

Central Administrative Tribunal
Principal Bench

O.A.No.824/98

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 19/2 day of February, 1999

Shri J.S.Kain
s/o Shri Garib Singh
Extra Assistant Director/Assistant
Engineer, Central Water Commission
New Delhi.
r/o 2/2 B DIZ Area, Gole Market
Sector-2
New Delhi. ... Applicant

(By Shri K.L.Bhandula, Advocate)

Vs.

1. Union of India through
Secretary to the Govt. of India
M/o Water Resources
Shram Shakti Bhavan
New Delhi - 110 002.
2. The Chairman
Central Water Commission
Sewa Bhawan
R.K.Puram
New Delhi. ... Respondents

(By Shri R.P.Aggarwal, Advocate)

O R D E R

The applicant is aggrieved by the OM dated 27.1.1998 issued by the Central Water Commission whereby the decision on reconsideration of his representation against the adverse remarks against him recorded in his ACR for the period 1.4.1990 to 19.11.1990 has been conveyed.

2. The applicant who was working as Extra Assistant Director/Assistant Engineer was by letter dated 10.7.1991 conveyed certain adverse remarks recorded in his ACR for the period 1.4.1990 to 19.11.1990. He was also informed that he could make only one representation against the adverse remarks. The applicant had filed a

representation dated 7.8.1991 which was rejected by OM dated 11.9.1991. He made certain further representations in 1993 and 1994. He also filed an OA No.2248/97 in respect of expunction of these remarks and the denial of the promotion to him as Assistant Engineer but states that realising that without the expunction of the remarks he could not get the promotion he filed the OA. Various grounds have been adduced by the applicant, which need not be gone into since I find that the OA is liable to be dismissed both on the ground of limitation as well as resjudicata.

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3. The applicant in fact filed two earlier OAs, namely, 367/97 and 2248/97. In the first OA filed on 14.2.1997 he pointed out that he had given a legal notice, Annexure A6 to that OA, dated 28.12.1995 in which he had asked that Departmental Promotion Committee may not be held till the report for the period ending 31.3.1996 was recorded or till a special report was called for so that his adverse report for the period 1.4.1990 to 19.11.1990 was excluded from consideration. The said OA was disposed of by an order dated 18.2.1997 with the directions to the respondents to dispose of the aforesaid representation in accordance with law and further that any DPC proceedings shall be subject to the order to be passed by the respondents on merits of his representations. In other words, the main plea of the applicant in this OA was that the DPC should have his latest ACRs as this will exclude the consideration of his adverse ACR of 1990.

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4. In OA 2248/97 the applicant impugned the select list issued by the respondents vide order dated 18.2.1997 on the basis of the DPC proceedings as the same did not contain the name of the applicant. By way of relief, he asked for quashing of the select list or in the alternative sought a direction to the select committee to reconsider the matter on the footing that adverse remarks in the year 1990 recorded were non-existent in the eyes of law, being not wholly adverse and unwarranted. This OA was however dismissed as withdrawn. Neither any liberty was sought nor granted to the applicant to reagitate the grievances which had been taken in the OA.

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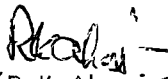
5. The learned counsel for the applicant argued before me that the earlier two OAs referred to above related to the question of promotion, and not to the question of the adverse entries in his ACR of 1990. For this reason he argued that the present OA did not suffer from the vice of resjudicata. I find this argument to be unacceptable. As already pointed out the applicant had sought an alternative relief in OA 2248/97 that the DPC should proceed on the basis that adverse remarks of 1990 were non-existent as the remarks therein were unwarranted. However, the OA was dismissed as withdrawn. The issue of the adverse entries was very much a part of the pleadings and of the relief sought for by the applicant. Hence the learned counsel for the applicant's argument that the question of promotion was distinct from the question of adverse ACRs does not stand scrutiny.

Q.

6. I find that OA also suffers from limitation. The learned counsel for the applicant sought to make out that the OM, Annexure A1, 1998 gave the applicant a fresh cause of action. He was however unable to show under which rule an appeal to reconsider the earlier representation could be filed and considered. It has been held by the Supreme Court in S.S.Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10 that unsuccessful representations not provided by law do not enlarge the period of limitation. Therefore any representation filed after the disposal of the statutory representation or representations, have no relevance in regard to the limitation. The representation provided by rules had been rejected as far back as on 11.9.1991 and the present OA was filed on 16.4.1998.

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7. In the light of the above discussion, I find that OA is liable to be dismissed both on the ground of resjudicata and limitation.


(R.K. Ahooja)
Member (A)

/rao/