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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

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O.A.331 of 1989

Dated New Delhi, this the 5th day of ~~April~~^{May}, 1994

Hon'ble Mr Justice S. K. Dhaon, Vice Chairman(J)

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

Shri Om Prakash Agnihotri
R/o 37A/32-B, Madhu Nagar
Agra-1

Telecom Mechanic (T.No.51)
Equipment Depot Workshop
Electrical & Mechanical Engineering
AGRA

• • • Applicant

By Advocate: Shri B.B. Srivastava

VERSUS

1. Union of India, through
Secretary to the Govt. of India
Ministry of Defence
South Block
NEW DELHI

2. The Director General of E.M.E.
Army Headquarter (EME-Civ.)
D.H.Q. P.O.
NEW DELHI

3. The Commander
Headquarter Technical Group
EME(Est), Delhi Cantt.

• • • Respondents

By Advocate: None present

O R D E R

Shri B. K. Singh, M(A)

This O.A.No.331/89 has been filed under Section 19 of the Administrative Tribunal Act, 1985 along with an application under Section 22 read with Section 21(3) of the Administrative Tribunal Act, 1985, for condonation of delay. This is directed against order No.20201 dated 13.3.87 issued by Commanding Officer, Equipment Depot Workshop, E.M.E., Agra.

2. The material averments in the OA are that the applicant was appointed as Telecom Mechanic in

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lieu of combatants in Equipment Depot Workshop, Electrical and Mechanical Engineering, Agra in 1961 vide letter No.66237/2/EME C.V.3 dated 26.10.79. 80 posts of Telecom Mechanics were sanctioned, out of which, 27 were allotted to Equipment Depot Workshop, E.M.E., Agra. Vide office order Hqrs. E.M.E. (Tech./Group) letter No.20801/SG/EST dated 4.11.84, 5 posts were converted into Selection Grade posts in the scale of Rs.425-640 (pre-revised) for civilian Telecom Mechanics of Equipment Depot Workshop, Agra w.e.f. 1.8.82 which had been continued vide letter of even number dated 21.5.86. Out of these 5 Selection Grade posts, 4 went to the general candidates and the fifth Selection Grade post was given to one Shri Prem Chand Dagore, a SC candidate. Shri Dagore in the combined seniority list, was junior to the applicant. The applicant made representations followed by an appeal dated 5.4.85 to Director General of E.M.E., Army Hqs. (E.M.E.-Civ.), New Delhi.

He was informed as below:

"Please refer to para 10 of this HQ letter of even no. dated 28.10.86 wherein it is clearly stated that the unit controlled civilians employed in lieu of combatants and made permanent/confirmed in terms of Govt. of India letter No.85350/Org.4(civ.)(a)/6161/D(AG) dated 15.10.79 are not entitled to S.G. Appointments. In view of this, question of grant of S.G. post to T.No.51 TCM Shri D.P. Agnihotri (Civilianised TCM) w.e.f. 26th Feb, 1986 as brought out in his application dated 16.9.86 does not arise."

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3. This application was filed in the Tribunal on 27.1.89. Firstly, the hurdle of jurisdiction was crossed by an order of the then Hon'ble Chairman, Mr Amitabh Banerji by transferring it to Principal Bench, New Delhi although Agra fall within the jurisdiction of CAT, Allahabad. on 7.4.89, the application was admitted since the learned counsel for the respondents did not oppose the admission of the OA but the subject matter or limitation was kept open to be argued at the time of final hearing. This would be evident from the Order Sheet dated 7.4.89.

4. The grievance arose on 13.3.87 when the applicant was informed of his disentitlement for Selection Grade post. The reliefs sought by the applicant are:

- (i) to set aside the order of withdrawal of Selection Grade to Telecom Mechanics of E.D.W., Agra;
- (ii) to direct the respondents to allow Selection Grade to the applicant w.e.f. 1.8.82 against the 5th S.G. post in which applicant's junior has wrongly been given the Selection Grade;
- (iii) to grant such and other relief as may be deemed fit in the facts and circumstances of the case, and
- (iv) to award the cost of the application i.e. Counsel's fee, expenses, etc.

5. A notice was issued to the respondents who filed their reply and contested the grant of reliefs prayed for by the applicant.

6. The material averment in the counter reply is that, E.M.E., Agra was allotted five Selection Grade posts vide letter No.20801/SG/Est. dated 4.12.84. It is admitted that four posts were given to seniors and one was given to Shri Prem Chand Dagore against the reserved Vacancy for SC. It is also admitted that Shri Dagore is junior to the applicant. The review of Selection Grade which was due on 1.8.85 could not be finalised upto 31.7.85 as it would be evident from letter No.20801/SG/Est 31.5.86. But the five persons who were given the Selection Grade were provisionally permitted to draw Selection Grade pay till final review was done. On 28.10.86, HQ Gp EME vide their letter No.20801/SG/Est dated 28.10.86 intimated that during review these personnel have not been considered for Selection Grade pay as personnel employed in lieu of combatants are not entitled for the same. As per rules in vogue point No.12.4 (Appointment of Selection Grade) of Chapter 12 of the Brochure on reservation of SC and ST Sixth Edition page-192, Selection Grade constitutes promotion and hence the reservation is applicable at per 40 Point Roster. As regards the reservation to SC/ST in service, it is stipulated that should be given only in the grade where the elements of direct recruitment does not exceed 66.2/3 per cent vide Brochure on reservation for SC/ST in service. While considering



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the case of the applicant, the HQ office clarified that reservation for SC/ST can be made applicable where the direct recruitment is less than 50 per cent, whereas TCMs posts are to be filled up by transfer on 100 per cent basis for Industrial Personnel failing which by direct recruitment. It was further clarified that the contention of the applicant was not correct. HQ Tech Gp EME vide their letter No. 20801/SG/Est. dated 10.9.85 stated that the plea of the applicant that reservation to SC/ST candidates for grant of selection grade can only be made applicable where direct recruitment is less than 50 per cent, is not correct. The stipulation of 50 per cent limit is applicable for fresh appointees and carry forward reservation and not for Selection Grade appointees. In this connection, they also referred to the Department of Personnel and AF OM No.36012/3/78-Estt(SCT) dated 9th Feb '82. Thus, after thorough examination, the representation of the applicant was rejected in the light of the principles laid down in the above OM of Department of Personnel and AF

and the reservation given to TCM, Shri Prem Chand Dagore was treated as correct.

7. The learned counsel for the applicant argued that Selection Grade is not a promotion, and as such, the seniority should be the guiding principle. Even the Selection Grade involves an element of

selection and it also involves roster system as enunciated in the OM of Department of Personnel as stated above. The roster of reservation for SC applies to the fifth post. Thus, though junior, Shri Dagore got promoted taking a march over his senior - the present applicant. Thus, fifth Selection Grade was rightly given to Shri Dagore according to rules in vogue and there is no arbitrariness and discrimination involved. The SRO 233 dated 7.9.82 gives the schedule prescribing the Recruitment Rules for industrial workers. The Corps E.M.E. laid down that the method of recruitment would be 100 per cent by transfer failing which by direct recruitment. Thus, the method of recruitment is 100 per cent by transfer and if it is not possible to fill up the posts by transfer on 100 per cent basis then only direct recruitment will take place. In the rejoinder the facts mentioned in the OA have been reiterated and no documentary evidence has been produced rebutting the contents of the Department of Personnel and AR's OM quoted by the respondents nor has any proof been given to show that Selection Grade is not a promotional post nor is there any specific element that there will be no reservation for SC/ST in case of the five Selection Grade posts sanctioned by the respondents.



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8. Apart from the discussions on merits, the application is hit by limitation. Section 21 of the A.T. Act, 1985 lays down that:

- (1) A Tribunal shall not admit an application,-
 - (a) in a case where a final order such as is mentioned in Clause(a) of Sub-section(2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
 - (b) in a case where an appeal or representation such as is mentioned in clause(b) of Sub-section (2) of Section 20 has been made add a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

However, the Tribunal has the discretion to condone the delay if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. In the application filed for condonation of delay, it has been mentioned that the applicant was not aware of the rules and that he was not in good health and was disturbed due to domestic problems and as such, could not file the application within time. This cannot be treated as a satisfactory explanation for condonation of delay. The order was communicated on 13.3.87 and this order was on his representation / appeal and therefore the period of limitation will run from the date of communication of the order.

In case of S. S. Rathore Vs State of M.P. (1989) 11 ATC



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913(SC) it was held that the right to sue first accrues not when the original adverse order was passed but when that order was finally disposed of by an higher authority on appeal or representation made by the aggrieved employee in exhaustion of statutory remedy and where no such final order is made, the right to sue will start ^{from} _{on} ^B appeal from the expiry of six months from the date of ^B appeal or representation. In the present case, final orders were communicated to the applicant on 13.3.87 and the cause of action arose from that date. If an aggrieved person does not approach the Tribunal within the statutory period, the remedy becomes time-barred. He cannot get a fresh lease of life even by filing repeated or successive representations. This has been clarified in the case of B. S Raghvan Vs Secretary to the Ministry of Defence & Ors. (1987)3 ATC 602 and has been followed in ^{large} number of cases of the Hon'ble Supreme Court. Once a final decision is given by a competent authority, repeated representations cannot extend the period of limitation. This has been held in the case of B. C. Lakshmi Narsimhaiah Vs Chairman Railway Board (1990) ... ATC 137.

9. As mentioned above, the showing of sufficient cause within the meaning of Section 5 of the Limitation Act for not making the application within limitation, is a condition precedent to condonation of delay.

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This has been held in the case P. S. Bansal Vs. U.O.I.

(1988)8 ATC 561 CAT, New Delhi. Laches and delay defeat the remedy and also the right accruing to an aggrieved person. The applicant slept over his right since 13.3.87 and as such it will be deemed that he acquiesced in the matter of denial of Selection Grade to him. A man who sleeps over his right, loses it, goes the popular saying.

10. Thus, the application is dismissed on merits and also on grounds of limitation, with no order as to costs.


(B. K. Singh)
Member (A)


(S. K. Dhaon)
Vice Chairman (J)

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