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Central Administrative Tribunal
Allahabad. Reserved.

Registration O.A.No. 544 of 1986

Chetan Prakash Mittal Applicant

Vs.

Union of India and 2 others ... Respondents.

Hon.D.S.Misra, AM

Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

The applicant who is posted as Section Officer in the office of the Joint Controller of Defence Accounts (Funds), Meerut has moved this petition under Section 19 of the Administrative Tribunals Act XIII of 1985 for a declaration that the order dated 3.8.1979 passed by the Controller of Defence Accounts (AF), Dehradun confirming him as Section Officer w.e.f. 16.4.1977 instead of 1.1.1977 ^{as alleged} and for a direction to promote him as Accounts Officer with the allegations that he had initially joined the service of the respondents as Upper Division Clerk and he was promoted as Section Officer (Accounts) on 13.5.1973 after passing the SAS examination in 1972. His grievance is that despite his satisfactory probation of two years on account of personal annoyance and prejudices of the local Audit Officer (Air Force), Jodhpur, under whom he was then working, he was given adverse remarks in the years 1974 and 1975 and his probation was extended by 23 months. The adverse remarks were communicated to the applicant much after the time stipulated under the rules and on account of extending the period of probation of the applicant he was confirmed late in the cadre of Section Officer w.e.f. 16.4.1977 though other persons of his batch were confirmed w.e.f. 1.1.1977. The time barred adverse remarks could not be given any weightage and the probation period could be

extended only by the Departmental Promotion Committee (for short DPC) and not by CDA. His representation against adverse remarks and his request for disclosing the cause of the adverse remarks were not acceded to and the same were rejected vide letter dated 16.7.1977 of the CDA. The applicant thereafter further made several reminders but the same were again ignored vide reply dated 3.5.1982. The appeal made by the applicant to the President of India on 6.8.1982 against this hardship was withheld without any sufficient cause vide communication dated 18.7.1983. The applicant further made a representation on 5.12.1985 asking for certain information and for reviewing his case through DPC but the same was rejected vide letter dated 27.2.1986. The stand of the applicant is that reduction in seniority amounts to penalty and the same could not be imposed on him without giving him an opportunity of showing cause and the same is illegal and void.

2. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the local Audit Officer (AF), it has been stated that the petition of the applicant is time barred. The allegations of the applicant regarding personal bias or prejudice are unfounded and the annual remarks were given to the applicant according to his work and conduct. In the annual remarks for 1974, though the applicant was reported to be fit for promotion/confirmation after considering the overall performance of the applicant, the DPC, which had the over-riding effect, did not find the applicant fit for confirmation. Every time the probation period of the applicant was extended on the recommendation of the local Promotion Committee by the competent authority and his allegations to the contrary are not correct. There was no undue delay in communicating

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the annual remarks to the applicant and there is no rule to provide that the belated adverse annual remarks should not be considered. The warnings and the adverse remarks were given to the applicant on merits and his probation was extended for valid reasons according to rules. The CDA is the appointing authority of the applicant and he also is the accepting authority. The local Accounts Officer did not bear any malice against the applicant and his performance was noticed adversely even by other authorities. Detailed reasons were communicated to the applicant for not confirming him before 16.4.1977 vide letter dated 2.1.1980, copy annexure CA-3. The reasons for withholding the appeal of the applicant to the President were also furnished to him. The applicant has no case on merits and he is not entitled to any relief.

3. The applicant neither filed any rejoinder nor appeared before us on the date of final hearing despite sufficient opportunity. We, therefore, could hear the arguments advanced on behalf of the respondents only. We have carefully examined the entire record in the light of the allegations made by the applicant in his petition and the case taken up on behalf of the respondents.

4. We will first like to consider the question of limitation arising in this case. So far as the first relief regarding the illegality of the order dated 3.8.1979 is concerned, on the own showing, the applicant had made a representation against it and the same was rejected vide letter dated 8.1.1980. The respondents have stated that the detailed reasons were communicated to the applicant in this respect vide letter dated 2.1.1980, copy annexure CA-3. Unfortunately, we do not find any annexure marked 'CA-3' with the reply. We, however, feel that its contents

are not material in view of the admission of the applicant in para 31 of his petition that the respondents did not accede to his request against his belated confirmation. Thus the representations of the applicants were rejected as early as 8.1.1980 and the cause of action to the applicant for the same arose on the date he received the said communication. As 3 years had already elapsed before the Administrative Tribunals Act XIII of 1985 came into force, this petition challenging the validity of the order dated 3.8.79 is barred by the limitation prescribed by Section 21 of the said Act. The applicant however did not lose heart and went on making further representations. Last such representation was made on 5.12.1985 and he also gave a notice under Section 80 CPC thereafter on 4.3.1986. We have perused the representation dated 5.12.1985 for reviewing his case through DPC. This request was rejected by the CGDA, New Delhi vide letter dated 27.2.1986. No review of such matter is provided after such a long time and in our opinion, this order cannot give a fresh cause of action to the applicant so as to bring his case within limitation. In B.S.Raghvan Vs. Secretary (1987 S.L.R.-155) a Bench of the Central Administrative Tribunal has held that time taken in the disposal of representation made in respect of cause of action arising more than 3 years before the Administrative Tribunals Act XIII of 1985 came into force cannot be excluded for the purposes of computing limitation under Section 21 of the Act. We are, therefore, clearly of the view that so far as the first relief is concerned, the case of the applicant is clearly barred by time.

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5. We have also made out satisfaction ^{about} on the merits of the case of the applicant regarding his first relief and we find that the allegations made by him are not correct. Every time when his probation was extended the matter was considered by the local Promotion Committee and it is on the recommendation of the said Committee that his probation was extended on the basis of his overall assessment. We also do not find any force in his contention that some delay made in communicating the adverse remarks is fatal to the consideration of the said remarks. The remarks were communicated to the applicant each time and he was given an opportunity of making representation against the same and they were duly considered by the concerned departmental authorities. There was, therefore, no denial of natural justice to the applicant and a delay of about 4½ months in his confirmation does not appear to be due to any malafides or personal reasons alleged by the applicant.

6. Regarding the relief for promotion we find that the petition is hopelessly vague. The applicant has not given the necessary details as to when he became due for promotion or whether any person junior to him was promoted or whether he was not considered at the time the persons junior to him were promoted. In the absence of the same, we are unable to consider his case for promotion on merits and we find that so far as this relief is concerned, this is not a fit case for adjudication. We may further add that ^{as per order 2} this fact alone will not prevent the applicant from filing a fresh petition for promotion with necessary facts in case the same may be otherwise maintainable.

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7. The petition is accordingly dismissed without any order as to costs.

MEMBER (A)

Shma
26 Oct. 87

Dated : Oct. 26, 1987
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26/10/87

MEMBER (J)