

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(13)

O.A. No. 1279/93

199

T.A.No.

DATE OF DECISION 5-4-1999

Sh.K.L.Malhotra

....Petitioner

Sh.K.L.Bhandula

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.K.C.D. Gangwani

....Advocate for the
Respondents.

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The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri N.Sahu, Member (A)

1. To be referred to the Reporter or not? YES

2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A.No.1279/93

New Delhi, this the 5th day of January, 1999

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)
HON'BLE SHRI N. SAHU, MEMBER(A)

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Shri K.L.Mehrotra,
S/o Shri R.P.Mehrotra,
working as Assistant Director,
TCD-I Dte.. (CEA)
Central Water Commission,
Sewa Bhawan, R.K.Puram,
New Delhi-110066.

Resident of:

V & P.O. Rithala (Behind Sector-V, Rohini)
Delhi-110085.Applicant

(By Advocate: Shri K.L.Bhandula)

Versus

1. Union of India, through
Secretary to Govt. of India,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi-110001.
2. The Chairman
Central Water Commission,
Sewa Bhawan, R.K.Puram,
New Delhi-110066.
3. The Chairman
Union Public Service Commission,
Dholpur House,
New Delhi-110011. Respondents

(By Advocate: Shri K.C.D.Gangwani)

O R D E R (ORAL)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)

We have heard Shri K.L.Bhandula, learned counsel for the applicant at length and Shri K.C.D.Gangwani, learned senior counsel for the respondents and perused the pleadings.

2. The applicant is aggrieved by the action/non-action of the respondents in not giving him the

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benefits that have been given to one Shri V.P.Mishra who was appointed on regular basis to the grade of Assistant Director with effect from 3.5.79 in terms of the judgement of the Supreme Court dated 23.4.91 in S.L.P.14389/88 by order dated 26.11.92. Hence, he has filed this O.A. claiming regularisation against the vacancy in the post of Assistant Director/Assistant Executive Engineer available in the promotee quota in the year 1979, as given to Shri V.P.Mishra with consequential benefits. This O.A. has been filed on 31.5.93.

3. Admittedly, both Shri V.P.Mishra and the applicant have been considered for promotion to the post of Assistant Director by the D.P.C. held on 9.8.82 and while the name of Shri Mishra was included in the panel, the D.P.C. had not found the applicant fit for promotion on that date. One of the pleas taken by Shri Bhandula, learned counsel for the applicant is that this Tribunal should call the records of the D.P.C. held on 9.8.82 to see whether the D.P.C. had followed the relevant rules. His other main contention is that the respondents have failed to hold the DPCs for nearly seven years from 1975 to 1982. Later, the applicant had been found fit for promotion to the post of Assistant Director by the D.P.C. held on 5.4.84. The learned counsel for the applicant further submits that the applicant had been agitating against his non-promotion since 1982 by making a number of representations, though none is placed on record, except the representation given in 1982. His contention is that after the judgement of the Tribunal in V.P.Mishra's case (O.A.13/87) on 3.8.88 had been upheld by the Supreme Court vide their order dated 23.4.91 in S.L.P.14389/88, the respondents passed the

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consequential order with respect to Shri V.P.Mishra and that gave him a fresh cause of action and, therefore, the question of limitation does not arise. He has submitted that as Shri Mishra was junior to the applicant all along, he should also have been considered for promotion to the post of Assistant Director from 1979 as he was similarly situated. He has also submitted that applicant's services should have been counted and he should have been considered senior to Shri V.P.Mishra.

4. The respondents in their reply have submitted that the case of Shri Mishra and that of the applicant are not similar. The learned counsel for the respondents has submitted that while Shri V.P.Mishra has continued to officiate on ad-hoc basis in the post of Assistant Director, the applicant had, in the meantime, been away on deputation and therefore, there is no question of counting his officiating position of ad-hoc promotion. He has, therefore, submitted that the question of considering these two persons on similar basis does not arise. The learned counsel has also raised a number of preliminary objections namely: (i) that as the applicant is agitating for reliefs dating back to 1979 and 1982, the Tribunal is barred from adjudicating on the matter having regard to the provisions of Section 21 of the Administrative Tribunals Act, 1985. He has also submitted that the applicant has not challenged the DPC held in 1982 when he has been superseded by Shri V.P.Mishra and he cannot do so at this belated stage as the claim, if any, is barred by limitation. (ii) Secondly he has submitted that the post of Assistant Director is a selection post for which the D.P.C. has been held on 9.8.82 in which the applicant has been considered and found

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unfit for promotion. Later, in the DPC held in the year 1984, he was considered again and promoted. The learned counsel has submitted that since the applicant has not agitated the matter earlier, he cannot do so at this stage. (iii) Thirdly, that the O.A. suffers from non-joinder of necessary parties as the persons who are likely to be affected have not been impleaded as parties in the O.A. (iv) Lastly, he has submitted that the judgement in O.A.31/87 has been delivered on 3.8.88 on the basis of which the applicant is claiming reliefs while this O.A. has been filed five years thereafter in 1993 which is also highly belated.

For these reasons, the learned counsel for the respondents has submitted that this O.A. may be dismissed.

5. We have carefully considered the pleadings and submissions made by the learned counsel for the parties. We find merit in the submissions made by the learned counsel for the respondents that this O.A. is liable to be dismissed as barred on the grounds of jurisdiction, limitation and non-joinder of necessary parties, even without going into the merits of the case. Admittedly, the applicant has been agitating the matter of his non-promotion from 1982 onwards by making a number of representations, but it is settled law that repeated representations will not extend the cause of action so as to bring it within the period of limitation under Section 21 of the Administrative Tribunals Act.1985. It is also noted that the D.P.C. held in 1982 had considered applicant's case, but had not found him fit for promotion to the post of Assistant Director which is a selection

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post, and there is no illegality in this justifying any interference in the matter. We find that this application is barred by limitation and jurisdiction. O.A. is accordingly dismissed. No order as to costs.

N. Sahu
(N. SAHU)
MEMBER(A)

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

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