

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.871/87

DATE OF DECISION: 10.07.1992.

N.K. Prasad

...Applicant

Versus

Union of India & Others ... Respondents

Coram:-

The Hon'ble Mr. T.S. Oberoi, Judicial Member

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the applicant Shri M.K. Gupta, Counsel.

For the respondents Shri J.C. Madan, Counsel.

1. Whether Reporters of local papers may be allowed
to see the Judgement? *yes*

2. To be referred to the Reporter or not? *yes*

Signature
(I.K. RASGOTRA)
MEMBER(A) 10/7/92

Signature
(T.S. OBEROI)
MEMBER(J)

(10)

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For the respondents Shri J.C. Madan, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

Shri N.K. Prasad working as Senior Scientific Officer Grade-II, Central Bureau of Investigation (CBI) New Delhi has filed this Original Application, under Section 19 of the Administrative Tribunals Act, 1985 against the "illegal threat of reversion to the post of Senior Scientific Assistant" which post he has been holding for the last 3 years.

2. The brief facts of the case are that the applicant joined as Scientific Assistant on 22.7.1968 in the Central Forensic Science Laboratory in the pay scale of Rs.210-425 in the Chemistry Division. He was later selected as Senior Scientific Assistant with effect from 19.9.1970 in the same division in the pay scale of Rs.550-900. His grievance is that although in the

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seniority list as on 31.8.1982 he figures at srl. No.2, he was not considered for promotion to the post of Senior Scientific Officer (SSO for short) Grade-II in 1975, 1976, 1978, 1979 and in 1982 when his juniors viz. S/Shri K.S. Chhabra, S.C. Mittal and S.K. Lahri respectively were promoted as S.S.O. He was, however, promoted as SSO Grade II on adhoc basis on 19.7.1984 which was extended from time to time with a technical break of 3 days from 19.1.1986 to 21.1.1986. While Shri K.S. Chhabra, srl. No.3. was regularised in 1976, Shri S.C. Mittal, Srl. No.4 of the seniority list was regularised as S.S.O. Grade II in 1980. SSO Grade-II is a selection post and according to the Recruitment Rules notified on 13.8.75 60% of the vacancies were to be filled up by direct recruitment and 40% by promotion, failing which by direct recruitment. The essential qualifications as per 1982 Recruitment Rules was M.Sc. degree in Physics or Chemistry or Mathematics from a recognised University with 5 years' research experience in analytical methods. The qualifications, however, were relaxable at the Commission's discretion in case of candidates otherwise well qualified. In 1982 rules while the essential qualifications were changed to at least IIInd class Master's degree in the required discipline from a recognised university or equivalent the particular discipline in which educational qualifications required are to be specified at the time of recruitment. The 1982 rules further prescribe that a Doctorate degree in the concerned discipline would be desirable. The said Recruitment Rules were further

amended vide notification dated 31.7.1986. The rules, however, specify that $66\frac{2}{3}\%$ vacancies will be filled by promotion, failing which by direct recruitment and $33\frac{1}{3}\%$ by direct recruitment. Further, for promotion the Senior Scientific Assistant with 5 years' regular service in the respective discipline such as Chemistry and Toxicology, Finger Print, Documents etc. was prescribed.

3. By way of relief the applicant has prayed that the respondents be directed:-

- i) to consider and regularise the applicant in the post of SSO Grade II with effect from 1978-79, Shri S.C. Mittal, his junior was appointed to the post of SSO Grade II on adhoc basis and subsequently regularised in 1980.
- ii) To quash the order whereby respondents have given a technical break of three days w.e.f. 19.1.1986 to 21.1.1986 being illegal, arbitrary and violative of rules of natural justice.
- iii) To quash the reversion order dated 10/11.6.1987 passed by Respondent No.3.
- iv) To direct the respondents to convene the DPC to consider the applicant's case to regularise him as SSO, Grade II.

4. The learned counsel for the respondents Shri J.C. Madan at the outset submitted that the Application is barred by limitation and does not deserve to be considered on merit at all. He drew our attention to the

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reliefs prayed for by the applicant viz. to direct the respondents to consider and regularise the applicant in the post of SSO Grade II w.e.f. 1978 and 1979 when Shri S.C. Mittal his junior was promoted as SSO. The learned counsel submitted that the OA was filed in June, 1987 and he cannot, therefore, be given any relief in this regard. He further submitted that even the second relief prayed for regarding quashing of the technical break of three days in January, 1986 is not maintainable on the ground of overall limitation of the Application. He further drew our specific attention to the fact that the challenge in the Application is to the threatend reversion order according to paragraph-3 of the Application but the order and the date of the order has not been cited in paragraph-3 at page 2 of the O.A. nor a copy thereof has been filed. The next preliminary objection raised by the learned counsel was that in case the contents of the OA are considered the persons to be directly affected would be S/Shri K.S. Chhabra, S.C. Mittal and S.K. Lahri. None of these persons have been impleaded in the O.A. The Court, therefore, cannot grant any relief to the applicant which would be to the prjudice of these persons who had not arrayed as respondents in the O.A. On merits the learned counsel submitted that Shri K.S. Chhabra, Srl. No.3 of the seniority list was appointed in the direct recruitment quota in accordance with the Recruitment Rules, as he possessed the essential qualifications of M.Sc. degree prescribed for filling

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up the vacancy through direct recruitment. The applicant was not considered, as he was not eligible for the post of SSO-II through direct recruitment, as he possesses only B.Sc. degree. The next vacancy went to Shri S.C. Mittal who is specialised in Documentation in the Documents Division and possesses all the qualifications for the said post. He was accordingly appointed on the basis of the recommendations of the Departmental Promotion Committee as SSO (Documents) w.e.f. 31.5.1980. As the applicant was working as SSA (Chemistry) in the Chemistry Division he was not eligible for promotion as SSO as per the provisions of Recruitment Rules for the post. The next junior Shri S.K. Lahri was promoted as SSO adhoc in the Lie Detector Division, pending amendment to the Recruitment Rules to make promotion discipline-wise. The applicant who was only a Graduate in Chemistry was not fulfilling the requirement of the discipline in question. In 1982 three vacancies which arose were one each in Lie Detector Division, Physics Division and Finger Print Division. The applicant could not be considered for these posts for the reasons given above.

The applicant, however, was appointed as SSO Grade II on adhoc basis in 1984, pending notification of the amendment to the Recruitment Rules for the post of SSO-II to make promotion discipline-wise and he has since been regularised w.e.f. 18.11.1988 vide Notification No.A-31014/13/86-AD.I(DPC) dated 4.1.1989. It was further

pointed out that the applicant was offered the appointment of SSO-II at Madras in 1985 but vide his letter dated 19.8.1985 he gave his unwillingness for appointment at Madras.

The respondents further submit that the promotions were made on adhoc basis initially, as the Recruitment Rules were to be amended in the interest of efficiency to provide that promotion should be discipline-wise. They have further pointed out in counter-affidavit that the UPSC has pointed out to them that vacancies prior to July 1986 would require to be filled up in accordance with the Rules then existed and if they are required to be filled according to the amended Rules the necessary relaxation of the Government will have to be obtained.

The learned counsel for the applicant to further fortify the case of the applicant relied on the following judicial pronouncements:-

- i) 1983 (3) SCC 285 **Y.V. Rangaiah & Ors. Vs. J.Sreenivasa Rao & Ors.**
- ii) 1988 (4) SLR 548 **P. Ganeshwar Rao & Ors. Vs. State of A.P. & Ors.**
- iii) 1992 (2) SCC 29 **Karnataka State Pvt. College Stop-Gap Lecturers Association Vs. State of Karnataka & Others.**

5. We have heard the learned counsel of both the parties and considered the material on record carefully. We are of the view that in accordance with the reliefs prayed for, the Application is time-barred.

The applicant has not even filed any Application for condonation of delay, explaining the reasons, if any, for such belated filing of the OA. In **Bhoop Singh Vs. Union of India & Ors.** JT 1992 (3) SC 322 the Hon'ble Supreme Court has observed:-

"It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, as-suming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years.

During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim.....

There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief."

The O.A. is also bad for non-impleadment of the parties which would be directly affected in case the O.A. is allowed.

In the above facts and circumstances of the case, we are of the view that the Application is barred by limitation and is bad in law for non-impleadment of the party concerned. The same is, accordingly, dismissed.

There will be no order as to costs.

Sukhpal
(I.K. RASGOTRA)
MEMBER(A) 1077192

Bera
(T.S. OBEROI)
MEMBER(J)

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July 10, 1992.