

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

M.A.No. 353 OF 1991

with

O.A. No. 370 OF 1991
XXXXXX

DATE OF DECISION 20-11-1991

M.G. Solanki, Petitioner

Mr. V.S. Mehta, Advocate for the Petitioner(s)

Versus

The Union of India, Respondent

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr. S. Gurusankaran, Admn. Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes

2. To be referred to the Reporter or not? Yes

3. Whether their Lordships wish to see the fair copy of the Judgement? No

4. Whether it needs to be circulated to other Benches of the Tribunal? No

M.G. Solanki
Retired Chief Goods Supervisor
Western Railway, H A P A
(Rajkot Division)

... Applicant.

(Advocate: Mr. V.S.Mehta)

Versus.

The Union of India,
Owning & Representing
Western Railway, through
General Manager,
Western Railway,
Churchgate,
Bombay - 20.

.... Respondents.

(Advocate: Mr. B.R.Kyada)

O R D E R

M.A.No. 353 OF 1991

with

O.A.No. 370 OF 1991

Date: 20-11-1991.

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

The applicant has filed this application under section 19 of the Administrative Tribunal Act praying for quashing of the orders dated 5.10.1983 (Annexure A-2) and orders dated 6.10.1983 (Ann. A-8), directing the respondents to fix his presumptive pay as Assistant Commercial Superintendent (ACS for short) w.e.f. 25.9.1983, and consequently pay him all the arrears due as back wages and retirement benefits, etc.

2. The salient features of the case of the applicant are that while he was working as Chief Goods Supervisor (CGS for short) at Sabarmati, Baroda Division, he was relieved on transfer to Ajmer on 2.7.1983. He reported for duty at Ajmer on 20.9.1983. In the meanwhile, promotion orders dated 8.8.1983 (Annexure A-1) had been issued promoting the applicant as ACS (Class II) purely on

adhoc basis and posting him in Headquarters office. Therefore he was not taken on duty at Ajmer and was directed to report to Headquarters vide letter dated 23.9.1983 (Annexure A-7).

Accordingly, the applicant reported at Headquarters office on 25.9.1983. The applicant has contended that since he reported at Headquarters office on 25.9.1983, his promotion has become operative from that date and further orders were issued only on 5.10.1983 and 6.10.1983 (supra) cancelling his adhoc promotion to ACS (ClassII) and directing him to report back to Ajmer in Class-III post. He has pointed out that both these orders did not indicate any reasons for not allowing him to continue in class II on adhoc basis and his juniors, who were also promoted on adhoc basis were allowed to continue in their promoted posts amounting to discrimination and violation of Articles 14 and 16 of the Constitution of India. The applicant has stated that no disciplinary action was either initiated or pending against him at the time of cancelling his promotion on 6.10.1983. He has produced copy of letter dated 17.8.1984 (Ann.A-12) to indicate that he had successfully passed the written test of the selection conducted for ACS (class-II) against 25% posts reserved for Limited Departmental Competitive Examination and the viva voce test was fixed on 22.8.1984. He was finally served with two major penalty memoranda dated 25.3.1986 and 12.5.1988 (Ann.A-4 and A-5 respectively), while he was working as Goods Supervisor, at Happa on Rajkot Division. He has submitted that he superannuated on 30.6.1988 and

vide orders dated 15.5.1990, the charges initiated under memorandum dated 25.3.1986 were dropped and for the charges initiated under memorandum dated 12.5.1988, he was imposed the penalty of withholding one set of passes. The applicant has pointed out that no promotion orders can be reversed unless they have been issued wrongly and that there was no orders in force in 1983 that an employee, whose conduct is under investigation, can be denied his right of promotion vis-a-vis his juniors.

3. After filing the application, the applicant has filed M.A. 353/91 for condonation of delay in filing the application within the period of limitation. In the M.A., the applicant has stated that he could have filed a suit against the order dated 6.10.1983 before 6.10.1986, i.e. within three years. But since the Central Administrative Tribunals were set up on 1.11.1985, he could have approached the Tribunal on 1.11.1986. But before that, he was served with the charge-sheet dated 15.3.1986 and he was finally exonerated on 15.5.1990 only. He was, therefore, not able to approach the Tribunal from 15.3.1986 to 15.5.1990, as he was under the bonafide belief that he could not approach the Tribunal as long as he was not exonerated of the charges. He has claimed that the cause of action thus arose only 15.5.1990 and he has filed this application on 13.5.1991 i.e. within one year. The applicant has stated that his application is in time and he has prayed that if the Tribunal feels that the application is delayed, the delay may be condoned and the O.A. heard on merits.

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4. We have heard Shri V.S.Mehta, the counsel for the applicant on the question of limitation. Apart from reitirating the various points brought out in the M.A. for condoning the delay, he stressed that the applicant was under the bona-fide belief that he could not approach the Tribunal from the date the first charge sheet was served viz. 25.3.1986 till 15.5.1990, when the charges were dropped. He argued that the cause of action arose only 15.5.1990. When specifically asked to indicate as to on what basis the applicant has prayed for quashing the order dated 5.10.1983 (Ann. A-2) and giving him promotion and all benefits from 25.9.1983, if the cause of action arise only on 15.5.1990, he maintained that if the applicant had approached the Tribunal or the Civil Courts after 25.3.1986, the applications/suits would not have been entertained since a major penalty proceeding was pending against the applicant. He also contended that since the charges have been finally dropped, the applicant should be given the benefits of adhoc promotion from the due date, since otherwise his pension is affected and thus it should be held as a continuing cause of action.

5. We are unable to agree with the contentions of the applicant, that the application is within the limitation period. The applicant has clearly admitted in para 5 of the application that "The cause of action first arose when Assistant Personnel Officer (Commercial), Churchgate sprang a surprise by issuing a note bearing No. EC/839/4/36 dated 6.10.1983 directing me to return back

to Ajmer cancelling my posting as ACS on the basis of GM(E) Routine Note No. E(G) 838/4 dated 5.10.1983". It is very clear that the cause of action arose actually on 25.9.1983, when he was not allowed to assume charge of the post after his reporting at headquarters office or latest on 6.10.1983, when he was redirected to go back to Ajmer to be posted in Class III. It is true that no reasons were communicated to him for cancelling his adhoc promotion to Class II ACS post. But, it cannot be said that he was reverted after being promoted to ACS (Class II), as per his claim in para 4 of the application that the promotion became operative from 25.9.1983 and he was retained against ACS's post from 25.9.1983 to 6.10.1983. He has not produced any proof to show that he actually assumed charge of the post and discharged the duties. This is clear from his appeal dated 19.2.1984 (Annexure A-5) wherein he has stated that he was detained from 26.9.1983 to 6.10.1983 at Headquarters office and his lawyer's notice dated 28.2.1984 wherein it has been admitted that no work was given to him.

6. The applicant has also not indicated as to whether he finally appeared in the interview for the 25% Limited Departmental Examination and the results of the same. He has also not mentioned as to whether the adhoc appointments of his juniors continued till his retirement or whether there was regular selection for ACS and the adhoc promotees were replaced by regularly selected candidates.

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7. The applicant has stated that in 1983, there were no rules or orders that a person against whom it was proposed to take major penalty action cannot be refused promotion. In the Full Bench judgment in the case of K. Ch. Venkata Reddy & Ors. Vs. Union of India & Ors. (page 158 of CAT Full Bench Judgment by Bahri Brothers), a reference has been made to Department of personnel circular dated 30.1.1982 wherein, it was laid down that the proposal to initiate major penalty action would act as a bar against promotion. It is now well settled by the Full Bench Judgment (supra) and the judgment of the Supreme Court in the case of Union of India Vs. K.V. Jankiraman & Ors. ((1991) 4 SCC 109) that sealed cover procedure can be adopted only after the charge sheet has been actually served on the employee. It is clear that on 5.10.1983, when his adhoc promotion orders were cancelled, there was no major penalty charge sheets issued to him nor any disciplinary enquiries pending against him. Hence these judgments would have been relevant in his case, even though they were delivered at a much later date.

8. Hence, the applicant was not ~~vigilant~~ enough to approach the appropriate forum promptly for getting the remedies. Even though he has stated in the application that he had made repeated appeals and also made personal enquiries, he has produced only his representation dated 19.2.1984 and lawyer notice dated 28.2.1984. We cannot give any credence to his statement that he could not have filed a case in the civil court or in the

Administrative Tribunal after 25.3.1986, when the major penalty charge sheet has served on him till 15.5.1990 when the charges were dropped. There was no such bar and he should have perused the legal remedies once his representations in February 1984 was not replied to without waiting till March 1986 for the major penalty charge sheet to be served and even after that he could have approached the Tribunal within the limitation period. Even assuming that the said Full Bench of the CAT and Supreme Court judgments referred to above were available at that point of time and the order cancelling his adhoc promotion is an illegal and void order, still the period of limitation would apply. In the case of State of Punjab & Ors. Vs. Gurdev Singh ((1991) 4 SCC 1), the Supreme Court have held that even a void order has atleast a defacto operation unless and until it is declared to be void or nullity by a competent court. They have stated that the statute of limitation was intended to provide a time limit for all suits conceivable. The supreme Court have also held that if the statutory time limit expires, the Court cannot give the declaration sought for. In this case the cause of action arose on 5.10.1983, when the adhoc promotion order was cancelled and since the applicant has filed the application in 1991 only, it is hopelessly time barred and we have no powers to declare that the order dated 5.10.1983 is void. In fact as far as the Central Administrative Tribunals are concerned, the period of limitation is governed by the provisions of Section 21 of the Administrative Tribunals Act, which is more restrictive than the limitation act.

In this case the applicant must have approached this Tribunal before 1.11.1986, as clearly admitted by him in M.A. 353/91.

9. In the light of the above, the applicant has to fail and the M.A. 353/91 for condonation of delay is rejected. Since the application for condonation of delay is rejected, O.A. 370/91 is also rejected at the admission stage itself.

10. Before parting with the case we express our unhappiness on the extra-ordinary delay in initiating and finalising the disciplinary proceedings on the applicant by the respondents. Even though the applicant's adhoc promotion was cancelled on 5.10.1983, a major penalty charge sheet was served on him only on 25.3.1986. Even after this delay, the disciplinary proceedings were finalised only on 15.5.1990, i.e., nearly 4 years after the issue of charge sheet and 2 years after the superannuation of the applicant by merely dropping of the charges. We hope that the respondents will take suitable steps to avoid such unjustifiable delays in disciplinary cases in future.

S. Gurusankaran
(S. Gurusankaran)
Member (A)

R.C. Bhatt
(R.C. Bhatt)
Member (J)

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Retired Chief Goods Supervisor
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