

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, ALIABAD

DATED: THIS THE 29th DAY OF AUGUST 1997

Coram: Hon'ble Mr. S. Das Gupta AM
Hon'ble Mr. D. C. Verma JM
- - - - -

ORIGINAL APPLICATION NO.1384/92

Raghunath Singh Yadav s/o Late Sri Chet Ram.

Singh Yadav aged about 47 years resident of

37/94-B-Bundu Katra, Agra- - - - - APPLICANT

C/A Sri Satish Dwivedi

Versus

1. Union of India through Secretary

Ministry of Defence, New Delhi.

2. Director General, Research & Development

(RD-PERS-I), New Delhi.

3. Director, Aerial Delivery, R & D Estt.,

51 Station Road, Agra Cantt.- - - - - RESPONDENTS

C/R Sri Amit Sthalakar

ORDER

By Hon'ble Mr. D. C. Verma JM

The applicant Sri Raghunath Singh Yadav has claimed relief that he be given the benefit of promotion to the post of Chargeman II, Chargeman I and Assistant Foreman w.e.f. the date of promotion of Sri M. M. Gupta on the said post. The applicant has also prayed that a direction ^{be given} to correct the

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seniority position of the applicant in the seniority list of Chargeman grade II and Chargeman I and to place him above the name of Sri M.M.Gupta and Shri J.S.Ghai in the seniority list.

2. The Defence, Research and Development Organisation group 'C' Non Gazetted (Technical, Scientific and ~~to~~ other Non Ministerial post Recruitment Rules 1968 (in short Rules 1968) were framed under Article 30 of the Constitution of India. The same was amended from time to time. As it then stood in the year 1979, one third of the post of Chargeman II was to be filled by direct recruits and two third by departmental promotion failing which by direct recruitment. Of the two third posts, 75% post of Chargeman II was to be filled by Supervisory Technical with 3 years service rendered after appointment thereto on regular basis failing which by group 'C' Industrial post included under the ^{sd} hearing Group I in the Schedule of the Defence, Research and Development Organisation, Ministry of Defence (Group 'C' and Group 'D' Industrial posts) Recruitment Rules 1977 (in short Rule 1977) with three years service rendered after appointment thereto on regular basis, after passing the appropriate test/course. 25% of the remaining two third vacancies was to be filled by promotion of group 'C' Industrial post included as per Rules 1977 by holder of group 'C' Industrial post with 3 years' service rendered on regular basis, after passing the appropriate test/course, failing which by Supervisory Technical with 3 years service in the grade.

3. As is evident from above a Supervisor Technical having the required length of regular service can be considered for promotion of Chargeman II without any test/course, but holder of an Industrial post even though has 3 years regular service has to pass a test/course for being considered for promotion to the post of Chargeman II.

4. As per applicant's case, he was initially appointed as Fitter in the deptt. of respondent no.3 in Feb' 1965 and was promoted to the post of Instrumental Mechanic w.e.f.24.12.76. The post of Instrumental Mechanic is an INDUSTRIAL post. One / Sri Thakur Das

an Industrial staff was promoted to the post of Chargeman II w.e.f. 27.8.1979 and thereafter next 3 vacancies were filled up by Sri Behari Lal, Anil Grover and Sri I.S.Dua, ^{who were} ~~non~~ Industrial staff. The next vacancy was to go to ~~xxxx~~ Industrial staff. The applicant claims that he was the sole eligible Industrial staff for promotion to such vacancy of Chargeman II, but the said vacancy was filled up by giving promotion to Sri M.M.Gupta, a non Industrial staff. The applicant represented against the same. ^{applicant} Admittedly ~~they~~ passed the trade test for promotion to the post of Chargeman II on 26.5.1981. On subsequent vacancies, the applicant (Industrial staff) and Sri J.S.Ghai (non Industrial staff) ~~xxxx~~ were promoted by the D.P.C. on 3.7.1981 as Chargeman II. A seniority list of Chargeman II was prepared and two years after his promotion, the applicant was called to sign the seniority roll and learnt that the applicant, though promoted alongwith Sri J.S.Ghai, has been given seniority after Sri J.S.Ghai. The applicant thereafter made representation to the respondents. The applicant, therefore, claims that he should have been promoted on the post of Chargeman II prior to the promotion of Sri M.M.Gupta and should have been placed in the seniority list of Chargeman II above Sri M.M.Gupta. In the alternative the applicant has claimed that he should have been given seniority atleast above Sri J.S.Ghai who was promoted alongwith the applicant to the post of Chargeman II. ~~as~~ Sri M.M.Gupta was subsequently promoted as Chargeman I on 15.3.1984 and Shri J.S.Ghai was promoted as Chargeman I. on 15.3.1986. The applicant was given promotion on 17.3.1987 as Chargeman I. The claim of the applicant is that he should have been promoted to the post of Chargeman I on 15.3.1984 i.e. the date on which Sri M.M.Gupta was promoted. The further

claim of the applicant is that due to incorrect seniority list, Sri M.M.Gupta has been further promoted to the post of Assistant Foreman and the applicant has been denied such promotion.

5. Coming to the first point that the applicant should have been promoted prior to Sri M.M.Gupta, it is found that admittedly the applicant passed the trade test on 26.5.1981. In the recruitment rules for promotion to the post of Chargeman II pre-requisite condition is to pass the trade test. Promotion of Sri M.M.Gupta to the post of Chargeman II was made on 12.2.1981 was Mr. M.M.Gupta was working as Supervisor Technical with three years regular service and no trade test was required in his case. By that date the applicant had not passed the required trade test. Thus non promotion of the applicant to the post of Chargeman II on 12.2.81 is in accordance with the rules.

6. According to the applicant, for the next vacancy the applicant was eligible for promotion to the post of Chargeman II. The respondents have, however, stated that there were two vacancies. First was a reserve vacancy and the second was to be filled up by a general candidate. After de-reservation the post was filled by Sri J.S.Ghai, Supervisor Technical III and on the other post, applicant was promoted. Both Sri J.S.Ghai and the applicant were promoted w.e.f. 3.7.1981. Respondents case is, ^{that} relative seniority in the lower grade was taken into consideration for putting Sri J.S.Ghai senior to the applicant. As per recital made in para 11 of the C.A., Shri J.S.Ghai was promoted to the post of Supervisor Technical grade III w.e.f. 17.12.1971 whereas the applicant ^{was} holding the post of Instrument Mechanic Industrial w.e.f. 24.12.1976.

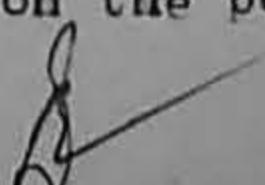
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These dates have not been controverted by the applicant in their rejoinder. Thus putting Sri J.S.Ghai senior to the applicant is perfectly in order.

7. As per O.A., after Sri M.M.Gupta was promoted as Chargeman II, the applicant had sent representation on 16.2.1981. Receipt of such representation has been specifically denied by the respondents. However, subsequent representation dated 24.3.1984 regarding the seniority was replied by the respondents vide annexure 3 dated 27.6.1984 and the claim of the applicant was rejected. In this reply too, the respondents informed the applicant that Sri Ghai was holding the post of Supervisor Technical w.e.f. 17.12.1971 whereas the applicant was holding the post of Instrument Mechanic w.e.f. 24.12.1976. This order was not challenged in court/Tribunal. Instead of approaching the court/Tribunal, the applicant kept on sending representations and reminders and filed this O.A. in the year 1992.

8. We also found that the applicant has been given two promotions and Sri M.M.Gupta has been given three promotions whereas Sri J.S.Ghai has also been given two promotions. Thus the settled position from 1981 would now be unsettled in case the belated claim of the applicant is acceded to.

9. It is also noted that though the seniority position of Sri M.M.Gupta and Sri J.S.Ghai has been challenged, but none of the two have been made respondents in the present case. Thus the position of Sri M.M.Gupta and Sri J.S.Ghai cannot be unsettled unless they are given an opportunity of hearing.

10. The learned counsel for the respondents has raised objection regarding the maintainability of the original application on the point of limitation. After



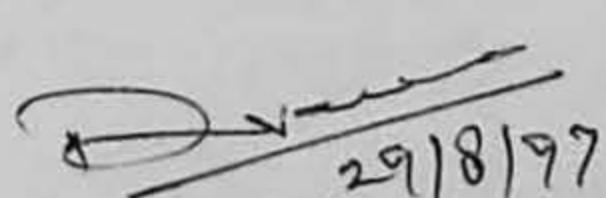
hearing the counsel for the parties, we find that the O.A. is highly barred by limitation. Sri M.M.Gupta was promoted as Chargeman II in February, 1981. Thus cause of action arose to the applicant in the year 1981 and the ~~applicant~~ applicant did not approach the appropriate judicial forum thereafter. We also found that when Sri J.S.Ghai was promoted alongwith the applicant in July, 1981, the applicant made belated representation in March 1984 and the same was rejected vide annexure 3 dated 27.6.84. Thus cause of action ~~putting~~ ^{about} the seniority matter/arose to the applicant in June 1984. The applicant did not approach the judicial forum i.e. court or the Tribunal, thereafter within ^{the} period of limitation. The applicant again kept on sending representation and reminders. It is established law that repeated representations/reminders do not extend the period of limitation. Thus initial cause of action which arose to the applicant in the year 1981 and again in the year 1984, the applicant should have approached the court/Tribunal with in the prescribed period of limitation.

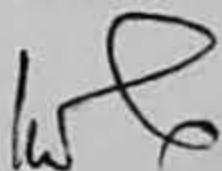
11. The Administrative Tribunal Act 1985 came into force w.e.f. 1.11.1985. Under section 21 of the said Act, an O.A. can be filed before the Tribunal if a representation has not been decided within six months, within one year after the expiry of the said period of six months. Thus specific ^{time limit} is provided for filing of O.A. It is, however, seen that against the order dated 27.6.1984, the applicant made a representation, in the form of appeal/review (annexure A-5) dated 15.4.1992. Thus the said appeal was itself belated. The circumstance therefore, show that the applicant accepted the position regarding promotion of Sri M.M.Gupta and Sri J.S.Ghai in the year 1981 and also the seniority of Sri J.S.Ghai

as he had not availed the opportunity of challenging the said orders in a judicial forum, court/Tribunal within the presecribed period of limitation.

12. The learned counsel for the applicant has, however, submitted that after final rejection by the respondents vide annexure A-9 dated 14.9.1992, the applicant filed the present O.A. in September, 1992 and thus the present O.A. is within Limitation. We are unable to accede to the submissions of learned counsel for the applicant. As has been observed above, subsequent representation cannot extend the period of limitation and, therefore, the belated representation/appeal rejected by the respondents on 14.9.1992 would not extend the period of limitation to provide a fresh cause of action. We, are, therefore, of the view that the O.A. is barred by limitation also.

13. Inview of the discussion made above, we find that the present O.A. deserves to be dismissed and is dismissed. There will be no order as to costs.


29/8/97
Member (J)


Member (A)

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