

Central Administrative Tribunal
Principal Bench

O.A.No.3221/92

Hon'ble Shri T.N.Bhat, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

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New Delhi, this the 4th day of Februry, 1990

Shri V.D.Saras
s/o late Shri Ram Sarup
r/o H.No.C-12A, Galli No.3
Sanwal Nagar, Near Sadiq Nagar
New Delhi - 110 049.

... Applicant

(By Shri Shyam Babu, Advocate)

Vs.

Union of India through

1. Chairman
Planning Commission
Yojna Bhawan, Parliament Street
New Delhi.
2. Deputy Chairman
Planning Commission
Yojna Bhawan, Parliament Street
New Delhi.
3. Shri Ram Kishore
Technical Officer
Planning Commission
Yojna Bhawan, Parliament Street
New Delhi. Respondents

(By Shri N.S.Mehta, Advocate)

ORDER

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant while working as Economic Investigator Grade-I in the Planning Commission was appointed on an ad hoc basis to the post of Technical Officer also in the Planning Commission by order dated 15.3.1982. He was however reverted as Economic Investigator by the impugned order dated 8.10.1984. He submits that his reversion was done without notice and with malafide intention, and the same is therefore liable to be set-aside. He further submits that he had been considered and approved for promotion to the post of Technical Officer by the DPC and his appointment was made

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on an adhoc basis only because the respondents intended to amend the Recruitment Rules. However even under the new Recruitment Rules 1985, he was qualified for the post of Technical Officer and rightly therefore he should have been continued as such. Even when the Rules were further amended on 25.11.1988, he claims that he continued to satisfy the eligibility conditions for regular appointment. But the respondents appointed one of his juniors, Respondent No.3 as a Technical Officer on 28.2.1989. The applicant submits that he made representations against the appointment of Respondent No.3 but his appeal dated 29.6.1991 remained unanswered by the respondents.

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2. The respondents in their reply have taken a preliminary objection that the application is time barred as it has been filed belatedly in 1992 against an order passed in 1984. On merits also they deny the claim of the applicant. They submit that the post of Technical Officer was in 1981 in Group 'A' and was to be filled in through transfer on deputation as per 1965 Recruitment Rules. However, in order to allow for promotion, it was decided to down grade the post from Group 'A' to Group 'B' by changing its pay scale from Rs.700-1300 to Rs.650-1200 w.e.f. 1.12.1981. Pending finalisation of the Recruitment Rules for the down graded post the applicant was appointed as Technical Officer on an ad hoc basis w.e.f. 24.2.1982. The UPSC however did not accord their concurrence to the continued ad hoc appointment beyond 24.4.1984 and the orders were issued reverting the applicant to the post of Economic Investigator on 8.10.1984. The revised Recruitment Rules were notified on 3.10.1985. The respondents say that the applicant did

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not come within the ambit of the field of promotion and his representations to treat the post of Economic Investigator as a feeder grade was not agreed to by the Department of Personnel and Administrative Reforms. At the same time, one Shri N.L.Sachdeva obtained an ad-interim injunction from the Court of Additional District Judge against the promotion of any other officer to the post of Technical Officer. This stay was ultimately vacated by this Tribunal on 20.5.1988. Meantime, the post of Technical Officer was again upgraded to Group 'A' w.e.f. 2.3.1987 and fresh Recruitment Rules were notified on 25.11.1988. The Rules allowed for the Departmental candidates with five years regular service and accordingly Respondent No.3 was a Senior Artist was appointed on ad hoc ^{basis} w.e.f. 28.2.1989.

3. We have heard the counsel. The reliefs sought for by the applicant are as follows:

"a) The Hon'ble Tribunal be pleased to quash the impugned order of reversion dated 8.10.1984 and order that the applicant is deemed to be appointed as Technical Officer on regular basis from 24.2.1982 onwards or from any subsequent date that this Hon'ble Tribunal may deem fit with all consequential reliefs and benefits.

b) Quash the order of appointment of Respondent No.3 as Technical Officer.

c) In the alternative, the applicant be granted one-time promotion following the judgment of Hon'ble Supreme Court in K.G.S.Bhat case reported as AIR 1989 SC 1972 since he is stagnating at the post of Economic Investigator/Research Assistant since 19th December, 1972 and is due to retire on 31st December, 1992.

d) Any other relief deemed suitable by this Hon'ble Tribunal along with costs."

4. The OA was filed on 7.12.1992, i.e., more than eight years after the impugned order of 8.10.1984. Patently the applicant's case against the order of reversion w.e.f. 8.10.1984 suffers from latches and is barred by limitation. It was argued by the learned

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counsel for the applicant that the applicant could make a representation of his reversion only when adhoc appointment was given to Respondent No.3 in 1989 since he had every expectation that on finalisation of the Recruitment Rules, he will be restored to the position of Technical Officer on a regular basis. We are unable to accept this explanation. The cause of action arose on 8.10.1984, when the applicant was reverted from the post of Technical Officer, and he had to approach the proper forum for relief within time and not after another eight years making his case contingent upon an entirely different set of circumstances in which Respondent No.3 was promoted. The arguments advanced by Shri Shyam Babu, learned counsel for the applicant, that the Technical plea of limitation should not be adopted by the Government as a model employer where injustice has patently occurred cannot also be accepted. If the applicant remains silent for so many years, the only presumption is that it was not an injustice so patent that ~~for which~~ he would have been compelled to seek his remedy without delay. The long delay involved, on the contrary, indicates that the action of the applicant is motivated by an after thought. Delay deprives the person of remedy available in law and one who loses the remedy by lapse of time also loses his right (See Rattan Chandra Sammantha & Others' case, JT 1993(3) SC 418.

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5. We now come to the second relief, i.e., quashing the appointment of Respondent No.3 as Technical Officer. The applicant says, in his rejoinder, that he made a representation against the appointment of Respondent No.3 on 29.6.1991. Thus he took two and half years to even approach the respondents with his representation. No

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explanation has been given for not immediately giving his representation and not approaching the Tribunal if the same was not disposed of within six months thereafter. The applicant cannot choose his own ^{time} to make his representation and thereafter claim that he is within limitation because the appellate authority has not acted on his plea for redressal. (23)

6. The learned counsel for the applicant submitted that the respondents acted mala fide in not undertaking the exercise of making regular appointment to the post of Technical Officer till the applicant retired from service, as otherwise the superior claim of the applicant would have been manifest before the DPC. We are unable to comment on this as the same is not a part of the pleadings.

7. Since the application is barred by limitation, the OA is liable to be dismissed on this ground alone. On merits also we do not find any ground for interference. There is no allegation that any Departmental Promotion Committee was held after the promulgation of the 1988 Recruitment Rules and that the applicant though eligible was not considered by that committee. In fact what we learnt from the arguments was that the DPC was held after the retirement of the applicant. Having failed to contest his own reversion of 1984 and also the promotion of Respondent NO.3 made in 1989 in proper time, no scope remains therefore for considering the relief sought for by the applicant. The OA is accordingly dismissed. No costs.

/rao/

R.K. Aboojah
(R.K. Aboojah)
Member(A)

T.N. Bhat
(T.N. Bhat)
Member(J)