

**Central Administrative Tribunal  
Principal Bench**

12

O.A.Nos.1649-50 of 2004  
M.A.Nos.549-550 of 2005

New Delhi, this the 6th day of May 2005

**Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.K. Naik, Member (A)**

OA-1649/2004

Shri Amar Singh  
S/o Late Shri Joginder Singh  
R/o A-20, Om Vihar  
Uttam Nagar, New Delhi-59

...Applicant

(By Advocate: Shri H.D. Birdi)

Versus

1. The Secretary  
Department of Telecommunication  
Govt. of India  
Sanchar Bhawan, Ashoka Road  
New Delhi-1
2. The Chairman  
Telecom Commission  
Department of Telecommunication  
Govt. of India  
Sanchar Bhawan, Ashoka Road  
New Delhi-1
3. The Chief General Manager  
Department of Telecommunication  
Govt. of India  
J&K Telecom Circle  
Sri Nagar (J&K)

... Respondents

(By Advocate: Shri S.M. Arif)

OA-1650/2004

Shri Ajmer Singh Soni  
S/o Late Shri Inder Singh  
R/o 8-D, J&K Pocket  
Dilshad Garden  
New Delhi

...Applicant

(By Advocate: Shri H.D. Birdi)

Versus

1. Union of India through Secretary  
Department of Telecommunication  
Govt. of India  
Sanchar Bhawan, Ashoka Road  
New Delhi-1



2. The Chairman  
Telecom Commission  
Department of Telecommunication  
Govt. of India  
Sanchar Bhawan, Ashoka Road  
New Delhi-1

... Respondents

(By Advocate: Shri S.M. Arif)

## ORDER

**Shri S.K. Naik:**

These are two applications filed by two different applicants (Shri Amar Singh – OA-1649/2004 and Shri Ajmer Singh Soni – OA-1650/2004) under Section 19 of Administrative Tribunals Act, 1985 in which they have raised identical issues on identical grounds, and further they are seeking identical reliefs. The applicants have also filed two different miscellaneous applications (MA-549 & 550 of 2005) respectively in the OAs for the condonation of delay in filing the applications. Both the OAs and the MAs being identical are, therefore, being disposed of by this single order.

2. Since the respondents have taken the plea of non-maintainability of the OAs on the ground of limitation, we first propose to deal with the MAs filed by the applicants for condonation of delay.

3. Both the applicants had joined the services of the respondents-Department as Engineering Superior Phones (ESP) during the year 1959. They were subsequently promoted to the post of Divisional Engineer Telephones (DET-Class-I) during 1979. Further both of them had also been promoted to the Junior Administrative Grade (JAG) on *ad hoc* basis during June 1992. While applicant – Shri Amar Singh – retired on superannuation on 31.7.1993, the other applicant – Shri Ajmer Singh Soni – retired on superannuation on 31.1.1995.

4. A few years after these applicants had superannuated, some of their colleagues had filed three different OAs (OAs 652 to 653 of 1997), in which they had challenged the DPC for the vacancies of 1991-92, which was decided by this Tribunal at Mumbai Bench on 19.8.1998 directing the respondents to hold revised DPC for the vacancies of 1991-92 by including in the zone of consideration 130 officers, who were in service at that time, including the officers who had subsequently retired prior to the holding of the DPC meeting on 11-13.9.1995 for filling up of the vacancies in JAG. The applicants claim that in the revised DPC held pursuant to the directions of this Tribunal at Mumbai, their names were included in the list of selected officers but orders of promotion were not issued on the ground that retired

officers have no right for promotion. The applicants claim that even prior to the decision of this Tribunal, they had submitted their representations seeking regular promotion in the JAG from the date of their *ad hoc* promotion. They had also submitted representation before the Director (Estt), Department of Personnel, Pension & Grievances, Govt. of India. In the absence of any response, they had again represented to the Director (Staff-I), Department of Communication, Delhi on 13.5.1999 for the grant of selection grade as they had put in 14 years of qualifying service. Again they did not receive any reply from the respondents. Subsequently, they again sent representation to the Chairman, Deptt. of Communication, New Delhi on 29.4.2002 followed by another representation dated 21.5.2002. Since no reply was received from the respondents, they claim that they had visited the Department of Telecommunication a number of times to find out the position of their case but were unable to get a clear picture in the matter. They contend that they were under the circumstances forced to issue legal notice on 12.6.2002 through their Advocate. Even that did not evoke any response and, thus, they have been forced to file these OAs.

5. Learned counsel for applicants has contended that the applicants, as explained, had been continuously pursuing their case for regularization of *ad hoc* promotion and for the grant of non-functional selection grade with the respondents and that the delay in filing the original applications has occurred simply in exhausting all the available channels to get justice. He has, therefore, urged that the delay in filing the OAs be condoned as otherwise the applicants will suffer recurring irreparable loss, which cannot otherwise be remedied.

6. We have considered the submissions made by the learned counsel for applicants on the point of condonation of delay. At the outset, it may be stated that what the applicants are seeking pertains to their promotion and as such, it does not amount to a recurring cause of action. In this background, we have analyzed the delay in filing these OAs. It is an admitted fact that while the applicant – Shri Amar singh – retired on superannuation on 31.7.1993, the other applicant – Shri Ajmer Singh Soni – retired on 31.1.1995. They are trying to make out a case on the basis of an order passed by the Mumbai Bench of the Tribunal in original applications filed by their colleagues during 1997. Even if their contention is accepted, a review DPC pursuant to the order of the Mumbai Bench of the Tribunal passed on 19.8.1998 had been held by the respondents during 1999 and the applicants were not promoted. Cause of action, therefore, arose in 1999 itself. Applicants state that they had submitted representations even prior to the order of the Mumbai Bench of the Tribunal in the OAs filed by their

for file

colleagues and have thereafter made a number of representations and personal visits. It has not at all been explained as to why the applicants were content only with making repeated representations year after year but did not agitate the matter before the Tribunal. According to their own admission, the legal notice, which was the last attempt made by them, was sent to the respondents on 12.6.2002 but these OAs have been filed only on 7.7.2004 after a period two years from the date of the issuance of the legal notice. The applicants have not provided any explanation as to why they did not agitate the matter before this Tribunal soon thereafter. On the subject of the date from which the cause of action shall be taken to have arisen, the Hon'ble Supreme Court in **S.S. Rathore v. State of M.P.**, AIR 1990 SC 10 has the following to say:-

"Cause of action shall be taken to arise on the date of the 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, the 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. It was further held that repeated representations and memorials to the President etc. do not extend limitation."

7. Further, in the case of **P.K. Ramchandran v. State of Kerala & another**, JT 1998 (7) SC 21, the Apex Court has held that "*Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds*". The Apex Court in that case had, therefore, set aside the exercise of discretion by the High Court and had further held that "*The order condoning the delay cannot be sustained*".

8. As discussed above, the claim of the applicants for promotion being a matter of one time action and, therefore, it was not a continuing wrong based on recurring cause of action and having regard to the citations of the Apex Court extracted above, we do not consider it appropriate to condone the delay. The MAs, therefore, are dismissed.

9. With the dismissal of the MAs, there is no occasion for us to consider the OAs on their merits and, therefore, the OAs also get dismissed. No costs.

  
( **S.K. Naik** )  
Member (A)

  
( **V. S. Aggarwal** )  
Chairman

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