

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A.248/92

Date of decision: 13.4.93

Udai Singh .. Applicant.

versus

Union of India .. Respondents.

Sh.M.R.Bhardwaj .. Counsel for the applicant.

Sh.N.S.Mehta .. Counsel for the respondents.

CORAM:

The Hon'ble Sh.N.V.Krishnan, Vice Chairman(A)

The Hon'ble Sh.B.S.Hegde, Member9J)

1. Whether Reporters of the local papers may be allowed to see the judgement? ✓
2. To be referred to Reporter or not? ✗

JUDGEMENT (ORAL)

(Hon'ble Sh.N.V.Krishnan, Vice Chairman(A))

The applicant belongs to the Indian Foreign Service and is aggrieved by the fact that eversince 1984 he has been superceded by his juniors in the matter of promotion. He has, therefore, prayed for the following reliefs:

" 1. Call for the relevant records and the proceedings of the D.P.Cs. held since 1984 and the C.Rs of the Officers of the eligible Officers whose cases were considered for promotion to Grade III of the IFS to judge for itself whether the comparative merit of the

contd..2p...

applicant assessed by the DPCs was just and fair vis-a-vis the Officers Junior to him and whether any specific reasons were recorded to ignore the applicant for promotion and whether the adverse remarks, if any, in the C.Rs. of the applicant which were never communicated to him, were acted upon by the respective D.P.Gs;

2. Issue suitable directions or orders to Respondent that the d.o. letter dated the 8.2.90 issued by the former Foreign Secretary, containing adverse remarks be expunged and taken off the service records of the applicant;

3. Issue further directions and orders that a Review D.P.C. be convened to reconsider the case of the applicant for promotion to Grade III of the IFS ignoring the adverse remarks, if any, in his C.R.s as no such remarks were ever communicated to the applicant to enable him to challenge them through representation to the competent authority and to order his promotion with effect from the date Officers junior to him were promoted in 1985 with all the consequential benefits with regard to seniority and arrears of pay and allowances."

2. When the matter came up for hearing today we noticed that the question of limitation arises in this case. It was then pointed out that the applicant has already filed M.P.303/92 for condonation of delay. Though it was directed on 4.8.92 that as the pleadings are complete, the M.P. for condonation of delay would also be taken up at the time of final hearing, we felt it proper to first dispose of the M.P. for condonation of delay. No objection was raised from either side. Hence, the M.P. was heard.

3. The learned counsel for the applicant submits that though it might appear, at first sight, that cause of action is old and therefore, barred by limitation, it is no so for, the applicant had made a representation on 19th October, 1989 (being part of Annexure 1 collectively) and to this representation a reply has been

u

contd..3p.

received by him sent on 8.2.90 (Annexure A-2) from the Foreign Secretary in the Ministry of External Affairs. The applicant was informed therein that the procedure for promotion are objective, despassionate and fair and the promotions are accorded only on the basis of the excellence or otherwise of the officer as reflected in the A.C.Rs. The applicant was also informed that there had been occasions when even officers with "very good" grading had to yield to persons who had a still better record. He was also informed that he must earn very much better reports if he is to be considered for promotion in future.

4. It was submitted by the learned counsel that, arising out of this reply, he made a representation on 20.11.90 (Annexure I collectively) in which he mentioned that the Government had not even bothered to convey the adverse remarks, if any, against any columns in the Confidential Report. He states that it is evident from the annexure A-2, reply of the Foreign Secretary, that the applicant was not promoted mainly because of the fact that there were adverse remarks in his character roll which were not communicated to him but considered by the D.P.C. Therefore, he contends that he wanted information from government about the adverse remarks in his confidential report and as he did not get any reply thereto he filed his application on 20.1.92 which is very much within time, it being within one year after the expiry of six months from the date the representation was filed.

U

contd..4p..

5. Reckoned thus, the application will not be barred by limitation. The question is whether the limitation runs from the annexure A-2 final reply or from the subsequent representation dated 20.11.90.

6. We have heard the learned counsel at length. We are unable to agree with his arguments.

7. It is not as if that the applicant has been informed for the first time on 8.2.90 by the Annexure A-2 letter that he has not been promoted. As a matter of fact, the applicant himself has filed two letters marked annexure A-5 dated 4.12.84 and 25.6.86, in both of which he has been informed that the departmental promotion committees did not find it possible to recommend him for promotion to grade III. The applicant, therefore, had opportunityis early as in December, 1984 and June, 1986 to seek information whether his supersession was due to any adverse remarks in the confidential reports.

8. That leads us to another aspect of the matter. If there is an adverse remark, it is in the normal course, communicated to the employee by the authorities. Therefore, if nothing is communicated, the presumption is that there are no adverse remarks and the reason for supersession should be something different. If, however, the employee suspects that there were adverse remarks, which were not communicated but yet considered by the

12

contd..5p..

D.P.C. if it is open to him to approach Tribunal and make such an allegation. That would have given an opportunity to the Tribunal to examine the merits and truth of that allegation. As a matter of fact, in the representation dated 20.11.90, the applicant did not seek any information at all. The thrust of the representation is that as no adverse remarks were communicated there were no adverse remarks and therefore there was justification to supersede him. Therefore, we notice that the argument of the learned counsel that the representation is to seek information has no basis.

9. Despite the annexure 5 letters, the respondents have chosen to send another reply (Annexure A-2), to the applicant on 8.2.90 disposing of his representation dated 19th October, 1989. We have carefully perused this letter of the Foreign Secretary. There is nothing in this letter which could have led to any bonafide inference that the applicant's name was not recommended on the ground that there were adverse remarks. Therefore, there is no question of the applicant seeking further information about adverse remarks.

10. In the circumstances, the Annexure 2 reply does not give any scope for any further representation like the one made on 20.11.90 because the foreign secretary had made it clear that persons better than the applicant had been selected for promotion. Therefore, in our view, the cause of action has to be treated as having arisen on

11

contd.. 6p...

6.2.90 when the Annexure A-2 letter was sent to the applicant. We do not wish to go into the question whether the cause of action did not arise in 1984 or 1986. It is clear that the representation made on 20.11.90 was not on any new point and was unnecessary. It does not extend the limitation otherwise available to file the O.A.

11. The learned counsel for the applicant has drawn our attention to a decision of the Principal Bench in Tota Ram Sharma vs Union of India (1990(2) A.T.L.T.C.A.T 618). That decision relates to condonation of delay in respect of discrimination in pay and allowances which was treated as a continuing grievance and therefore, it is not applicable to the facts of the present case. The learned counsel also cites a judgement of the Supreme Court in A.I.R. 1991 S.C. 424 (A.Sagainathan vs. Divisional Personnel Officer, Railways). It is true that in that judgement the Apex Court considered the question of limitation in respect of the grievance of the petitioner arising out of promotion of his juniors and it was also directed that the matter should be heard by the Central Administrative Tribunal on merits because it was of the view that despite the delay this matter requires investigation. We are of the view that the aforesaid judgement of the Supreme Court is relatable to the facts of that case and cannot have general application. In the circumstances we are of the view that the question whether, in this application, we should condone the delay or not, is a matter to be considered on the merits of this case.

12. We are satisfied that the applicant who is a senior officer belonging to the Indian Foreign Service has been negligent in taking appropriate action at the relevant time and the grounds given by him in the M.P. for condonation of delay have no merit. Therefore, the M.P. for condonation of delay is dismissed and consequently the O.A. is dismissed as time barred.


(B.S. Hegde)

Member (J)


13.4.83

(N.V. Krishnan)

Vice Chairman (A)

bv