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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1374/1992. DATE OF DECISION: 31-3-1993.

Shri D.D. Khurana Applicant.

V/s.

Union of India & Ors. Respondents.

CORAM: Hon^{ble} Mr. J.P. Sharma, Member (J).
Hon^{ble} Mr. S.R. Adige, Member (A).

Applicant in person.
Mrs. Raj Kumar Chopra, counsel for the respondents.

(JUDGMENT OF THE BENCH DELIVERED BY
HON^{BLE} MR. J.P. SHARMA, MEMBER (J).)

JUDGMENT

The applicant was appointed as Surveyor Draftsman (SDO III) for a period of three months from 2.8.65 at Udhampur in AD ML&C HQ XV Corps. He was discharged from service with effect from 2.11.1965 (F.N.). The applicant was again appointed for three months on 16.12.65 in the office of AMEO, Jammu and discharged with effect from 15.3.66. The applicant joined on the same post on 6.4.66 in the office of ^DMEO, Delhi and Rajasthan Circle, situated at Delhi Cantt. A letter was issued by C.D.A., Southern Command, Pune, on 18.12.1967 that former service ML&C would be counted for fixation of pay of the applicant. The grievance of the applicant is that his seniority has not been counted with effect from 2nd August, 1965 when he was initially employed for three months in AD ML&C HQ XV Corps. The applicant, therefore, made a representation which was rejected by the order dated 30.1.91 and it has been observed that his case has been considered in the light of the general principles of seniority and promotion in the Central Government service. Since his service with effect from 2.8.65 to 2.11.65 and 16.12.65 to 15.3.66 was on short term and purely temporary basis with breaks before his appointment on regular basis with

effect from 6.4.66, so the seniority could not be counted with effect from 2.8.65 in the grade of SDO-III as shown in the Nominal Roll, ^{and} according to the respondents, has been correctly fixed and there is no case for change of the same. The applicant is aggrieved by this order and filed an Original Application, which was subsequently amended, praying for the reliefs that the respondents be directed to count the service of the applicant from the initial date of his appointment i.e., 2.8.1965 and give him the seniority, promotion and other consequential benefits.

2. The respondents contested the application and took a preliminary objection that the application is hopelessly barred by time. The application has been filed on 9.3.92 claiming relief for the year 1965. It is further stated that the applicant has no case at all. The applicant was initially appointed for a short period of three months and, as such, his seniority cannot be counted in the grade of SDO-III and that his seniority has been correctly fixed as shown in the Nominal Roll. The applicant has also not impleaded the necessary parties who are likely to be affected in the event of change of seniority of the applicant. The respondents have also contested the application on merits and have stated that the pay of the applicant has been fixed taking into account his earlier temporary service, but he could not have been given seniority as the service was not continuous and he was never appointed on regular basis earlier to 6.4.66.

3. We have heard the applicant in person and the learned counsel for the respondents. The applicant for the first time made a representation on 22.11.1968 and he has relied on the Government of India letter No.9/49/54-AFS, dated 25.4.1958. This O.M. is on the subject of "Treatment of cases of Wrong Retrenchment or Reversion

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cases by Administrative Errors". Sub-para (4) of para 2 thereof provides that the Government servant may be restored to the same position in the Seniority list which he would have had but for his reversion or the termination of his service. Such restoration of seniority would not, however, have retrospective effect for confirmation or promotion.

4. The case of the applicant is not of retrenchment nor of reversion. The applicant was engaged only for a specified period of three months in August, 1965 and then again for three months in November, 1965. It was only in April, 1966 that the applicant was engaged ^{on regular basis as} SDC-III in MEO, Delhi and Rajasthan Circle, situated at Delhi Cantt. Thus the applicant cannot be given the benefit claimed by him. At the same time, he was promoted as SDC-II in 1972 on ad-hoc basis with effect from 3.11.1972. He was again reverted from this ad-hoc promotion on the transfer of one Shri P.P. Goel in 1973. If the applicant had any grievance of not counting his seniority from August, 1965, he should have assailed that matter at that time, which the applicant did not do. Again the applicant was promoted to Grade II on 11th October, 1976, but he was not given the benefit of alleged claim of seniority at that time also. This time also, the applicant did not assail his seniority. An application under Section 19 of the A.T. Act, 1985 can relate to a cause of action which has arisen within three years before the commencement of the Act. In this case, the present cause of action has arisen much before November, 1982 and the Tribunal, as such, has no jurisdiction to entertain any grievance which relates to the period earlier to November, 1982. The contention of the applicant is that he has been informed about the reaction of his representation by the impugned order dated 30.1.1991. In fact, the representation was made by the applicant only on

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12.7.90, on which the impugned order dated 30.1.91 has been passed. The applicant has also since retired from service. The contention of the applicant cannot bring the grievance of the applicant which has arisen before November, 1982 within the scope and jurisdiction of this Tribunal.

5. It has been clearly laid down in the case of S.S. RATHORE Vs. STATE OF MADHYA PRADESH that repeated representations do not add to the period of limitation which has been specifically laid down in Section 21 of the A.T. Act, 1985 (A.I.R. 1990 S.C. p.10). Again in another decision, the Hon'ble Supreme Court in the case of STATE OF PUNJAB Vs. GUNDEV SINGH, reported in 1991 (4) SCC p.1) held that even in service matters, the aggrieved party has to approach for judicial review within the period of limitation. Thus, the present application is barred by limitation and the preliminary objection taken by the respondents has to be accepted.

6. The applicant also argued that there has been gross violation of the recruitment rules in appointment in the grade of Surveyor Draftsman (S.D.O. Grade III). It is also contended by the applicant that there is violation of O.M. dated 25.2.66 & 6.2.69, which envisage that surplus employees are not entitled for benefit of the past service rendered in the previous organisation for the purpose of their seniority in the new organisation. Such employees are to be treated as fresh entrants in the matter of their seniority, promotion etc. The applicant has given the names of such applicants in para 1.10 of the Amended O.A. The applicant has not made any of these persons as parties in the Original Application; nor has he sought any relief against them, though he has only prayed for counting of his service rendered in two spells in August, 1965 and November, 1965. In any case, the impleadment of all these persons was

persons

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necessary for effective decision of the particular issue raised by the applicant and the objection of the respondents that the application is bad for non-joinder of necessary parties is to be accepted. The respondents, however, in reply have specifically stated that other persons who are alleged to be junior by the applicant were not appointed by the same Appointing Authority but by different Authorities through AG's Branch. Their provisional continuous service rendered against long term has qualified for seniority. As and when vacancies arose, appointments were made by Regional Directors. The applicant was not eligible for appointment at places where his name was not registered with the Employment Exchange. The applicant, therefore, could not have applied in the vacancies arisen in different parts of the country and was not declared surplus. He only served in two different offices in two short spells against short term vacancies of three months each. The applicant has admitted in para 1.11 of the Amended O.A. that as per recruitment rules, the appointment in the grade of Surveyor Draftsman shall only be made through Employment Exchange. It is not the case of the applicant that his name was sponsored by the Employment Exchange of a particular region and he was not given preference in employment though persons who joined subsequently had been retained. It is not also the case of the applicant that he should have been retained in service and had been wrongly discharged after three months' period in two different spells.

7. In view of the above facts and circumstances, firstly, the present application is hopelessly barred by time and secondly on merits also, the applicant has no case. The application is, therefore, dismissed

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both as barred by limitation and also being devoid
of any merit, leaving the parties to bear their own
costs.

Andhige
(S.R. ADIGE)
MEMBER (A)

Jomane
(J.P. SHARMA) 31.3.93
MEMBER (J)