

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1367/93 & MP 1823/93

Date : 4.8.1993

Shai K.R. Sharma

.... Applicant

Vs.

Union of India

.... Respondents

For the Applicant

.... Shri B.B. Srivastava

For the Respondents

....

COARM : Hon'ble Mr. J.P. Sharma, Member (J)

Hon'ble Mr. S. Gurusankaran, Member (A)

The applicant in this case had certain grievances on his promotion and he filed WP 1020/80 in Delhi High Court on 24th July, 1980. That has been transferred to this Tribunal and registered as TA 806/86 and decided by Principal Bench by order dated 24.5.1988 directing the respondents to constitute a Review DPC as on 5.5.1979 and consider the case for regular promotion of the applicant ignoring the adverse entry of 1975. Further it was directed that the applicant may also be considered for ad-hoc promotion vis-a-vis his junior Shri Rajeshwar Verma with effect from May 1978, and he may also be given the same benefit of ad-hoc promotion with effect from 6.5.1978. The respondents in pursuance of this direction of this Principal Bench, issued two simultaneous orders in December, 1988 giving the applicant ad-hoc promotion with effect from 10.5.1978 in officiating capacity as Director/ Superintendent Engineer, CWC. The applicant was dissatisfied,

as in spite of direction of the Order in December, 1988

(Annexure A3 and Annexure A5) monetary benefits of officiating service on ad-hoc basis was not given to the applicant. The applicant therefore filed CCP under relevant provisions of Administrative Tribunal Act, 1985 for drawing contempt proceedings, as the respondents have not completely complied with the directions of the judgment in TA 806/86 (Supra). The CCP was registered as CCP 18/89 and considered the matter about consideration of the applicant by Review DPC. The Bench observed that

" We are satisfied that the respondents have substantially complied with the directions of this Tribunal. The case was considered by the Review DPC for promotion, but he has not been found suitable. As regards, ad-hoc promotion of the petitioner, the respondents issued the orders, but the arrears of pay and allowances have not been given to him on the ground that he was on various kinds of leave during that period".

However, it has been observed while dismissing the CCP that it will be open to the applicant to agitate his grievance, if any, if advised, by filing a fresh application in accordance with law. It appears that the applicant, thereafter moved MP No. 1929/92 on 3rd June, 1992 under Rule 24 of the CAT procedure rules, 1987. This MP was dismissed by order dated 8.4.1993 observing that the order passed in CCP dated 6.9.1989 clearly directed

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the applicant to file fresh OA. The applicant has filed an application on 10.6.1993, in which the applicant has prayed for a number of reliefs going to the extent that the proceedings of the Review DPC ~~to~~ be quashed. He has further claimed arrears of pay and allowances for officiating service on ad-hoc basis for the period from 12.5.1978 to 19.6.1979 and also prayed for a direction to be issued to the respondents to continue the ad-hoc promotion from 20.6.1994 to 20.8.1994. ^{X 1979 + 1981} He also prayed for the consequential reliefs.

Having heard the learned counsel for the applicant on admission at a considerable length, the request made by the counsel for the issue of notice, advancing the argument that the applicant was hard hit and also narrated certain casualities even to the extent of the death of his wife and has incurred a quite a large amount of money could not be accepted.

MP No. 1823/93 has also been moved for condonation of delay, in which certain facts have been stated which prevented the applicant to file this application earlier.

Regarding the relief claimed by the applicant for quashing the proceedings of Review DPC, the matter is already decided and cannot be heard second time. Thus, relief in this respect is not maintainable at all irrespective of limitation.

As regards payment of arrears of pay and allowances for the period from 19.6.1979, the applicant himself did not choose proper forum at the proper time. Delay defeats the legal remedy and also the rights available. Limitation is a point which gives the advantage to the adversary. The learned

counsel referred to AIR 1987 SC 1353, wherein the Supreme ^{and claim}
Court laid down that ^{plea} right of limitation should not be allowed. ^{outweighment of}

In the present case the picture which comes before us is different, as the applicant has not asailed the earlier order of December, 1988 wherein the applicant was not allowed the arrears of salary also for officiating period. If that was not paid in due time, then within 1½ years from that day he should have asailed the same. He did not ^{comply} with directions given in CCP that he is at liberty to asail the non-compliance part of the judgment by filing a fresh OA in accordance with law. He has rather moved the MP, which was dismissed in April 1993. We have considered the various averments made in the MP 1823/93 and do not find any substantial reasons to condone the delay.

In view of this fact we find that the present application is barred by limitation with regard to relief of payment of arrears of pay and allowance.

The learned counsel also prayed for extending the period of ad-hoc service even beyond June, 1979 till he was given regular promotion from 29th August 1991. That relief is also not tenable as the applicant has ^{not} asailed the order of December 1988, which restricted the period of officiating service till June 1979. That relief also cannot be considered as barred by delay and latches.

Since the main reliefs can be granted as ^{not} devoid of ^{banned by limitation} and ^{merits,} the other reliefs which follows from the main relief cannot be granted.

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In view of this fact the present application is
dismissed as barred by limitation and resjudicata at the
admission stage itself.

J. P. Sharma
f/8993
(S. Gurushankaran)
Member (OJ).

J. P. Sharma
(J. P. Sharma)
Member (J)