined applicant's claim on merits we found considerable force in respondents' contention that in the background of Tribunal's order dated 2.4.94 in OA No.2693/92 they were bound to pursue the proposal for amendment in RRs. Nothing has been shown to us to establish that the aforesaid order dated 2.4.93 has been modified, stayed or set aside and under the circumstance when the amendment to the RRs were under active consideration of respondents, they cannot be faulted for continuing the adhoc arrangement made earlier till the RRs were finally amended and taking up steps to fill up the post on regular basis in the light of the amended RRs.

13. During the course of hearing, applicant's counsel Shri G.D.Gupta relied upon certain rulings including N.T.Devin Katti & Ors Vs. Karnataka Public Service Commission & Anr. 1990(3) SCC 157; Union of India & Ors. Vs. T.R.Mohanty & Ors. 1994(5) SCC 450 and C.P.Gupta Vs. UOI & Ors. 1987(4) ATC 487 but none of these rulings specifically assist applicant in surmounting the bar of limitation raised by Section 21 AT Act as discussed above but those rulings were handed down in particular facts and circumstances of those cases and in the light

(29)

of the foregoing discussion do not advance applicant's claim in the particular facts and circumstances of the present case.

14. The OA is therefore dismissed. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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