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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1880/96

New Delhi, this the 9th day of November, 2000

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)

Hon'ble Sh. Govindan S. Tampi, Member (Admn)

1. Sh. S.N. Sharma of Ordnance Depot
Shakurbasti, Delhi - 110056, and R/o
456/12, Jacobpura, Gurgaon (Haryana)

...Applicant.

(By Advocate : Sh. G.D. Bhandari)

V E R S U S

1. The Union of India through
Secretary, Govt. of India
Ministry of Defence,
New Delhi.

3. Sh. P.N.Luthra
Sr. Foreman, Pt. II, through
O I/C ADC Records
Trimulgherry
Secunderabad

2. Director General Ordnance Services
Army Headquarters,
New Delhi - 110011.

4. Sh. G.P.Tiwari
Sr. Foreman, Pt. II through
O I/C ADC Records
Trimulgherry, Secunderabad

(By Advocate : Sh. S.M.Arif)

...Respondents

O R D E R (ORAL)

Justice V.Rajagopala Reddy,

The applicant is Foreman Gr.II, - Part I cadre. Principal Bench in P.N.Luthra Vs. UOI & Ors. in T-822/1985 (CW-2470/82) of 5-2-87 which directed that Mr. P.N.Luthra, the applicant therein to be promoted to the post of Senior Foreman Part I cadre and that in the seniority lists of Part I and part II should be prepared and eligible Foremen should also be considered for promotion. The present OA is filed seeking the benefit of the above judgment and also as G.P.Tiwari, the applicant's junior has been promoted by an order dated 15-01-91 w.e.f. the date of judgment i.e. 5-2-87. The applicant made a representation against the said order in October, 1991 for his own promotion w.e.f. the date of the judgment, but as the representation/appeal has not been responded to.

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2. The respondents filed a counter in which a preliminary objection was taken that the OA was barred by limitation and the same was, therefore, to be dismissed at the threshold. It is contended by the learned counsel for the respondents Sh. Arif, that as the applicant's junior has been promoted in 1991, the applicant should have approached this Court after waiting for six months only, within a period of one year. The learned counsel for the applicant Sh. Bhandari, however, tries to justify the delay caused by filing the OA in MA No. 1927/96, for condonation of delay. It was stated that the Sr. Foreman of Army Ordnance Corp and Foremen all over India, Northern command Southern command are centrally controlled. Hence, it would not be possible to have information regarding promotion of others until and unless the Seniority List was published, but it was circulated once in 4 years. It is, however, stated that the applicant came to know about the impugned action of the respondents i.e. the promotion of his juniors only in 1991 by co-incidence. Soon, thereafter he made representations in September-October, 1991 and he received reply on 21-10-91. He made an appeal on 28-12-92 before the Secretary to the Govt. of India, Ministry of Defence, and to receive the reply. The appeal was under consideration during 1993-94, but the applicant has not received any communication from the Govt. of India. Thereafter, the applicant filed the present OA. Learned counsel for the applicant Sh. Bhandari contends that there is no wilful negligence are want of bonafides for the applicant. Learned counsel submits that the benefit of the judgment

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should be extended to all the concerned employees who are entitled for the same and the question of limitation cannot be placed against him.

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3. We have given careful consideration to the contentions raised by the learned counsel on either sides. There is no controversy that the OA was not filed within the period of limitation. Hence, it is necessary for the applicant to satisfy the Court whether there are sufficient cause for not making the application within the period of limitation, under Clause 3 of Section 21 of the Administrative Tribunal's Act. If the OA was not filed within the period of limitation, it may still be admitted. If the applicant satisfies that he has sufficient cause for the delay. We have closely perused the reasons given in the MA. It is not also in dispute that the applicant's junior have been promoted in January, 1991, giving the benefit of the judgment in TA No. 822/95 dated 5/2/87. He states that he made an representation after coming to know of the promotion of his juniors, but the representation have been rejected on 21-10-91. On the rejection of his representations, the applicant should have approached the Tribunal within a period of one year. We do not find any provision providing for filing appeal against the order of rejection of the representations. Even taking the date of appeal as the starting point for the applicant should have filed an OA within a period of one year. The applicant has not done so. The applicant seeks to place reliance on the intimation received by him on 29-6-96 from the Department. Even this communication in our view does not make any

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difference as the limitation started in October 1991 when his representation was rejected. Making repeated representations also would not extend the period of limitation. Learned counsel relies upon State of Haryana Vs. Chandramani and Ors. 96 (5) SCC P.75. On the facts of that case, the Supreme Court found that the delay was properly explained. Learned counsel relies upon Shakuntala Devi Jain Vs. Kuntal Kumar & Ors. 1969 (1) SCR P.1006, O.P. Kathpaliya Vs. Lakhmir Singh (Dead) & Ors. 1984 (4) SCC P.66 and State of Karnataka & Anr. Vs. Uppegouda & Ors. 1996 (7) SCALE P. 713 to contend that unless the bonafides of action and negligence has been proved, the delay under Section 5 should be condoned and the case should not be thrown out on the mere question of delay. The facts in this case have to be considered whether the delay was bonafide. The applicant having known about the limitation of filing OA before the Tribunal and having also come to know that his juniors have been promoted in 1991, and even after receiving the order of rejection of his representations. He has chosen not to file the OA.

4. The delay is not few days or few months, a delay of five years have occurred. The judgment of the Tribunal was rendered in 1987, then the delay comes to nearly nine years. Under Section 21 of the Administrative Tribunal's Act. Tribunal should not admit the application unless the OA was filed within the period of limitation. We find no bonafide in waiting about 9 years. The cases cited are not applicable to the present facts.

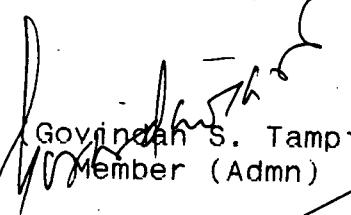
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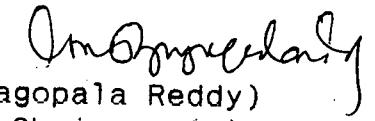
5. Lastly, it is contended that there can be no limitation in applying the benefit of a judgment of the Tribunal in identical matters. But no decision is shown to us in support of this proposition. The Supreme Court in State of Karnataka and Ors. Vs. S.M. Kotrayya and Ors. 1996 (6) SCC P.267 held that the period of limitation should be reckoned from the date of the order passed and not from the date of the judgment.

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6. We are, therefore, of the view that the OA is barred by limitation. The OA is, therefore, dismissed on grounds of delay. In the circumstances, No costs.

7. As directed, ^{earlier} the respondents paid the cost of Rs. 1000/- today to the counsel for the applicant which have been received.


Govindaraj S. Tampi
Member (Admn)


(V. Rajagopala Reddy)
Vice-Chairman (J)


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