

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

REVIEW APPLICATION NO. 196/97 IN  
ORIGINAL APPLICATION NO. 1548 OF 1997

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New Delhi, this the 15<sup>th</sup> day of July, 1998

Sh. R S Gupta, S/O Sh. Ram  
Gobind Gupta, R/O WZ-2007/A, Rani  
Bagh, Shakurbasti, DELHI - 110  
034.

--APPLICANT.

Versus

1. The Controller General of  
Accounts, Govt. of India,  
Ministry of Finance, Deptt.  
of Expenditure, Lok Nayak  
Bhawan, New Delhi.
2. Chief Controller of  
Accounts, Ministry of Urban  
Development & Employment,  
Nirman Bhawan, New Delhi.
3. Controller of Accounts,  
Public Works Department,  
Delhi Administration, Mori  
Gate, Delhi.

--RESPONDENTS.

O R D E R (in circulation)

By Mr. N. Sahu, Member (Admnv) -

The applicant seeks a review of the order dated 14.7.1997 passed in OA 1548/1997 on the ground that the following errors apparent on the face of record are noticed:-

- 1) He contests that <sup>observations that</sup> there was delay in approaching the Tribunal. He states that, although, his representation was rejected by the Disciplinary Authority on 9.1.1992, his appeal was rejected by the Appellate Authority only on 16.1.1997. He says that the order of Disciplinary Authority merged in the order of the Appellate Authority.

(2)

As the OA was filed on 1.7.1997, it was well within time.

- ii) The observations in the order that the post of Assistant Accounts Officer appears to be a selection post is contested by him on the ground that the promotion to the post of Asstt. Accounts Officer is on the basis of "Seniority-cum-fitness" For this purpose, he annexed Recruitment Rules to prove the point. According to the applicant, JOHN CHACKO PADICAL Vs. UNION OF INDIA AND OTHERS (1991) 15 ATC 370 is applicable to his case. In the order sought to be reviewed, John Chacko's was distinguished on the ground that this case was applicable to selection by merit. Since, the applicant's promotion is not selection by merit, it is stated to be an error apparent on the face of the record.

2. We have carefully considered the submissions made and we are of the view that this Review Application has no merit. The applicant has prayed for a declaration that he was entitled to promotion as Asstt. Accounts Officer w.e.f. 24.9.90, the date from which his juniors were promoted. He also prayed for a declaration to treat the adverse remarks in the applicants' CR from 20.5.88 to 31.12.88 as invalid.

*[Signature]*

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3. By a Memorandum dated 29.6.1989 adverse remarks for the period from 20.5.1988 to 31.12.1988 were communicated to the applicant. After considering his representation dated 1.8.1989 for expunction of the said adverse remarks, his representation was rejected by a Memorandum dated 8.6.1993. The applicant filed the OA on 1.7.1997 against these adverse remarks ~~is invalid and illegal~~. This is clearly barred by limitation under Section 21 of Administrative Tribunal's Act, 1985. There was also no application for Condonation of Delay. Therefore, there is no error in the impugned order dated 14.7.97. With regard to his prayer for promotion, he states that the appellate order was passed on 16.1.97. Here again, there is a fallacy. The applicant refers to the appeal under Rule 23 (iv) of the C.C.S. (CCA) Rules, 1965 against supersession in the matter of promotion. According to the rule 25 of C.C.S (CCA) Rules, 1965 "no appeal shall be entertained unless such appeal is preferred within a period of 45 days from the date on which a copy of the order appealed against is delivered to the appellant." The appellate order also states that the applicant's appeal filed on 24.10.95 is "extremely belated" and "the reasons for delay are not convincing." It is settled law that where the applicant has totally neglected or omitted to avail of his departmental remedy and has allowed that remedy to become time barred according to the period prescribed, therefor, under the service rules, he is deemed to have acquiesced in the order adverse to him. Therefore, he cannot approach the Tribunal as this Tribunal has no inherent power to entertain a time barred claim. The applicant cannot rely

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on an Appellate order as the starting point to reckon limitation when the appeal itself was filed late and rejected as not maintainable on the ground of delay.

4. Whether it is a selection post or a post where the consideration was seniority-cum-fitness, the Tribunal has no power ~~to~~ judicial review against the findings of the DPC. In the case of STATE BANK OF INDIA AND ANOTHER Vs. MOHAMMAD MOHIUDDIN [1987 (3) SLJ 161], the Hon'ble Supreme Court held that the Court cannot take the role of a selection committee and reassess the claims for promotion. Even if we accept applicant's plea that the criterion is seniority-cum-suitability, the DPC found him unsuitable because of the adverse remarks. As such remarks have not been challenged, the decision of the DPC to overlook the applicant cannot be questioned. The same conclusion arrived at para 3 of the order would follow even if the selection is on the basis of seniority-cum-fitness.

5. In view of the above discussion, there is no error in the order sought to be reviewed either in law or on facts.

6. Review Application is rejected at the circulation stage.

  
(K M AGARWAL)  
CHAIRMAN

  
(N SAHU)  
MEMBER (A)