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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 13 /19 93

DATE OF DECISION : 22-5-98

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER (A)

Dr. S.K.Sood ... Applicant(s)

-Versus-

U.O.I & anr. ... Respondent(s)

Advocates :

Mr./Ms. B.S.MAINEE for Applicant(s)

Mr./Ms. V.S.R.KRISHNA & for Respondent(s)  
Mr. R.L.Dhawan

1. Whether to be referred to Reporter? yes

2. Whether to be circulated to other Benches?

*Km*  
( K. M. Agarwal )  
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

23

O.A. No.13/93

NEW DELHI, THIS THE 22<sup>nd</sup> DAY OF MAY, 1998.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN  
HON'BLE MR.R.K.AHOOJA, MEMBER(A)

Dr. S.K.Sood  
Sr.Divisional Medical Officer  
Northern Railway  
Bikaner

... Applicant

(BY ADVOCATE SHRI B.S.MAINEE)

vs.

Union of India: Through

1. The Secretary  
Ministry of Railways  
Rail Bhawan  
New Delhi
2. The General Manager  
Northern Railway  
Baroda House  
New Delhi.
3. The Chief Medical Officer  
Northern Railway  
Baroda House  
New Delhi.

... Respondents

(SHRI V.S.R.KRISHNA, ADVOCATE FOR RESPONDENT No.1)

(SHRI R.L.DHAWAN, ADVOCATE FOR RESPONDENTS NOS.2 &3)

ORDER

JUSTICE K.M.AGARWAL:

The two main reliefs claimed in this application under section 19 of the Administrative Tribunals Act, 1985, (in short, the "Act"), as mentioned in paragraphs 8.3 and 8.4 of the application are as follows:

"8.3. That this honourable Tribunal may be further pleased to direct the respondents to quash the remarks given by the accepting authority in the A.C.Rs of the applicant and further direct the respondents to re-consider the case of the applicant as Sr.D.M.O. as per his seniority on the basis of the report given by the reporting/reviewing authority.

"8.4. That this honourable Tribunal may be further pleased to direct the respondents to consider the applicant for promotion as

*Yours*

Sr.D.M.O. from the date from which his juniors have been promoted with all consequential benefits."

2. Briefly stated, the applicant joined the services of the Northern Railway as Assistant Surgeon (Class III) w.e.f. 4.5.1964. He was first promoted as Assistant Medical Officer (Class II) w.e.f. 1.1.1966, then as Assistant Divisional Medical Officer (Class I) w.e.f. 1.1.1973 and, thereafter, as D.M.O. w.e.f. September 1987 against one of the upgraded posts of D.M.Os. by order dated 13.4.1988 with retrospective effect. Ultimately he was further promoted as Sr.D.M.O. (J.A. grade) by order dated 13.5.1991 of the first respondent, communicated to him by the second respondent by his notice dated 3.7.1991. The applicant complains that he had become eligible for the post of Sr.D.M.O. (J.A. grade) in October 1989, but he was ignored and his juniors were promoted w.e.f. 31.10.1989 and, therefore, he had to file his representation dated 18.12.1989, followed by another representation dated 28.11.1990. In reply, he was informed by the second respondent by his letter dated 22.3.1991 that he "did not fulfil the norms laid down for promotion in J.A. grade ." Being aggrieved, he has filed the present O.A. for the said reliefs. The application is resisted by the respondents.

3. The learned counsel for the applicant argued that it was apprehended that the grading given by the Reporting and Reviewing Officers in the A.C.Rs. of the applicant for the relevant years was down-graded by the Accepting Officer, which was taken into account by the D.P.C. and which resulted in exclusion of his name in the Select List of 1989. Relying on a decision of this Tribunal in **Dr.Rajendra Prasad v. Union of India, O.A. No.959/92**, decided on 19.9.1997, it was argued that it was a fit case for granting the reliefs claimed in this

application.

4. The learned counsel for the respondents pointed out that the said ground was not urged in any of the representations made by the applicant and that the application was also barred by time. In reply the learned counsel for the applicant urged that the applicant did not know even on the date of arguments, if there was down-grading by the Accepting Officer and, therefore, the point could not be taken in his various representations. It was argued that under the circumstances, a prayer was made for directing the respondents to produce the applicant's ACRs. for the relevant years and to decide the case on the basis of the entries in the ACRs. On limitation, it was argued that the applicant's representations were under active consideration of the respondents and, therefore, the application was not belated. In support of his contention, the learned counsel relied on a decision of this Tribunal in **The All India Engineering Design Draughtsman Association v. The Director**, 1992 (1) SLJ (CAT-Madras) 87.

5. To take up the question of limitation first, in **S.S. Rathore v. State of M.P.**, AIR 1990 SC 10, after quoting the provisions of sub-sections (2) and (3) of section 20 of the Administrative Tribunals Act, 1985, the Supreme Court held:

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action

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shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

Further in State of Karnataka v. S.M.Kotrayya, 1996 SCC (L&S) 1488, the Supreme Court said in paragraph 9 of its decision:

"9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

In the present case, the applicant claimed that as per his seniority, he was due for promotion to the post of Sr. D.M.O. (J.A. grade) in October 1989. He further alleged in paragraphs 4.8 and 4.9 of his application:

"4.8. That in terms of notice No.940-E/19-XIX (Eia) dated 15.11.1989 the respondent No.2 issued promotion orders of a large number

of D.M.Os to the post Sr.D.M.Os in pursuance of Railway Board letter No.E(O)III/89 PM/126 dated 31.10.1989. A copy of this notice is annexed hereto and marked as Annexure A-1.

"4.9. That in terms of the aforesaid notice as many as 59 D.M.Os were promoted as Sr. D.M.Os but the name of the applicant was illegally, arbitrarily and inexplicably ignored."

In paragraphs 4.13 and 4.14, he alleged that he made a representation on 18.12.1989, followed by another representation on 28.11.1990. In paragraph 4.16, it was alleged that on 22.3.1991 "the respondent No.2 gave a bald reply saying that the applicant did not fulfil the norms laid down for promotion in J.A. grade." Accordingly as provided in section 21 of the Administrative Tribunals Act and held by the Supreme Court in the aforesaid two cases, the present O.A. ought to have been filed within one year from 15.11.1989, the date of notification; or within six months from 18.12.1989, the date of first representation; or, at least, within 18 months from 15.11.1989, taking the best possible view in favour of the applicant. However, the present O.A. was filed on 30.12.1992, i.e., after a delay of about more than one year and seven months. As held by the Supreme Court in S.M.Kotrayya's case (supra), the applicant was bound to explain the delay, which he has not done. On the contrary, in paragraph 3 of the application, a wrong statement has been made:

"That the applicant further declares that the application is within the limitation period prescribed in Section 21 of the A.T. Act, 1985."

As held in Rathore's case (supra), repeated unsuccessful representations not provided by law are not governed by the principle laid down. Thus, the application is barred by time and deserves to be dismissed on the ground of

limitation.

6. The decision of the Madras Bench of this Tribunal in the All India Engineering Design Draughtsman Association case, relied on by the learned counsel for the applicant, cannot be a good law in the light of the aforesaid decisions of the Supreme Court. Secondly, the case is also distinguishable. In the Madras case it was found that the respondents therein had issued a series of letters in response to the representations of the applicant therein, containing assurances that the matter was under consideration. In the present case, there was no such assurance. On the contrary, by his letter dated 22.3.1991, the respondent No.2 had specifically informed the applicant that he was not found eligible for the reason stated. Even from 22.3.1991, the O.A. would be barred by time. Accordingly our view is supported that the application is liable to be dismissed on the ground of limitation.

7. Though in the light of our conclusion on the question of limitation, the other point raised in the case may not be examined, but we propose to examine that point also in order to do complete justice to the applicant.

8. Admittedly the applicant did not complain in any of his representations that the grading given to him by his Reporting and Reviewing Officers was down-graded by the Accepting Officer, which resulted in vitiating the findings of the DPC about his merits for promotion to the post of Sr. D.M.O. (J.A.grade). If he did not know this fact, he could have expressed his apprehensions in that regard, as was done in the O.A. He cannot, therefore, be allowed to urge the point for the first time in his O.A. and that too on no basis. Fact remains that he was

considered by the D.P.C. that was convened in 1989 and that he was not found fit. If the contention is allowed to prevail even without any basis, there will be no end to litigation, or finality to the Select List prepared by the D.P.C. In each and every case, where officers are not found fit for promotion, the grievance would be similar to one raised in this petition and in each and every case, the Tribunal will be required to summon the ACRs and to satisfy itself, if the apprehension was well founded.

9. It is true that in Dr. Rajendra Prasad v. Union of India, O.A. No.959/92, it was held by ~~that~~ the Tribunal that:

"8.....The grievance of the applicant is that in this ACR, while the reporting and reviewing officers had graded him "very good", the accepting authority without powers to do so had downgraded this to "good". The respondents have not been able to controvert the allegation of the applicant that as per Government of India instructions conveyed vide DG, P&T letter No.27-2/83-Vig. II dated 21.1.1983 reproduced in Swamy's Compilation on Confidential Reports (Copy at annexure A-5), the remarks by an officer other than the reporting and reviewing officers in the ACRs are not in order. Thus, while the ACR for 1987-88 could be considered, the remarks of the accepting authority could not be taken into account."

But in what context, or on what basis the aforesaid conclusions were reached? The applicant in that case was under suspension and subjected to departmental enquiry, which ultimately resulted in his favour. In the meanwhile, on the basis of the recommendations of the Selection Committee, 186 ADMOs were promoted to the upgraded posts. The applicant was left out, though his juniors were promoted. The applicant therein filed OA

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No.588/88, which was disposed of by directing the respondents to review his ACRs of 3 years in the light of the directions made. Pursuant to the said directions, the respondents therein passed the following order:

"The ACRs for each of the years 1984-85, 1985-86 and 1986-87, have been reviewed afresh taking into consideration the remarks of the Commission for Departmental Inquiries, by the Chief Medical Officer, who observed as under:-

In both the CRs ended 1984-85 and 1985-86 under 'Integrity' column, a mention about CBI's trap has been made. As the ACRs are initiated, reviewed and accepted taking into account the officer's technical ability, personality, capabilities and potentialities during the year under report, the CBI trap has in no way influenced the Reporting/Reviewing/Accepting authorities. I, therefore, find no ground to change the assessment, as reflected in these two CRs." (Emphasis supplied).

There was, thus, foundation for the contention that "the remarks of the accepting authority have been considered when under the rules only the reporting and reviewing officers' remarks are to remain on the ACRs." There is no such foundation in the present case.

10. We also perused the proceedings of the D.P.C. meeting dated 21.9.1989. They do not say or indicate that the remarks of the Accepting Officer were also considered. In paragraph 5 of the proceedings, it is recorded:

"5. Board scrutinised the performance of all the eligible doctors and found that the following doctors are not suitable for empanelment to JA grade:

<u>S.No.</u>	<u>Drs.</u>	<u>Railway</u>
1 to 3	Not reproduced.	
4.	SK Sood	N
5 to 26	Not reproduced."	

11. The ACRs. of the applicant for the various periods were produced before us, which were also produced before the D.P.C. Though in the light of what we have stated above, it does not appear necessary to reproduce the various entries made by the Reporting and Reviewing Officers in the ACRs of the applicant, we may say that in the ACR for the year ending 31.3.1986 initial grading by the Reporting Officer was "Average", which was struck out subsequently and then substituted by the word "Good". In the column of general assessment for the said year it was written "Just manages to carry on his work." Subsequently the word "Just" was scored off. For the subsequent period between 1.4.1986 and 7.1.1987/31.3.1987, the grading given by the Reporting Officer and the Reviewing Officer was "Good". During 1987-88, the grading by the Reporting Officer was "Very Good", but no grading was given by the Reviewing Officer. He only mentioned, "I agree with the comments and the assessment", in the column reserved for grading. During 1988-89, the grading given by the Reporting Authority was "Outstanding", but again the Reviewing Officer did not give any grading. He was satisfied by saying "He did good work in connection with F.P." Similarly for the period between 1.4.1989 to 9.8.1989, the grading was "Very good" as per the Reporting Officer, whereas no grading was given by the Reviewing Authority. He was satisfied by saying, "Fit for promotion as per his seniority" in the column meant for grading. Now in these proceedings, we cannot direct the respondents to produce before us the ACRs. of other candidates, compare them with those of the applicant and then say that others having similar gradings were preferred. If it is done, it will lead to endless litigation and unnecessary delay and administrative exercise.

12. For the foregoing reasons, we see no merit in this application. Accordingly it is hereby dismissed, but without any order as to costs.

*Agarwal*  
(K.M.AGARWAL)  
CHAIRMAN

*R.K.Ahooja*  
(R.K.AHOOJA)  
MEMBER(A)