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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1504 of 1991

New Delhi, this the 7th day of ^{March} February, 1996.

HON'BLE MR JUSTICE A.K.CHATTERJEE, V.C.(J)

HON'BLE MR R.K.AHOOJA, MEMBER (A)

S ri Nathi Ram Bhardwaj

son of Shri Let Mehtab Singh,
R/O 821, Mehtab Bhawan, Chirag Delhi-17.

..... Applicant.

(through Ms Nitya Ramakrishna, Advocate).

versus

1. Union of India through
its Secretary,
Ministry of Communication,
Sanchar Bhawan,
New Delhi.
2. Post Master General
Delhi Circle, New Delhi.
3. Senior Superintendent
Delhi Sorting Division,
RMS Bhawan,
Kashmiri Gate, Delhi-6. ..Respondents.

(through Mr P.H.Ramchandani, Advocate).

O R D E R

(delivered by Hon'ble Mr R.K.Ahooja, Member(A)

The facts, in brief, are that the applicant, who joined the Railway Department as a Porter(Group-D post) on 6.6.1946 was subsequently promoted as a Sorter(Group-C) w.e.f.1.6.1965. In 1968, there was a strike in the Office of the Railway Mail Service and 19 sorters, who were loyal to the Department during the

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strike period were given promotion to the Lower Selection Grade, on out of turn basis. Subsequently, on 15.3.1985 14 other sorters who had been on deputation to the Army Postal Service were also given the same out of turn promotion. The postal Department also introduced a time bound one promotion Scheme in 1983 according to which the cases of those, who had completed 16 years of service on 17.12.1983 were to be placed before the Departmental Promotion Committee for promotion to the lower Selection Grade. The grievance of the applicant is that although he was working in the Army Postal Service in 1968, he was denied the out of turn promotion and ^{sub}consequently, though he had completed 16 years of service in 1983, he was not given the benefit of the time bound one promotion Scheme and was given the Lower Selection Grade only in 1990.

2. The respondents have contested the claim of the applicant. They have submitted that since the applicant had been promoted as Sorter only in 1965 he should not be considered for the out of turn promotion in 1983. They have submitted that the applicant had not been regular in his attendance during his service career. They have given in para 5 of their counter-affidavit the detail of the period of absence of the applicant from 15.6.81 to 25.8.83, which period has been treated as dies-non. It is the case of the respondents that since no ACRs for the aforementioned periods were available, the DPC which met in the year 1983, deferred ^{the} case of the applicant for consideration for

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promotion under the one-time bound promotion Scheme. The case of the applicant came up again before the D.P.C., which met on 30.5.1984, 29.11.1984, January 86, September, 1986, 2.9.1987 and 11.1.1989 but the applicant was assessed as 'not yet fit' for promotion. Finally he was considered and assessed ^{for} for promotion by the D.P.C., which met on 23.3.1990.

3. When the case came up for final hearing, the first relief claimed, namely, out of turn promotion in 1968 was not pressed by the learned counsel for the applicant. As regards the second relief, the learned counsel submitted that one time bound promotion scheme was based on a qualifying service of sixteen years and ~~since~~^{or} the applicant, having been appointed as a Sorter w.e.f. 1.6.1965, had completed qualifying period 16 years ~~only~~^{already} on 31.5.1981. The learned counsel argued that the alleged period of absence ~~not~~^{or} treated as 'dies non' begins on 15.6.1981 and hence is decided ~~and~~^{or} ever and above the qualifying period of 16 years. For this reason she claims that the D.P.C. could ^{not} have taken into account any incident of service after the conclusion of the qualifying period for the purpose of one time bound promotion which only required a rejection of unfit. In this context she cited the case of Nathi Ram Bhardwaj vs. Union of India and others, TA No.446/86 decided on 13.4.1992. In that case the petitioner, who was a Sorting Assistant in the R.M.S. was absent from duty for a long period which was later treated by the authorities as dies-non

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The Tribunal had set aside the order since the absence of the applicant therein was explained to be on medical grounds.

4. The learned counsel for the respondents has pressed the preliminary objection that the case of the applicant is barred by limitation since he claims promotion from 1983 but came to the Tribunal only in 1991. He pointed out that at the time of admission of the application, the Tribunal had left the question of limitation to be contested at the time of final hearing. On merit, the learned counsel submitted that the applicant had only a right to be considered for promotion and it was not a part of judicial review to go into the reasons or justification of the decision of the concerned D.P.C. He submitted that the applicant having been absent from duty for a long period of two years and there being no record of service available, the D.P.C. was fully justified in coming to its conclusion that the applicant was not yet fit for promotion.

5. We have considered the arguments advanced on both sides and have gone through the record. The learned counsel for the applicant has sought to rebut the plea of limitation by stressing the plea, ^{That} the denial of promotion, resulting in loss of pay, was a recurring ~~and~~ cause of action and therefore, there could be no limitation in this case. ^{On} ~~This case~~, even if, in the event of relief being granted, the claim of back wages could be affected by the delay in filing the application. We are however, not in agreement

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with the interpretation advanced by the learned counsel. It is true that the questions of pay and pension give rise to recurring cause of action but where such claim is based on a specific event such as the decision in a disciplinary proceedings or supersession by a D.P.C., or dismissal, delay in seeking a remedy tantamounts to acquiescing in that decision. In such an event any alleged loss of emoluments is hit by limitation since the question of pay is subsidiary to the main cause of action which is supersession. If a different interpretation were to be taken then in service matters, there would virtually be no limitation for in every service matter there is invariably an effect on the emoluments of the employee. We, therefore, find that the applicant having been slack in seeking a remedy against his non-promotion at the appropriate time, his case is now barred by limitation.

6. Even on merit, we find that the case of the applicant deserves little consideration. The respondents stated in their counter-affidavit that the case of the applicant was placed before the D.P.C. alongwith others initially and on all subsequent occasions but he was found not fit. It is also clear that when the D.P.C. first met on the promulgation of the time bound one promotion in 1983, the applicant had been absent from duty for a period of two years. We are unable to agree with the learned counsel for the applicant that this fact should not have been considered since the applicant had completed his sixteen years of service 15 days prior to his

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absence from duty. Qualifying service is a determinant only in as much that promotion before completing that period is not permissible. The circumstances of the period intervening between the qualifying service and the date of D.P.C. cannot be ignored, the only requirement being that whatever yard stick is used it should be equally and uniformly made applicable to all those who are to be considered for promotion. We find nothing on the record to show that the applicant was considered by a different yardstick than that applied to his equals. As he was duly considered by the D.P.C. in 1983 as well as thereafter he can have no justifiable ground for grievance in the circumstances of the case.

7. In view of the above discussion, the application is dismissed. There will be no order as to costs.

R.K. Ahooja
(R.K. Ahooja)
MEMBER (A)

A.K. Chatterjee
(A.K. Chatterjee)
VICE CHAIRMAN (J)

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