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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A. NO. 2254/90

New Delhi this the 8/2 day of February, 1995

HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN
HON'BLE SHRI S. R. ADIGE, MEMBER (A)

Shri Roop Lal S/O Bachha Ram,
R/O H. No. 161/61,
Khajan Basti (New No. D-36),
Nangal Raya, New Delhi.

... Applicant

(By Advocate Shri J. N. Singh)

Versus

1. Union of India through
Secretary, Ministry of
Defence, New Delhi.

2. The Chief of Army Staff,
Army Headquarters,
New Delhi.

3. The Commandant,
505, Army Base Workshop,
E.M.E., Delhi Cantt.

... Respondents

(By Advocate Shri M. K. Gupta)

O R D E R

Shri Justice S. C. Mathur -

The applicant seeks direction to the respondents to appoint him Fitter in the Army Base Workshop, E.M.E., Delhi Cantonment with effect from the date first appointment to the said post was made after the year 1966 and to give him consequential benefits including the benefit of promotion in the trade of Fitter and payment of arrears of pay and allowances.

2. The facts as stated by the applicant are thus :- the applicant was appointed Mazdoor in the respondent organisation on 16.3.1959. With effect from 18.11.1959 he was promoted to the post of Upholster. In order to

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advance his service prospects, the applicant applied for the post of Fitter in the year 1966. His application was allowed and he successfully appeared at the written and oral tests conducted by the Technical Testing Board. Certificate dated 20.10.1966 indicating successful completion of the test was issued to the applicant. After qualifying for appointment to the post of Fitter, the applicant pressed his claim for appointment to the said post through various representations, but the respondents instead of appointing him to that post, promoted him by order dated 4.12.1986 to the post of Rubber and Plastic Moulder. The applicant was never interested in appointment to the post of Rubber and Plastic Moulder. The applicant belongs to SC and there are instructions of the Central Government for upliftment of members of the SCs and STs on out-of-turn basis; the applicant is entitled to the benefit of these instructions. The applicant preferred representation for appointment to the post of Fitter on 26.11.1982, 6.1.1983, 20.5.1989 and 23.6.1990, but without success. The last representation was in the form of notice issued by the applicant's counsel to which the applicant received reply dated 19.7.1990 in which it was stated that the applicant was making undue claim; in other words, the applicant's claim was rejected.

3. In the counter reply filed on behalf of the respondents it is stated thus : in the year 1966 the applicant was allowed to appear at the trade test of Fitter subject to the condition that he would not claim promotion to the trade of Fitter. The applicant

accepted this condition and gave an undertaking to that effect on 30.11.1966. In view of this undertaking, the applicant has no right to claim appointment in the Fitter trade. By his promotion to the post of Upholster which he willingly accepted, he has gone out of the channel of promotion in the trade of Fitter prescribed in the recruitment rules extract wherefrom has been filed as Annexure R-II. No employee can claim re-musterering according to his choice. There is no provision for giving any benefit of the nature claimed by the applicant on the ground that he belongs to SC. The post of Upholster falls in the feeder channel for promotion to the post of Rubber and Plastic Moulder, to which post the applicant was promoted according to his eligibility. The promotion was not forced upon him and the applicant accepted the same. Under the rules, feeder post for the post of Fitter is Fitter Mate. The applicant never held the post of Fitter Mate and, therefore, he did not become eligible for appointment to the post of Fitter. The pay scale of Rubber and Plastic Moulder was Rs.1200-1800 while that of Fitter was Rs.950-1500. Once the applicant had been promoted to the scale of Rs.1200-1800, there was no question of considering him for appointment to the post carrying lesser pay scale of Rs.950-1500. The applicant's claim has been considered and rightly rejected.

4. We have heard the learned counsel for the parties and perused the record. In our opinion, the application is liable to be rejected on the ground of limitation and laches as well as on merits. We will first deal with the merits of the case.

Merits

5. The respondents have filed a copy of the undertaking given by the applicant on 30.11.1966 before appearing at the trade test of Fitter. Material portion of the undertaking reads as follows :-

"I.....Trade Uphol. Name Roop Lal clearly understand that I am being allowed to appear for trade test of FTR as a special case. In case I am successful I will not request for remustering as FTR in this unit and I understand that I am being trade test only to help me in posting to other units where vacancies for FTR may occur from time to time."

From this certificate it is apparent that the applicant was allowed to appear at the trade test of Fitter as a special case. The undertaking bears out the respondents' plea that the applicant was allowed to take the trade test at his own request and on the specific understanding that passing at the test will confer no right upon him to claim appointment to the post of Fitter or in the trade of Fitter.

6. The applicant has not brought to our notice any rule, regulation or order under which by mere passing of the trade test he becomes entitled to be appointed in the Fitter trade.

7. In the recruitment rules, extract from which has been filed along with the counter reply, feeder post for appointment to the post of Fitter Skilled is mentioned as, "Tradesmen Mates of this trade with 3 years of regular service in the grade on the basis of qualifying departmental test held for the purpose." Admittedly, the applicant never worked as Mate in the

Fitter trade. Accordingly, he never acquired three years' experience referred to in the rules. The applicant is, therefore, ineligible to be appointed as Fitter.

8. In the aforesaid rules, the post of Rubber and Plastic Moulder is mentioned at serial No. 40 of the Schedule. Column 12 dealing with promotion reads thus :

"Upholsterer skilled saddler skilled Operator tyre repair plant skilled with 3 years regular service in the grade on the basis of qualifying departmental test held for the purpose."

From this, it is apparent that the applicant was entitled to be promoted only to the post of Rubber and Plastic Moulder as he was already holding the post of Upholsterer.

9. From an examination of the rules, the defence of the respondents is amply borne out that by his appointment to the post of Upholsterer which took place prior to the applicant acquiring the certificate dated 20.10.1966, the applicant went out of the channel of promotion to the post of Fitter. His claim for appointment to the post of Fitter is, therefore, contrary to the rules.

10. The applicant's application is liable to be dismissed also on the principle of acquiescence and approbation and reprobation. The applicant not only accepted promotion to the post of Upholsterer, he also accepted promotion to the next higher post of

Rubber and Plastic Moulder. It is too late in the day for the applicant to assert that he did not accept appointment or promotion to the said posts willingly and that the said appointment or promotion was forced upon him. Having accepted those appointments and promotions and having worked on those posts for such a long period, the applicant will be deemed to have acquired in the said appointments and promotions. After accepting those appointments, he cannot repudiate the same.

11. We also find substance in the submission of the learned counsel for the respondents that once the applicant had been given promotion to a higher pay scale, there was no question of considering him for appointment to a post which carried lower pay scale.

12. The learned counsel for the applicant submitted that the right of the applicant to be appointed as Fitter has not been denied even in the respondents' reply dated 13.8.1990 to the applicant's legal notice dated 19.7.1990. The learned counsel has invited our attention to clause (c) of paragraph 2 of the reply which reads thus :-

"(c) the individual requested in 1969 for promotion to Fitter but he was informed that as and when workload permits his case will be examined."

On the basis of this observation, it cannot be said that the respondents recognised the right of the applicant to be appointed as Fitter. The respondents merely informed the applicant that his request shall be examined at the appropriate time.

12. It also needs to be pointed out that the applicant has nowhere indicated as to when vacancy in the Fitter Trade arose after he passed the trade test in the year 1966. The applicant has impleaded as respondents in the application the officers of the unit in which he was working at the time he gave the undertaking dated 30.11.1966. He has not impleaded any officer of any other unit. In the undertaking dated 30.11.1966, the applicant had stated that he understood that he was being trade tested only to enable him to get posting in other units. The applicant has neither impleaded the other units nor he has indicated the accrual of vacancies in other units. For this reason also, the application is liable to be rejected.

Limitation/laches

13. The applicant's case is that ever since 1966 he has been requesting the concerned authority to appoint him in the Fitter trade. In view of this statement in the O.A., the cause of action accrued to the applicant in the year 1966 or 1967 as the certificate of passing the test is dated 20.12.1966. Section 21(1) of the Administrative Tribunals Act, 1985 provides the period of limitation within which an application may be filed in the Tribunal. The said provision reads as follows :-

"(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 and 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.

The applicant has filed a copy of the order dated 14.12.1983 whereby his representations dated 17.9.1982, 12.10.1982, 26.11.1982 and 6.1.1983 were rejected.

In view of sub-section (1) the applicant could have brought his grievance before the appropriate authority within one year from 14.2.1983. That period expired on 14.2.1984. At that time the Tribunal under the Act had not been constituted. This situation is taken care of in sub-section (2) of Section 21, which reads as follows :-

"(2) Notwithstanding anything contained in sub-section (1), where —

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."

The Tribunal came to be constituted in the year 1985. Even within one year of the constitution of the Tribunal no application was made. The application

was actually made after four years on 26.10.1990. The application is, therefore, barred by limitation prescribed in Section 21 of the Act. The applicant is also guilty of laches.

14. The learned counsel for the applicant, however, submitted that the applicant had been making representations and, therefore, the plea of limitation cannot be set-up against him. The learned counsel has not invited our attention to any statutory provision conferring right upon the applicant to prefer representation. We may assume that even in the absence of a statutory provision the applicant was entitled to make representation. However, repeated representations will not extend the limitation. It was so held by their lordships of the Supreme Court in S. S. RATHORE Vs. STATE OF MADHYA PRADESH (AIR 1990 SC 10) (see paragraphs 20 and 22).

15. The learned counsel has cited SHRI B. KUMAR Vs. UNION OF INDIA & ORS. (1989 (1) SLJ 97 (CAT)) for submitting that once a subsequent representation has been entertained the application cannot be rejected on the ground of limitation counting the same from the date of rejection of the first representation. In paragraph 12 of the Report, it has been observed :-

".....while it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and consider the same on merits before disposing of the same."

On the basis of this observation, the learned counsel submits that it is apparent from the rejection order

dated 13.8.1990 that the applicant's representation dated 19.7.1990 was entertained. Reply dated 13.8.1990 was sent to the applicant to the notice sent by him through his counsel. The reply does not indicate that the representation of the applicant was entertained. The reply only narrates the events which had taken place earlier including the rejection of his claim. On the basis of the letter dated 13.8.1990, the applicant's claim on the plea of limitation cannot be upheld.

16. BHARAT SINGH Vs. UNION OF INDIA (1987 (3) SLJ (CAT) 423) was relied upon by the learned counsel for the proposition that the applicant will be entitled to payment of arrears of salary. The question of payment of arrears of salary would arise only after we accept the applicant's claim that he is entitled to be promoted to the post of Fitter. As we are not upholding that claim, this authority does not require examination.

17. In view of the above, the application is dismissed, but without any order as to costs.

Arulige
(S. R. Adige)
Member (A)

/as/

Mathur
(S. C. Mathur)

Chairman

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