

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Original Application No.15 of 1996

Thursday, this the 21st day of November, 2002

Hon'ble Mr. S.Dayal, A.M.

Hon'ble Mr. A.K.Bhatnagar, J.M.

Virendra Mohan Tewari,
S/o Shri Kripa Shanker Tewari,
r/o 261/4, New Labour Colony,
Babu Purwa, Kanpur- 208011,
employed as Upper Division Clerk
(adhoc) in the office of the
Joint Director General of Foreign Trade,
B-38, 1-A/2, Tulsipur, Mehmoorganj,
Varanasi.

... Applicant

(By Advocate : None)

Versus

1. Union of India,
through the Secretary,
Ministry of Commerce,
Udyog Bhawan, New Delhi-110001.
2. The Joint Director General of Foreign Trade,
6-IV-C, Green Field, Shakti Chowk,
Ludhiana, Punjab.
3. The Joint Director General of Foreign Trade,
6-7, Asaf Ali Road, New Delhi-110002.
4. The Director General of Foreign Trade,
Udyog Bhawan, New Delhi-110001.
5. Shri B.N.Singh, Joint Director General
of Foreign Trade, 6-IV-C, Green Field,
Shakti Chowk, Ludhiana.

..... Respondents.

(By Advocate : Shri A.Mohiley)

ORDER (ORAL)

By Hon'ble Mr. S.Dayal, A.M. :

This application has been filed for setting aside
the order dated 1.3.1994 giving break in service to the

(Signature)
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applicant as also for setting aside the adverse remarks in the A.C.R. for 1992-93. A direction is sought to promote the applicant on the post of Upper Division Clerk with all consequential benefits w.e.f. 1.4.1994. A further direction is sought for the respondent No.1 to make rules to compulsorily institute severe penal action against the reporting authorities who make malafide adverse remarks on the ACRs of their subordinates.

2. The applicant has claimed that he had applied for one day's casual leave while posted in Ludhiana office and had gone to Kanpur. There was curfew in Kanpur between 9.2.94 to 19.2.94. The applicant to left for Ludhiana from Kanpur only on 18.2.1994 when there was relaxation of curfew during day hours. He presented himself in the office of Ludhiana on 21.2.1994 (19th & 20th being Saturday and Sunday respectively). The applicant had also sent a telegram to the respondents regarding his residential area in Kanpur being under curfew. The applicant has also claimed that vide leave voucher No.145, he had asked for C.L. to go to Kanpur and not for Delhi. The applicant claims that his appeal was wrongly rejected by the Appellate Authority on the ground that there was nothing substantial in his representation. He was not heard in person before disposal of his appeal. The applicant has attributed the adverse remarks in his ACR for 1992-93 by respondent No.2 to the reason that the Head of Office Shri B.N. Singh was biased and inimical to the applicant. It is claimed that the representation filed by the applicant has not been disposed of till the date of filing of the O.A. The appeal of the applicant regarding non disposal of his

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representation was disposed of by Appellate Authority as containing nothing substantial in his representation. It is claimed that his juniors have been promoted while he has not been given promotion so far.

3. It is claimed that even in the DPC held in January, 1995, the applicant's case was not considered on the ground of adverse remarks in ACR for 1992-93.

4. We have carefully gone through the pleadings of record.

5. We find in the counter reply that the respondents have raised the preliminary objections regarding the jurisdiction of the OA. It is submitted that the petition is against the order 1.3.1994 and adverse remarks in the ACR is for the year 1992-93, both pertaining to the period when the applicant was serving in the office of the Joint Director General of Foreign Trade, Ludhiana which falls under the jurisdiction of the Central Administrative Tribunal of Chandigarh and that the decision in appeals dated 9.2.1995 is consequential in nature and cannot be made a criterion for deciding the jurisdiction of the Tribunal. The applicant appears to have filed an application because he was posted in the office of Joint Director General of Foreign Trade, Tulsipur, Mehmoorganj, Varanasi at the time of filing of the OA. We find that the objection of the respondents with regard to arising of the cause of action out side the jurisdiction of this Tribunal in so far as the relief against the order of break in service is concerned, is justified. It is also justified with regard to communication of the adverse remarks and representation

made by the applicant against the adverse remarks. The objection is also justified with regard to consideration of promotion of the applicant at the time of D.P.C. held in 1994. However, rules 6 of the C.A.T. (procedure) rules reads as follows :-

"Place of filing Application :- (1) An application shall ordinarily be filed by an applicant with the Registrar of the bench within whose jurisdiction :-

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen :

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub rule (1), a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

It appears that the impugned order dated 9.2.1995 was passed, when the applicant was posted within the jurisdiction of this Tribunal. At the time of filing of this OA, the applicant was also posted within the jurisdiction of this Tribunal. Therefore, we reject this ground of the respondents.

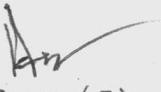
6. Since the order dated 9.2.1995, which is impugned, deals with all the reliefs claimed by the applicant, this ground also cannot be accepted for disposal of the OA at this stage. The learned counsel for the respondents raised objection with regard to limitation as the punishment order, adverse remarks and non inclusion of the applicant in the

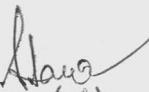
panel of promotion to U.D.C pertaining to the year 1995. The O.A. was filed in 1996. We find that the OA has been filed against rejection of appeals of the applicant as mentioned in the order dated 9.2.1995. Therefore, the ground of limitation also cannot be treated as a barred by time.

7. The application has contended in his OA that he was not heard before the appeal was decided against him. This contention of the applicant gains further credence due to the fact that the ~~appeals~~ of the applicant have been decided by a cryptic order. The only reason mentioned in the order dated 9.2.1995 is that there was nothing substantial in the representation of the applicant. The issues raised by the applicant in his representation/appeals have not been touched at all. In the interest of justice, we direct the Appellate Authority to afford ^{the} opportunity of hearing to the applicant and pass a fresh order on his appeal. We set aside the order dated 9.2.1995 passed by the respondents on the appeals preferred by the applicant.

8. The applicant shall be heard and appeal decided within a period of three months from the date of receipt of the copy of the order.

9. There shall be no order as to costs.


Member (J)


Member (A)

RKM/V