

Central Administrative Tribunal  
Principal Bench

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O.A. No. 2012/94

New Delhi, this the 2nd Day of May, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)  
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Dy. Syed Zuhair Ahmed Zaidi  
(Pen Name: Dr. Ranjan Zaidi)  
son of Dr. Afaq Ali Zaidi,  
R/o A-1/242-A, Lawrence Road,  
Delhi- 110 035.

Applicant

(By Shri S.C. Sharma, Advocate)

Versus

Union of India through

1. The Secretary,  
Deptt. of Women and Child Development,  
Ministry of Human Resource Development,  
Shastri Bhawan,  
New Delhi.
2. Central Social Welfare Board through  
its Chairman / Chairperson,  
Samaj Kalyan Bhawan,  
B-12, Tara Crescent Road,  
Institutional Area,  
New Delhi- 110 016.
3. Executive Committee through its  
Chairman/Chairperson,  
Central Social Welfare Board,  
Samaj Kalyan Bhawan,  
B-12, Tara Crescent Road,  
Institutional Area,  
New Delhi- 110 016.
4. Shri Nanak Chand s/o Late Sh. Shambhu Dayal,  
R/o B-25, Tagore Road,  
Adarsh Nagar,  
Delhi- 110 033.

Respondents

(By Shri P.H. Ramchandani, Advocate)

JUDGEMENT (ORAL)  
(delivered by Hon'ble Mr. J.P. Sharma, Member (J))

The applicant has filed this application under section  
19 of the A.T. Act, 1985 on 30.9.1994 aggrieved by the

appointment of respondent No. 4 Shri Nanak Chand as Editor, Samaj Kalyan w.e.f. 23rd October, 1991 in the office of Central Social Welfare Board, New Delhi. He is further aggrieved by his non-selection to the post for which he was also an applicant and was interviewed and placed at No. 2 of the panel but was offered the post of Assistant Editor in the same Department, a lower post, while as per averments in the application the selection of respondent no. 4 is dehors the recruitment rules.

A notice was issued to the respondents to file their reply and both official respondents as well as respondent no. 4 have filed their separate reply contesting the claim of the applicant and also taking preliminary objections that the application is barred by limitation as well as by non-exhaustion of departmental remedy. On merit, it is stated that respondent no. 4 who had earlier been an employee with the respondent No. 2 has been discharging certain functions with the respondents and that he was found eligible for the said post having five years of experience of journalism. The applicant too did not deny the post-graduation degree in Hindi of respondent no. 4.

The applicant has filed the rejoinder to both the counters filed by the contesting respondents.

We have heard the learned counsel Shri S.C. Sharma for the applicant at length. We have also heard the counsel Shri P.H. Ramchandani for the official respondents. None is present on behalf of the respondent No. 4. Since the pleadings of the respondent no. 4 is on record, we have perused the same.

The contention of the learned counsel for the applicant is that in para No. 4.13, the posts held by respondent no. 4 have been detailed as Translator from January 1980 to December, 1985, as Production Assistant from January, 1986 to September, 1987 and that of the Assistant- Grade-I from September, 1987 to April, 1989.

The post of the Editor alongwith the post of Assistant Editor were advertised in September, 1989. The eligibility conditions for the post, as said above, the post-graduation in Hindi with five years experience in journalism are the essential qualifications. According to the learned counsel for the applicant that respondent No. 4 was a departmental candidate cannot be said to have attained the experience of journalism by the performance of the

duties he has been discharging from the year 1980 till April, 1989. The learned counsel for the applicant also referred to the case of P.K. Ramchandra Iyer V/s UOI reported in AIR 1984 SC page 541 in which a selection where one who was ranked as number 1 was found ineligible, that the petitioner who was at serial number 2 was offered the appointment. We will discuss this point at a later stage. Firstly we are coming to the point of limitation.

Section 21 of the A.T. Act, 1985 lays down one year period for assailing the order. The cause of action in favour of the applicant arose when respondent no. 4 was given appointment as Editor, Samaj Kalyan on 23.10.1991. The applicant was offered an appointment to the post of Assistant Editor which he accepted. If the applicant was aggrieved by non-selection or when a person not eligible as per the recruitment rules/advertisement has been selected, he should have come for judicial review of his grievance within one year and if he desired to make a departmental representation he should have come <sup>in</sup> one years and six months thereafter. The applicant did not exhaust any departmental remedy as said above. The limitation period was, therefore,

expired after the empanelment at serial number 1 and subsequent appointment of respondent no. 4 in October, 1992.

This application is said to have been filed on 30th Sept., 1994 and there is no miscellaneous application for condonation of delay in filing this application, oral or

written. Thus the present application is hopelessly barred

by time. During the course when the judgement was being

dictated, the learned counsel for the applicant pointed

out that he has to make certain more averments on the

point of limitation. The learned counsel has taken us

to the aspects of section 20 & 21, and highlighted the

fact that since there was no final order such as

is mentioned in section 20, so, the case of the applicant would not be covered by prescribed period of limitation.

We do not accept this contention at all. The word 'such as'

in section 21 only deals a final order while in the

case of the applicant, the panel was finally declared and

the appointment was offered to the respondent no. 4 on

23rd October, 1991. Infact the applicant himself is

challenging that order of appointment in this application

while he was offered the appointment of Assistant Editor

on 24th October, 1991. The cause of action has once

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12

arisen, the limitation starts and will continue for prescribed period of limitation. Thereafter, if any judicial review sought that shall be hit by limitation and can, in suitable cases, be condoned, under the provisions of sub-clause 3 of Section 21 of the A.T. Act, 1985. Thus after re-hearing the counsel for the applicant we re-iterate the view taken by us that the application is barred by limitation. The learned counsel for the applicant also pointed out, when the judgement was to close, that the knowledge was obtained by the applicant when he was functioning as Assistant Editor, from certain documents. This cannot be said to be a knowledge but is only knowing something which was already known. The applicant as Assistant Editor already knew that this respondent no. 4 has been appointed as Editor and he wanted to challenge his appointment on the ground of ineligibility. In view of this, it is not a case where the applicant, for the first time, got knowledge by finding certain papers when the applicant has accepted the appointment as Assistant Editor, he is estopped to

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challenge the appointment of respondent No. 4 as Editor who has been selected in the same selection by virtue of an advertisement for both posts together.

However, since we have heard the learned counsel on merit also, We are not going to dispose of this application on limitation alone. The contention of the learned counsel for the applicant is that because of averments made in para 4.13 of the original application which have been partially admitted in the counter filed by the official respondents in the similar paragraph, the respondents have conceded that the respondent no. 4 has not discharged any such duties since 1980 to 1989 to be taken as experience of journalism. There cannot be two <sup>opinion</sup> / about this, but the admission made in the corresponding para 4.13 of the counter is not with regard to any misrepresentation by respondent no. 4 practiced upon the respondent no. 2. Now, analysing the qualification as regards the experience the learned counsel referred to the definition of journalism under the working journalist Act. Journalism is a wide subject. The duty, respondent no. 4 was discharging cannot be said to be properly categorised as inherent in the profession of journalism but they were

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17

in aid to the journalism itself. The respondent no. 4 was Production Assistant and was editing certain papers and was also writing articles. He was also doing the translation work. Designation does not matter but the work performed, which matters. It is for the employer i.e. respondent no. 2 to judge as to what amounted to in aid of journalism. In any case, we find that the respondent no. 4 was also appointed as Assistant Editor in April, 1989 and he continues to be Assistant Editor till 23rd October, 1991 thereafter he is continued as Editor and he is Editor till today. If for the sake of arguments we accept that respondent no. 4 was not having experience, which is not a fact, as the Selection Body has opined that he had five years of journalism experience, even then now he had been working admittedly for more than five years in sphere of journalism it would not be logical in an application barred by time to interfere in the appointment of a person as Editor, as the respondent no. 4 is.

In view of the above facts and circumstances, we find no merit in the application and the same is dismissed leaving the parties to bear their own costs.

(B.K. SINGH)  
MEMBER (A)

(J.P. SHARMA)  
MEMBER (J)

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