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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 2072 of 1994

New Delhi, this the 21st day of Sept., 1995.

Hon'ble Mr B.K. Singh, Member(A)

Shri G.K. Gaur,
working as Dy. Stores & Purchase Officer
in the Central Building Research Institute,
Roorkee(UP). .. . Applicant.

(through Mr K.N. Bahugana, Advocate).

vs.

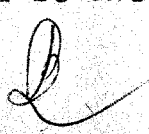
1. Council of Scientific &
Industrial Research
'Anusandhan Bhawan'
Rafi Marg, New Delhi.
2. The Director,
Central Building Research Institute
Roorkee(UP). .. . Respondents.
(through Mrs Sheila Seth, Advocate).

Order

Hon'ble Mr B.K. Singh, Member(A)

This application No.2072 of 1994 is directed against non-counting of the adhoc officiating service of the applicant from 1.2.1986 to 31.3.1990.

The admitted facts are that the applicant was given officiating promotion to the post of Dy. Stores & Purchase Officer in the scale of Rs.2000-3500 w.e.f.27.1.1987 and prior to that he had been promoted on officiating basis as Stores Purchase Assistant in the pre-revised pay-scale of Rs.550-900. He was promoted as Stores & Purchase Grade-III w.e.f.1.2.1986. Annexure A-2 is the Office Memorandum dated 23.4.1986



whereby the applicant was promoted as Stores and Purchase Assistant Grade-IV from the post of Stores & Purchase Assistant(Grade-V) in the scale of Rs.550-900 w.e.f.1.2.1986 in place of Shri R.K.Nair on his retirement. The memorandum states in the last para that the appointment of Shri Gaur was temporary and terminable at any time without notice and without assigning any reasons and that he will have no right or claim for his regular absorption against the said post. Annexure A-4 indicates that after cadre review, the Director, NIO granted him adhoc officiating appointment as S.P.O(Grade-III) w.e.f.17.8.1987 in the revised pay scale of Rs.2000-3500 against the post vacated by Shri R.K.Nair, S.P.O.(Gd.III) on his retirement. The last para again categorically states that the adhoc appointment is temporary and terminable at any time without notice and without assigning any reason and that he will have no right or claim for his regular absorption against the said post. The rules of promotion were issued by the Council of Scientific & Industrial Research on 17.5.1989. The governing body of C.S.I.R. approved the provision of sub-rule 4(ii) relating to filling up of 1/3rd of the posts of Deputy Stores & Purchase Officer in the scale of Rs.2000-3500 and by promotion on seniority-cum-fitness basis instead by limited departmental Competitive Examination. The provision was modified so that the vacancies against this quota may be filled up on the basis of seniority-cum-fitness as per sub-rule (iv)(i) as a one-time exception. After this one-time relaxation O.M. dated 11.12.1990 No.33(84)9/90-E.I. was issued and from the cadre of

Stores & Purchase Assistant, confirmation of officers were made as Deputy Stores and Purchase Officer in the scale of Rs. 2000-3500 in the National Labs./Instts. as mentioned against each from the panel notified vide O.M. No. 33(77)88-E.I dated 28.11.1990. This was a regular promotion after a panel was duly approved by a D.P.C. on 28.11.1990 and it lays down that the pay fixation of the officer contained in this panel would be fixed under the normal rules and it further lays down that the promotees will be on probation for a period of one year from the date of taking over the charge of the post.

The applicant has not challenged the letter dated 11.12.1990 where he was regularly promoted as Deputy Stores & Purchase Officer alongwith six others and these orders were given effect from 1.4.1990.

This application was filed on 21.9.1994 without any application for condonation of delay.

The cause of action arose to the applicant on 11.12.1990 and the application was filed on 21.9.1994, as stated above. This Tribunal is limited vested with the power for condonation of delay under Section 21 of the Central Tribunals Act, 1985 which clearly lays down that the period of limitation will start from the date the cause of action arose if no appeal or representation has been filed and if an appeal or representation has been filed, it will be after 1½ years, if the appeal/representation is pending and is not disposed of.

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Thus, the statutory period of 1½ years will be counted from 11th December, 1990 and this letter is nowhere challenged. The applicant should have approached the Tribunal for relief of declaration for counting his adhoc service latest by 10th June, 1992. The law has been laid down on the subject by the Hon'ble Supreme Court in S. S. Rathore vs. State of M.P. AIR 1990 SC 10. It lays down that the cause of action shall be taken to arise on the date of the order of the higher authority disposing of the appeal or representation and where no such order is made within six months after making such appeal or representation, the cause of action would arise from the date of expiry of six months. Repeated unsuccessful representations, not supported by law do not enlarge the period of limitation. It was further held that repeated representations and memorials to the President etc. do not extend the period of limitation. The similar view was re-iterated in State of Punjab vs. Gurdev Singh, 1991(4) SCC 1. It lays down that the party aggrieved by an order has to approach the Court for relief of declaration within the statutory time limit prescribed under the Act since after the expiry of the statutory time limit the Court cannot give the declaration sought for. In JT 1993(3) SC 418, Union of India vs. Rattam Chandra Samanta, the Hon'ble Supreme Court set aside the judgment of the CAT Bombay Bench on the ground of delay and laches. It laid down the law that the delay deprives a person of his remedy and if remedy is lost, the right is also lost. Thus, this application is badly hit by delay and laches.

On merits also, the applicant has no case.

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The rules were modified by the governing body of SCIR (Annexure A-5), as one time exception for filling up 1/3rd of the posts of Dy. Stores and Purchase Officer ^{which} ~~were~~ to be filled up on the basis of Departmental Competitive Examination by promotion on the basis of seniority-cum-fitness and and this is only after the amendment of the Rules in 1989 as one time exception that regular promotion against 1/3rd quota reserved for Departmental Competitive Examination was allowed to be filled up by constituting a D.P.C. and making a panel on 28th November, 1990 and declaring these seven persons fit for promotion. The very fact that they were kept on probation for ^{one} year after these regular promotions clearly indicates that their past services were not to be counted and these adhoc promotions were shown to be purely temporary and were liable to be terminated at any time without any notice and without assigning any reason to the applicant to claim absorption against the post either of Assistant (Grade-IV) or Dy. Stores and Purchase Officer. This would be evident from the annexure filed by the applicant himself at Annexure A-2 and Annexure A-4. Thus, these adhoc appointments were purely temporary, terminable without assigning any reason and without giving any right to the applicant to claim ^{absorption} against the post from those dates. The regular promotion came only after the amendment of Rule 4(ii) and high-jacking the 1/3rd quota reserved for being filled up by Departmental Competitive Examination to the quota of promotion on the basis of seniority-cum-fitness and after empanelment they were declared to be on probation for a period of one year. As held by the Hon'ble Supreme Court in K.C. Joshi's case ~~that~~

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that such fortituous adhoc promotions do not count for seniority and as such the applicant, on merits also has no claim. The application thus fails and is dismissed on the ground of delay and laches and on merits also but without any order as to costs.

/sds/

(B. K. Singh)
Member (A)