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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. OA.834/88      Date of decision : 3.1.1989

Shri Ashok Kumar Aggarwal      .. Applicant  
Vs.  
Union of India & others      .. Respondents

**PRESENT :**

Applicant in person  
Mr. M.L. Varma, Advocate for the respondents.

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CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Ashok Kumar Aggarwal, Assistant Engineer in the Office of the Chief Engineer (Vigilance), Central P.W.D., New Delhi against the impugned order No.32/2093/79-EC.III dated 12-8-1987 passed by the Director General of Works, CPWD, New Delhi disallowing crossing of Efficiency Bar by adopting discriminatory attitude as compared to <sup>the</sup> one adopted in favour of another Assistant Engineer, Shri M.C. Agarwal.

2. The ~~brief~~ facts of the case as stated in the application are that the applicant was due to cross the Efficiency Bar on 1-1-1984; <sup>he had</sup> ~~he had~~ already passed the departmental examination in Accounts in 1979 and that the D.G.(W) found him fit to cross the Efficiency Bar with

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effect from 1-1-1985 with no benefit of past service, whereas in the case of another Assistant Engineer, Sri M.C. Agarwal, he was allowed to cross efficiency bar with effect from the <sup>date</sup> due/ with benefit of past service under F.R.25, in spite of the fact that Shri M.C. Agarwal had not earned better confidential reports than the applicant. Shri M.C. Agarwal was not allowed to cross the Efficiency Bar with effect from the due date by respondent no.2, but on appeal by him to respondent no.1, he was allowed to cross the Efficiency Bar from the due date. On coming to know about the discriminatory attitude of DG(W) against him, the applicant made an appeal to the President of India on 8-6-1987 with a request to condone the delay as the grounds for discriminatory action were not known to him earlier. But, the appeal was rejected by the DG(W) on 12-8-1987 on the ground that it was time-barred. The applicant prays that he should be allowed to cross the efficiency bar with effect from 1-1-1984 with benefit of past service under F.R.25 as has been allowed to Shri M.C. Agarwal.


2. The respondents in their reply have stated that the application is bad for non-joinder of Shri M.C. Agarwal, that the applica<sup>tion</sup> is time-barred under Sec.21 of the Administrative Tribunals Act, 1985 ~~and therefore, is~~ <sup>by authority</sup> ~~badly time-barred~~. Representations <sup>R</sup> do not extend the limitation under the Administrative Tribunals Act,

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as has been held by the Tribunal in the case of Mohinder Chakervarti Vs. Union of India (Cal) 1(1987) ATLT 70 and that the Tribunal should not sit as an appellate court over the jurisdiction of the competent authority as has been held by the Supreme Court in Jaswant Sing Brar Vs. State of Punjab & Har (1975 SLJ (S.N.)7 . It has been stated that there has been no discrimination and the case of Shri M.C. Agarwal was considered separately on merits. It has been denied that Shri M.C. Agarwal was allowed to cross the Efficiency Bar even on average reports and that each case was decided by the DPC on its merit as per guidelines given by the authorities and the rules on the subject. The order rejecting the applicant's appeal was clear and that it was rejected on the ground that it was time-barred and no further merit could be considered at that stage. The applicant states that no adverse remarks were ever conveyed to him and that he was posted in Vigilance Division only because of his good reports. He stated that the Supreme Court has held that cases should not be rejected on grounds of limitation and people could not be punished merely because of delay. He cited the case of Shri K.K. Sharma (O.A.No.103/87) decided by this Tribunal where no adverse remarks were communicated to the applicant and he was given important assignments.

4. I have gone through the arguments of both the sides. In this case, the appeal of the applicant was rejected on grounds of being time-barred. It is true that the Supreme Court has held that delay under S. 5 of the Limitation Act should be interpreted liberally and that delay should be condoned in interest of justice in cases where negligence or deliberate inaction or lack of bonafides is not imputable to the parties seeking condonation. The Supreme Court has repeated the same in several cases. The Tribunal is, however, not deciding the cases on limitation under Section 5 of the Limitation Act, but under the Administrative Tribunals Act, 1985 wherein it is <sup>n/r</sup> open to the Tribunal to take up cases where cause of action took place three years prior to passing of the Act or where applications are not filed within a year of the passing of the Act. As such, it is mandatory for the Tribunal not to consider such cases and the question of condoning delay would not arise. The applicant does not get a cause of action merely because in the case of another officer different orders were passed, specially when we do not know the circumstances under which such orders were passed. I do not consider it necessary to call for the records of the case of Shri M.C. Agarwal in order to compare it with the case of the applicant at this stage. In the circumstances, the application is rejected. There will be no order as to costs.

  
(B.C. Mathur) 3.1.89  
Vice-Chairman R