

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2128/95

199

T.A. No.

DATE OF DECISION 19-11-99

....Petitioner

B.Sateesh Kumar

Sh.Surinder Singh

....Advocate for the
Petitioner(s)

VERSUS

VOI & Ors

....Respondent(s)

....Advocate for the
Respondents.

Sh.S.M.Arif

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The Hon'ble Shri S.R.Adige, Vice Chairman(A)

The Hon'ble Smti Lakshmi Swaminathan, Member(J)

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

Lakshmi Swaminathan
(Smti. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 2128/95

New Delhi this the 19 th day of November, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

B. Sateesh Kumar,
S/o Shri (late) B. Anjnappa,
R/o A-505, Curzon Road Apartment,
K.G. Marg, N.Delhi-1. ... Applicant.

By Advocate Shri Surinder Singh.

Versus

Union of India through

1. The Defence Secretary,
Ministry of Defence,
South Block,
New Delhi-110 001.
2. The Chief Administrative Officer
and Joint Secretary,
Ministry of Defence,
C-II, Hutmants,
Dalhousie Road,
New Delhi-110 011. ... Respondents.

By Advocate Shri S.M. Arif.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 17.9.1993 rejecting his representation dated 14.1.1993 regarding his regular promotion in the grade of Civilian Staff Officer (CSO).

2. The applicant has submitted that he is not satisfied with the aforesaid letter issued by the respondents dated 17.9.1993 as it has been passed without application of mind and giving reasons for rejection of his contentions in terms of the relevant Recruitment Rules. He had submitted another representation on 7.1.1994 to which he has not received any reply and hence this O.A. The applicant has also filed MA 2757/95 praying for condonation

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of delay of about three and a half months taking into account his second representation dated 7.1.1994. The O.A. has been filed on 9.11.1995.

3. The Tribunal while admitting the O.A. on 18.4.1996 had passed the following order:

"The learned counsel for the applicant states that he has filed MA 2757/95 for condonation of delay which has not been listed. We take judicial notice of this and also perused the record".

4. The respondents have filed their reply on 10.1.1996 in which they have taken a preliminary objection that since the applicant's representation against the supersession for promotion to the grade of CSO was disposed of by them by order dated 17.9.1993 and the O.A. has been filed beyond the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'), it is liable to be dismissed on this ground alone. To this, Shri Surinder Singh, learned counsel, has referred to the Tribunal's order dated 18.4.1996 by which he submits that the Tribunal had condoned the delay. We are unable to agree with this contention of the learned counsel for the applicant. The Tribunal had noted that judicial notice of MA 2757/95 has been taken for condonation of delay and has admitted the O.A. on 18.4.1996. In the circumstances of the case, it cannot be stated that the Tribunal had admitted the O.A. after condoning the delay prayed for in MA 2757/95, without considering the settled law that repeated representations do not extend the period of limitation (See the observations of the Supreme Court in S.S.Rathore Vs. State of M.P. (AIR 1990 SC 10) and the statutory provisions of law contained in Section 21 of the Act). The applicant has stated in MA 2757/95 that since his service career is ruined on account

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of the impugned order dated 17.9.1993 he had submitted another representation dated 7.1.1994 and taking this date into account plus the maximum period of one year and six months as provided under Section 21 of the Act he has sought further indulgence of the Tribunal to condone the delay of another three and a half months. Therefore, applying the provisions of law contained in Section 21 of the Act and the law laid down by the Hon'ble Supreme Court in S.S.Rathore's case (*supra*), we find no good ground to allow MA 2757/90 and this O.A. is, therefore, liable to be dismissed on this ground alone.

5. We have also considered the case on merits. According to the applicant, the respondents have not followed the relevant Rules and instructions regarding holding of DPCs where there has been delay. The respondents have contended that under the AFHQ Civil Service Rules, 1968, any person in the grade of ACSO will be considered for promotion to the post of CSO after completion of 8 years service and all persons senior to him in the grade belonging to SC/ST having not less than 4 years approved service in the grade of ACSO will also be considered for promotion. They have also submitted that as no ACSO was eligible for consideration as none had completed 8 years of service from 1984-1985 to 1987-88, no DPCs could be held prior to this period. The first batch of ACSOs with 8 years approved service became available only in 1988. Therefore, the DPCs were held thereafter and considering the situation, for the intervening period ACSOs have been promoted on ad hoc basis. The applicant has contended that the respondents have bunched the vacancies, which allegation has been denied by the respondents.

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6. The applicant who is a SC candidate was recruited in the AFHQ Civil Service as ACSO on the basis of the Civil Services Examination, 1980 and was appointed in the year 1982. The contention of the applicant is that eligible candidates were not available only upto a certain point i.e. upto 1988-89 and according to him when they became eligible, they became eligible for the unfilled vacancies for the years 1984-85 or 1985-86 and so on and the same should be filled from the earliest unfilled vacancies. He has impugned the action of the respondents on the ground that there has been bunching of vacancies as the vacancies should have been accounted for yearwise and the candidates who admittedly became eligible later on should have been adjusted against the vacancies which arose from an earlier date.

7. We note from the reply filed by the respondents that eligible officers became available only after 1988 i.e. from 1989 onwards for consideration for promotion to the post of CSO and the DPC for the year 1984-85 and subsequent years were drawn up. They have submitted that due to revision of seniority list following certain court directions, Select List for regular promotions could not be issued till October, 1992. They have also submitted that the applicant himself had fulfilled the eligibility criteria only in the panel year 1988-89 and the DPC of 1992 had considered his case along with the other eligible officers. The applicant's contention that even though the candidates became eligible only from 1988-89 onwards as they had completed 8 years of service, they should be considered against the unfilled vacancies of earlier years from 1984 onwards cannot, therefore, be accepted as it would be contrary to the provisions of the Recruitment Rules.

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8. The applicant had been considered along with the other eligible persons in the DPC for 1988-89 by virtue of the fact that some of his juniors with 8 years of approved service have been considered for promotion, even though he himself had not completed 8 years of service, in accordance with the provisions of the Recruitment Rules which enabled an ACSO who belongs to the SC/ST category and who has not rendered less than 4 years approved service to be considered, where his junior was to be considered. Therefore, taking into account the facts and circumstances of the case, it cannot be stated that the respondents have in any way violated the provisions of the Recruitment Rules or instructions for holding the DPCs which justifies any interference in the matter.

9. In the result, for the reasons given above, the O.A. fails and is dismissed both on the grounds of limitation as well as on merits. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Adige
(S.R. Adige)
Vice Chairman (A)