

Central Administrative Tribunal
Principal Bench
New Delhi

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O.A. No. 1686/95

Decided on 30.8.1999

... Applicant

(By Advocate: Shri D.S.Garg)

Versus

Union of India & Ors. ... Respondents

(By Advocate: Shri Rajinder Pandita)

CORAM

HON'BLE MR. JUSTICE R.G. VAIDYANATHA, VICE CHAIRMAN
HON'BLE MR. J.L. NEGI, MEMBER (A)

1. To be referred to the Reporter or Not? Yes ✓
2. Whether to be circulated to other outlying Benches of the Tribunal or not? No

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A.NO.1686/95

New Delhi, this the 30st day of August, 1999.

HON'BLE MR. JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN (J)
HON'BLE MR. J.L.NEGI, MEMBER (A)

Sh. N.C.Verma (Ex-Suprintendent,
Dept. of Social Welfare, Govt. of
Delhi), s/o Late Sh. B.P.Verma, R/O
298, RPS Flats, Madangir, New Delhi -
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-----Applicant.

(By Advocate :Mr.D.S.Garg)

VERSUS

1. The Chief Secretary, Govt. of Delhi, 5, Alipur Road, Delhi - 54.
2. The Secretary-cum-Director of Social Welfare, Govt. of Delhi, Canning Lane, K.G.Marg, New Delhi - 1.
3. Lt. Governor, Govt. of Delhi, Raj Niwas, Delhi.

-----Respondents.

(By Advocate :Mr.Rajinder Pandita)

O R D E R (ORAL)

By Hon'ble Mr.Justice R.G.Vaidyanatha, VC (J):

4 This is an application under Section 19 of the Administrative Tribunal Act filed by the applicant. Respondents have filed thier counter. We have heard Mr. D.S.Garg, counsel for applicant and Mr.Rajinder Pandita, counsel for respondents.

2. Fue facts, which are necessary for disposal of the application, are as follows:-

The applicant had been promoted as Welfare Officer Grade II (equilivant to Suprintendent) in the Deptt. of Social Welfare, Govt. of Delhi, on adhoc

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basis in 1982. In 1991, the question of regularisation of the adhoc promotions were taken, but six officers came to be regularised as per orders dated 22.3.91 without including the name of the applicant. Those officers who were regularised as per orders dated 22.3.91, were juniors to the applicant. The applicant made representation seeking retrospective promotion with effect from his juniors got promotion, but with no success. It is also the applicant's case that subsequently in 1994 by order dated 7.1.94 seven officers including four officers, who were juniors to the applicant, came to be further promoted as Senior Superintendent and the applicant's case was not considered. The grievance of the applicant is that his case was not considered for the regularisation of adhoc promotion and again for further promotion on the ground that vigilance clearance was not available. The applicant is not responsible, if there was administrative delay in obtaining the vigilance clearance. The applicant should have been regularised retrospectively from 1982 as Welfare Officer Grade-II and he should have been further promoted in 1994 when some of the juniors came to be promoted as Sr. Superintendent. Though, the applicant made number of representations but there was no reply to this by the Department. Then, the applicant refers to internal department correspondence dated 7.12.94. The applicant retired from service on 31.5.95 after attaining the age of superannuation. Now, he has come to know that vigilance department has given clearance; then, he made one more representation to the department that he should be given retrospective benefits in view of the

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vigilance clearance. He has also come to know that findings of the DPC in 1994 were kept in sealed cover. Therefore, the applicant has approached this Tribunal and his prayer's in the amended OA are that the respondents should be directed to open the sealed cover adopted by the DPC and give effect to the recommendations of the DPC and to regularise the adhoc promotion of the applicant in class-II w.e.f. 13.7.82 and that applicant should be given further promotion in Class-I w.e.f. 7.1.94 retrospectively with all consequential monetory benefits.

2. Respondents in the reply have taken the stand that the application is not maintainable, since the applicant has not complied with the provisions of the Administrative Tribunals Act. That application is barred by limitation. It is also stated that applicant has not exhausted departmental remedies prior to approaching this Tribunal. It is admitted that the applicant's case was considered for regularisation in the DPC held in 12.3.95 but the name of the applicant could not be considered for want of vigilance clearance. It is also stated that some complaints were pending against the applicant regarding certain irregularities and inflated bills of hair cutting and shaving of inmates. Then the DPC was held on 17.6.94 again for regularisation of adhoc Superintendents including the applicant, but his case could not be considered for want of vigilance clearance. It is also stated that on 17.6.94, the applicant's case for

regularisation was kept in sealed cover. The applicant cannot be considered for further promotion as Chief Supdt. unless the applicant is first regularised in Class-II service. Since, the applicant had not been regularised in the feeder cadre, he was not in the zone of consideration for promotion to the post of Sr. Supdt. That the applicant is not entitled to any other relief prayed for.

3. The short point for consideration is whether the applicant is entitled to retrospective regularisation as Supdt. and retrospective promotion as Sr. Supdt. as claimed in the application.

4. Before going to the merits of the case, we may have to consider some of the legal objections raised on behalf of respondents. One of the contentions is that the applicant has not exhausted departmental remedies as provided under Section 20 of the A.T. Act and, therefore, the application is not maintainable. That the application does not challenge any particular order and that applicant is not stated to be aggrieved by any order of the Govt. and, therefore, no relief can be granted to the applicant. We only say that this technical objection cannot be considered if we peruse the contents of the entire application. We cannot apply the strict rule of pleadings as in Civil Courts. If we go by the grievance of the applicant, he has been superceded by promotion of juniors and, therefore, he has approached this Tribunal. The applicant need not challenge any

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particular order but he is aggrieved by the action of the administration in not giving him promotion. As far as exhausting departmental remedies is concerned, we find that the applicant has made number of representations and it is admitted by the department itself in one of the internal departmental correspondence which is at 20 of the paper book, the very head note of that letter shows as "Representation of Sh. N.C.Verma for regularisation". Therefore, the applicant has been making representations and, therefore, it is not a case whether he rushed to the Tribunal immediately without exhausting departmental remedies.

5. Another serious contention urged by the respondents' counsel is that the applicant's claim is barred by limitation, delay and latches.

In the present case, the applicant is seeking three reliefs, namely, i) regularisation from 1982, ii) regularisation from 1991 and iii) promotion in 1994. After hearing both the sides and considering the law on the point, we have no hesitation to hold that the claim so far first two points are concerned, on the face of it, appears to be barred by limitation, besides suffering from delay and latches.

In fact, the Tribunal in its order dated 13.10.95 itself has made it clear that the Tribunal cannot go into the question of applicant's regularisation from 31.7.82, since, it is beyond the jurisdiction of the Tribunal to go in to the question.

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6. The law is very clear on the point which is referred to in Section 21 of the A.T. Act which clearly provides that this Tribunal cannot go into cause of action which occurred three years prior to the constitution of the Tribunal. Therefore, in view of the earlier order dated 13.10.95 and the in the facts and circumstances of the case, we cannot go into the question whether the applicant should get retrospective regularisation w.e.f. 13.7.82; in fact the Tribunal in the order dated 13.10.95 has clearly ordered that the prayer (ii) cannot be gone into, in this O.A.

7. Now coming to the applicant's prayer regarding retrospective regularisation and promotion, from 1991 is concerned, we find that the present application was filed on 11.9.95. The applicant attained superannuation on 31.5.95. That means 4 years after the cause of action and 4 months after the retirement of the applicant, the applicant has approached this Tribunal claiming regularisation from 1991 and consequent promotion. According to the Section 21 of the AT Act, the period of limitation is one year from the date when cause of action arises. It may be that the applicant was making representations, but the question is whether making repeated representations will save limitation?

8. We have come across a recent judgement of the Hon'ble Supreme Court reported as 1996 SCC (L&S) 205 (Administration of Union Territory of Daman And Diu)

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& Others Vs. R.D. Valand) where Hon'ble the Supreme Court has clearly held that making successive representations is of no consequence to consider the question of limitation. That was also a case where an official had approached this Tribunal for getting promotion. The Tribunal had allowed the application and gave direction to the administration to consider the case of the applicant for promotion and grant all consequential reliefs. Hon'ble Supreme Court on appeal, reversed the order of the Tribunal and clearly mentioned that repeated representations will not save limitation. In fact, in that case, the Tribunal had made observations that since the applicant was making repeated representations, there was no bar limitation and this observation was not approved by the Apex Court.

9. Counsel for the respondents invited our attention to the case of S.S. Rathore Vs. State of Madhya Pradesh reported as 1990 SC 10 where the Apex Court has observed that the cause of action arose as soon as there is a statutory order in disposing of the appeal and the limitation will begin to run and it will not stop merely because a representation is sent to a higher officer or higher authority.

10. Counsel for applicant invited our attention to the decision of the Apex Court in the case of State of Madhya Pradesh Vs. Bani Singh & Anr. reported as AIR 1990 SC 1308 where the Tribunal had gone into the question in detail and considered the

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applicant's representations, therefore, it is a fit case for condoning the delay and in such a case, Hon'ble Supreme Court has observed that it is not a case of interference with the order of the Tribunal.

In our view, the applicant cannot now set the 'clock back' in respect of 1982 order and 1991 order. The application suffers from delay and latches, besides being barred by limitation.

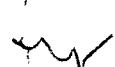
11. Now, we come to the applicant's grievance as far as non-consideration of his claim for regularisation and further promotion in 1994. Admittedly, two DPCs were held on 17.6.94. The applicant's claim for regularisation was not considered since vigilance clearance had not been received. His claim for promotion was kept in sealed cover. The question of applicant's case for regularisation was kept in sealed cover by the DPC, as stated in para 7 of the letter dated 8.5.95 written by the Joint Director to the Deputy Secretary of the Govt. of Delhi (page 20 of the paper book).

12. Now, the question is whether DPC was right in keeping its findings in sealed cover regarding the applicant's case for regularisation. Here, the regularisation is granting the regular promotion to the applicant, when he was admittedly on adhoc promotion. Therefore, it is a case of considering the claim of the applicant for regular promotion which came to be kept in sealed cover. It may be that administration had

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received some complaints against the applicant but no departmental action had been initiated against the applicant by issuing charge sheet. As observed by the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. K.V.Jankiraman & Ors. reported as (1991) 4 SCC 109 where it has been held that sealed cover procedure cannot be adopted unless there was any criminal case pending or any departmental charge sheet is pending against an officer or he was under suspension. Since, in this particular case, above conditions did not apply, the DPC was not right in keeping its findings in a sealed cover regarding regular promotion of the applicant to the post of Supdt. Therefore, the respondents should be directed to open the sealed cover kept by the DPC in the meeting held on 17.6.94 and give effect to the recommendations of the DPC.

13. In case, the DPC finds the applicant fit for regular promotion as Supdt., then subject to seniority and fitness, he should be next considered for the promotion of Sr.Supdt. since, that point has not been considered by the DPC, in view of our finding that the sealed cover should be opened, we feel that the respondents should be directed to consider the case of the applicant for further promotion to the post of Sr.Supdt., subject to his seniority, fitness and suitability as per rules and if he is found suitable by DPC, he may be granted promotion with all benefits according to law.



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14. In the result, the application is partly allowed with the following directions:

i) The respondents are directed to open the sealed cover kept by the DPC in its meeting held on 17.6.94 regarding regularisation / promotion of the applicant to the post of Supdt. and then give effect to the findings of the DPC.

ii) In case, the applicant is found suitable for regular promotion as Supdt., then the review DPC may be arranged to consider the case of applicant for next promotion to the post of Sr.Supdt subject to he is being in zone of consideration and subject to his seniority, suitability and fitness as per rules.

iii) In the circumstances of the case, the respondents are directed to comply with this order of the Tribunal within a period of four months from the date of receipt of a copy of this order. No order as to costs.

JL Negi
(J.L.NEGI)
MEMBER (A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN (J)

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