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Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 290 of 2002

Thursday, this the 07th day of August 2008

**Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

Bhagwan Singh Sethi, aged about 49 years, S/o Late Shri Hansraj Sethi, R/o 118/103 (18), Kaushalpuri, Bamba Road, Kanpur.

Applicant

By Advocate Sri Rakesh Verma

Vs.

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The Director General, Ordnance Factory Board, 10-A, S.K. Bose Road, Calcutta-700001.
3. The Additional Director General, of Ordnance Factories (OEF Group), Headquarters, G.T. Road, Kanpur-208013.
4. The General Manager, Ordnance Equipment Factory, Kanpur.
5. The General Manager, Small Arms Factory, Kanpur.
6. Shri Shambhu Nath Dube, Presently working as Chargeman Grade II (Non technical other than Stores), Ordnance Equipment Factory, Kanpur.
7. Shri Ram Gopal Pandey, Presently working as Chargeman Grade II (Non technical other than Stores), Ordnance Equipment Factory, Kanpur.

Respondents

By Advocates Sri Saumitra Singh (for respondent No. 1 to 5)
Sri R.K. Shukla (for respondent No. 6 and 7)

ORDER

By Justice A.K. Yog, Member (J)

Heard Sri Rakesh Verma, Advocate on behalf of the applicant, Sri Saumitra Singh, Senior Standing Counsel on behalf of respondent No. 1 to 5 and Sri R.K. Shukla, Advocate on behalf of respondent No. 6 and 7.

2. The present O.A. No. 290 of 2002 Bhagwan Singh Sethi vs. Union of India and others has been filed by claiming following reliefs: -

(Signature)

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"8. Relief (s) sought:

In view of the facts mentioned in para 4 above, the applicant prays for the following relief (s): -

- (i) *To issue a writ, order or direction in the nature of certiorari quashing panel/select list published vide Factory Order Part II No. 1095 dated 7.6.1999 by the respondent No. 4 so far as it relates to the respondent No. 6 and 7, Factory Order Part II No. 1159 dated 15.6.1999 appointing and posting the respondent No. 6 and 7 on the post of Chargeman Grade II (non-technical other than stores), letter dated 17.10.2000 issued by the respondent No. 4 and letter dated 25.6.2001 issued by the respondent No. 4 rejecting the representation and appeal of the petitioner referring the decision of the respondent No. 2 (Annexure A-V, A-I, A-XI & A-XIII).*
- (ii) *To issue a writ, order or direction in the nature of Mandamus directing the respondent No. 4 to revert and send back the respondent No. 6 and 7 on the post of Lower Division Clerk-Small Arms Factory, Kanpur i.e. with the respondent No.5 with the similar direction to the respondent No. 5 to take on strength the above persons on their factory.*
- (iii) *To issue a writ, order or direction in the nature of mandamus directing the respondent No. 4 to appoint and post the petitioner against one of the resultant vacancy of the post of Chargeman Grade II (non-technical other than stores) with effect from 5.6.1999 when other quo-employee of the petitioner out of the same panel were posted vide Factory Order Part II No. 1096 dated 7.6.1999 i.e. with effect from 5.6.1999 and to accord all consequential benefits (Annexure A-VI).*
- (iv) *To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.*
- (v) *To award cost of the petition."*

Apparently in order to grant aforesaid relief, respondent No.6/Shambhu Nath Dube and respondent No. 7/Ram Gopal Pandey will have to suffer. The Tribunal can extend the relief to the applicant without prejudicial the application/claim of the respondents. Para-6 of the O.A. reads: -

"6. DETAILS OF REMEDIES EXHAUSTED:

The petitioner preferred a representation dated 26.5.2000, which was rejected on 17.10.2000 against which he submitted an appeal dated 11.4.2001, which too has been rejected vide order dated 25.6.2001.

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Apparently the contents of para-6 (quoted above) are not correct and misleading. The documents annexed with the O.A. itself shows that no appeal was filed and the applicant has been filing representation before the same authority. The applicant, thus, allowed about 2 years to be consumed and he did not care to challenge the orders, now impugned through this O.A. The original order is dated 15.06.1999 and the present O.A. was presented in the registry on 13.03.2002. The gap is of more than 2 1/2 years.

3. Apart from it, it may be noted that Sri Saumitra Singh, Senior Standing Counsel-representing the respondents has raised a preliminary issue on the point of maintainability of the O.A. and pointed out that this O.A. is time barred and should not be entertained. Objection to this effect has been taken in para-8 of the C.A., which reads: -

"8 *That the instant case is hopelessly time barred. The representations of the petitioner were finally replied by this factory letter No. E/E-19/B/NIE dt. 17.10.2000 (Annexure A-XI while he has approached this Hon'ble Tribunal only in the year 2002 well after the limitation period of one year prescribed under the A.T. Act. The petitioner has not filed any application for the condonation of delay. As such the instant petition is liable to be dismissed on the ground of limitation alone. Subsequent, repeated representations and their replies drawing attention to original reply do not constitute fresh cause of action. In this connection Judgment & Order dated 20.03.2002 of the Hon'ble CAT, Jabalpur (Bench) in O.A. No. 764 of 2001-Dharmendra Patel vs. UOI & Others is relevant. The relevant portion of the Judgment is quoted below: - "The applicant's request has been rejected on 23.12.1998 and he has not come before the Tribunal within the stipulated period of limitation as envisaged under Section 21 of the Administrative Tribunals Act, 1985. What has been communicated to him on 17.09.2001 is that his request has already been rejected on 23.12.1998 which does not amount to reconsideration of the issue and would not extend the limitation."*

4. Copy of said Counter Affidavit was received in the Office of learned counsel for the applicant on 17.09.2002. Rejoinder Affidavit, in reply to the said Counter Affidavit, was presented in the registry on 28.10.2002. It cannot be said that aforesaid preliminary objection raised in the Counter Affidavit has not come into the knowledge of the applicant till date. The applicant had an opportunity which he did not prefer to avail for filing an application to condone the delay. This O.A. was filed in the year 2002. Sri Rakesh Verma, Advocate, however, after matter was heard for more than an hour, requested to adjourn the case for filing an application for condonation of delay. This request cannot be accepted at this stage because of the reason that law of limitation

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must be sacrosanct and if this practice of non filing the application for condonation of delay is encouraged, same has been frustrated. It has to be seen that if a party does not act expeditiously and promptly to protect his right, the Court need not to show extravagance in as much as the same will be against public policy, since sheer wastage of Court's time.

5. In view of the above, we find no alternative but to hold that O.A. is time barred for which no sufficient explanation come forth on record. Accordingly the O.A. is dismissed as time barred.

6. There will be no order as to costs.

Emmons
Member (A)

Sh. S. S.
Member (J)

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