

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No.537/90

New Delhi, this the 16th day of December, 1994

Hon'ble Mr. Justice S.C. Mathur, Chairman.

Hon'ble Shri P.T. Thiruvengadam, Member (A)

Shri S. Prasad
s/o Shri Sitaram Prasad,
Scientist,
Division of L.P.T., IVRI (ICAR),
Krishi Bhawan, New Delhi. ..Applicant
(BY Advocate Ms. Sangeeta)

Vs.

Union of India, through:
Indian Council of Agricultural
Research, Krishi Bhawan,
New Delhi. ..Respondents
(By Shri R.S. Aggarwal, Advocate)

ORDER

Shri P.T. Thiruvengadam, Member (A)

The applicant while functioning as Scientist S-1. (EE) Central Institute of Agricultural Engineering (C.I.A.E) was given adverse remarks for the calendar years 1981, 1982 and 1983. These remarks were communicated to him vide Memoranda dated 12-11-82, 9-8-84 and 9-8-84, respectively.

2. He was due to cross his efficiency bar on 1-9-82 and was also eligible for consideration for time bound promotion on 1-7-82. Both these were not granted in his favour.

3. This O.A. has been filed for a direction for expunging the adverse remarks for the years 1981, 1982 and 1983 and for directions that the applicant be deemed to have ^{crossed} the efficiency bar on 1-9-82 as well as be granted the time bound promotion from 1-7-82.

4. The applicant has subsequently been allowed to cross the efficiency bar in September, 1984

and was also granted the time bound promotion in July, 1984. (21)

5. At the outset the issue regarding limitation was raised by the respondent. It was argued that for the cause of action which arose in the years 1981 to 1983 the filing of this O.A. in March 1990 should be declared to be hopelessly time barred.

6. The learned counsel for the applicant argued that representations had been submitted against the adverse confidential remarks ^{the} for ~~three~~ years and these representations have been disposed of only in June, 1989 stating that the adverse entries for the years 1982 and 1983 stand. Representation against the adverse entry for the year 1981 is still not disposed of. Reference was also made to the Memorandum dated 7-8-85 (An.A.10 to the application) to the effect that pending decision on the representations against the C.Rs for the years 1981, 1982 and 1983 ^{the} / Departmental Promotion Committee which met for the purpose of considering the crossing of efficiency bar could not take a final view. A similar communication was also issued on 3-5-86 (page 52 of the O.A). In view of this the applicant was under the genuine impression that his representations including that against the 1981 adverse remarks were under consideration of the respondents and hence limitation should not apply to him. A number of citations (quoted below) bringing out that the question of limitation should be liberally viewed where there is sufficient cause were relied upon.

1. 1981(1) ATR 581
2. 1987(4) ATC 947
3. 1988 (6) ATC 962
4. 1989 (7) SLR 351
5. 1991 (1) SLJ 363
6. 1989 (9) ATC 49
7. AIR 1987 SC 1353 and
8. AIR 1974 SC 259

(NOTE: Out of the above 8 citations- 1 to 6- are orders passed by the Benches of Central Administrative Tribunal).

We however note that only for the relief with regard to the adverse remarks for the years 1982 and 1983 a final order rejecting the representation had been passed in June 1989. The cause of action in the case of other reliefs arose in 1982. The applicant might have represented but in the absence of a reply from the respondents he should have approached this Tribunal within 18 months from the date of submitting the ^{relevant} representations. Repeated representations cannot extend the period of limitation. It has been held by their Lordships of the Hon'ble Supreme Court in SS Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10) that the cause of action shall be taken to arise on the date of order of the higher authority disposing of the appeal or representation. Where no such order is made within six months after making such appeal or representation cause of action would arise from the date of expiry of six months. Repeated unsuccessful representations not provided by law do not enlarge the period of limitation.

7. In view of the above we hold that there has been undue delay on the part of the applicant in seeking legal remedy with regard to the adverse remarks for the year 1981 as well as his non-crossing of efficiency bar on 1-9-1982 and the non grant of time bound promotion on 1-7-82. The learned counsel for the applicant conceded that representations against all these had been made within reasonable time. ^{note that the} Hence ~~we~~ /approach to ^{has been made after} and this this Tribunal. [/] a delay of 8 years/cannot be viewed with favour. We are fortified in this view by observations of their Lordships in

ex-Captain Harish Uppal Vs. UOI (JT 1994 (3) 125):

"Parties should pursue the rights and remedies promptly and not sleep over the rights. If they choose to sleep over the rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under article 226 of the Constitution of India."

Again in Rattan Chander Samanta Vs. UOI (JT 1993 (3) 418) it is held:

"A writ is to be issued in favour of a person who has some rights. Delay itself deprives a person of right. In the absence of any fresh cause of action or legislation a person who has lost his remedy by lapse of time loses his remedy."

8. We also note that the adverse entries for the year 1981, which entries we are not going into because of limitations^{resulted} in the denial of crossing of EB and time barred promotion in the year 1982. Thus even ~~re~~viewing from a different angle, we do not see any reason to entertain the reliefs regarding anti dating the E.B/Time Barred promotion.

9. In the circumstances we are limiting our further discussion only with regard to the adverse remarks in ACRs of 1982 and 1983.

10. The learned counsel for the applicant advanced the following grounds in favour of the applicant. The reporting and reviewing officers for the relevant period were biased. Reporting Officer was one Dr. R.C. Maheshwari and reviewing officer was one Dr. T.P. Dja. It was alleged that Dr. Maheshwari illegally wanted to give his name in the project in the scientific publications of the applicant; thus trying to share credit without any contribution.

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11. Respondents in the reply have brought out that Dr. Maheshwari is recipient of Jawahar Lal Nehru award for postgraduate research for 1976. Before joining the Agricultural Research Organisation he already had more than 40 publications to his credit from his work in IIT Kharagpur while the applicant had no publication to his credit till that time. The allegations of bias and harassment of any kind have been denied as baseless. It has been added that the confidential report for the year 1980 did not contain any adverse remarks and for that year also the same Dr. R. C. Maheshwari was the reporting officer.

12. As regards Dr. T. P. Ojha, allegation of bias has been advanced on the ground that the applicant raised his voice against the change in the name of Electro Mechanical Engineering Division and this was not appreciated. The respondents have denied any bias on the part of Dr. T. P. Ojha and have blamed ^{the} adamant and stubborn attitude of the applicant for his present position.

13. Even otherwise, it is not necessary to go into the aspect of bias since neither Dr. Maheshwari nor Dr. Ojha have been impleaded in the O.A. An allegation of bias is a serious matter which can be countered only by the persons concerned. In the absence of impleading the parties, the seriousness of allegations cannot be assumed.

14. It was then argued that the communication of adverse remarks was belated and the following citation was relied upon.

1989 (4) SLR 220.

15. On behalf of the respondents it was argued that there was hardly any delay in communicating the adverse remarks. It is the applicant who

gave the ACR forms duly filled in only by February 1984, as regards the ACRs for the years relating to 1982 and 1983. The ACRs could be processed only later and there was hardly any delay in communicating the adverse entries. In view of the above, this ground cannot be sustained.

16. The learned counsel then mentioned that the relevant adverse remarks have not cited any specific instances and are also vague. A number of citations to the effect that vague remarks and absence of specific instances cannot result in adverse entries were quoted.

1. ATR 1987 (2) CAT 501

2. 1990 (12) ATC 302

17. Respondents in their reply have given ^{the} background to the adverse entries. A long list of the acts of commission and omission on the part of the applicant has been enclosed as annexure 'R' to the counter. This list brings out ^{the} delay on the part of the applicant in following various instructions/reports, instances of refusal to accept official papers, instances of sending direct representations to the President and Director General of ICAR and so on. Annexure R-2 to the reply details the experiments that were designed for the applicant for step by special approach for optimisation of parameters. It is stated that the applicant failed to ^{adhere to} his time schedule and targets. In the face of the above remarks of the respondents, we are not in a position to accept that the adverse entries were without any basis.

18. It was finally argued that the disposal of the representation is by way of non-speaking order. On this aspect the learned counsel for the respondents referred to the observations of their Lordships of

the Hon'ble Supreme Court in UOI Vs. E.G.Namboodri
reported in AIR 1991 SC 1215:

"Reasons for rejecting representation
against adverse remarks need not be
recorded or communicated. But if such
a decision is challenged before a
court of law for judicial review the
reasons for the decision may be
placed before the court."

19. In view of the detailed reply filed by the
respondents, portions of which have already been
discussed by us, we are not impressed by the
argument that the representation has been disposed
of without application of mind.

20. In the circumstances, the O.A. is dismissed.
There shall be no order as to costs.

P. J. Thiruvengadam

(P.T.THIRUVENGADAM)
Member(A)

'M'

S. C. Mathur

(S.C.MATHUR)
Chairman.