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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 4/6/2001

1. O.A. No. 415/1995.

2. M.A. No. 244/1996

IN

O.A. No. 415/1995.

Narayan Ram S/o Shri Mota Ram, by caste Sharma, aged about 44 years, At present working as Refrigerator Mechanic (SK) in the office of Garrison Engineer, Military Engineering Services, Bikaner.

APPLICANT.

VERSUS



1. The Union of India, through its Secretary, Ministry of Defence, Government of India, Raksha Bhawan, New Delhi.
2. The Engineer-in-Chief, Army Headquarter, Kashmir House, New Delhi.
3. The Chief Engineer, Western Command, Headquarter Building, Chandi Mandir, Chandigarh.
4. The Commander Works Engineer (Project), Military Engineering Services (Army), Bikaner.
5. The Garrison Engineer, Military Engineering Services (Army), Bikaner.
6. Mahendra Singh, at present working as Refrigerator Mechanic (High Skilled Gr. I) under the office of Garrison Engineer, Military Engineering Services (Army), Bikaner.
7. Ajmer Singh, at present working as Refrigerator Mechanic (High Skilled Gr. I), under the office of Garrison Engineer, Military Engineering Services (Army), Bikaner.
8. Ram Deo, at present working as Refrigerator Mechanic (High Skilled Gr. I) under the office of Garrison Engineer, Military Engineering Services (Army), Bikaner.
9. Ram Narain, at present working as Refrigerator Mechanic (High Skilled Gr. I) under the office of Garrison Engineer, Military Engineering Services (Army), Bikaner.

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Applicant present in person.

Mr. Y. K. Sharma, Adv. Brief holder for
Mr. S. N. Trivedi, counsel for the applicant.

Mr. Vinit Mathur, counsel for the Respondent Nos. 1 to 5.
None is present for respondents nos. 6 to 9.

CORAM

Hon'ble Mr. A. K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(per Hon'ble Mr. A. K. Misra)

The applicant had filed this OA with the prayer that the respondents be directed to promote the applicant as Highly Skilled Gr. II w.e.f. 15.10.1984 and thereafter accord subsequent promotions w.e.f. the date of his Juniors giving benefit of promotion with all consequential benefits of pay fixation etc. The applicant has further prayed for payment of salary as a result of pay fixation.



2. Notice of the OA was given to the respondents who have filed their reply to which rejoinder was also filed by the applicant.

3. The applicant had moved an application for hearing condonation of delay. After order for issuance of notice in the OA was passed. The MA was filed for condonation of delay in which it is stated that the applicant was ignored by the respondents in the matter of promotion and his juniors were promoted, therefore, the grievance of the applicant is genuine and he has

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a recurring cause of action, therefore, delay in filing the OA be condoned. The respondents have opposed this application and have pleaded that delay in moving the OA cannot be condoned.

4. We have heard the learned counsel for the parties on 06.02.2001 when the case was listed for remaining arguments. The learned counsel for the applicant was not available therefore, arguments of the learned counsel for the respondents were heard and ^{the} applicant was directed that, if he has to say something, written arguments be submitted. Consequently, written arguments were submitted on behalf of the applicant which we have duly considered and have gone through the case file.



5. Facts as mentioned by the applicant are as follows :-

The applicant has stated that he was Motor Pump Attendant on 14.09.1972 and thereafter he appeared in a trade test for promotion as Refrigerator Mechanic in which he was declared passed vide order dated 09.01.1984 (Annexure A-1). Consequent to this the applicant was promoted as Refrigerator Mechanic from the same date. Thereafter, three graded Structure Scheme for promotion of the employees working in the MES was introduced w.e.f 15.10.1984. It is alleged by the applicant that 35% of Refrigerator Mechanics were to be promoted as Highly Skilled Grade-II as per seniority. According to this scheme, eight persons ~~✓~~ were promoted, first 6 of them were promoted w.e.f. 30.04.1986 and rest of 2 were promoted w.e.f. 19.01.1987.

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It is stated by the applicant that out of these 8 persons 4 persons were applicant's senior but 4 persons were his junior. The claim of the applicant was ignored and these juniors were promoted. It is also stated by the applicant that 2 persons i.e. Mahendra Singh and Ajmer Singh were wrongly promoted as they were not in the strength of respondent no. 4 in the year 1986, because they had come on being transfer from another Zone i.e. Bhatinda Zone, remaining 2 persons i.e. Ram Deo and Ram Narayan were promoted w.e.f 19.01.1987 were also applicant's junior as they had joined service much after the applicant. As per the departmental instructions the candidates at Sl. No. 5 & 6, who had come on transfer from another Unit were not entitled to get seniority for being promoted but promotion was accorded to them against the departmental instructions. Thereafter, the applicant had represented to the department on 30.09.1988 vide Annexure A-4 and 29.06.1993 Annexure A-5. The grievance of the applicant was not redressed by the department. Hence this OA.

6. The respondents have stated that the application of the applicant is hopelessly time barred, the grievance of the applicant arose in the year 1986 when first batch of 6 persons was promoted and then in 1987 when second batch of 2 persons was promoted. The applicant had filed the OA in the year 1995 and thus the claim of the applicant is liable to be rejected as time barred. It is further stated :

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that the contentions of the applicant that 35% persons from amongst the skilled grade were to be promoted to HS-II is wrong, only 20% were required to be promoted and 15% were to be promoted only after qualifying the trade test. The promotion accorded by the respondents to the persons as stated by the applicant was strictly as per the Government instructions and the guidelines on the subject. No junior has been given promotion ignoring the claim of the applicant. It is also stated by the applicant that rights of the applicant if at all there were any were affected in the year 1986 ^{and} 1987 therefore, the belated claim of the applicant has to be rejected.



7. In the Rejoinder, the applicant has repeated the facts and nothing has been brought on record which may further strengthen the case of the applicant.

8. It was argued by the learned counsel for the applicant, that the applicant was wrongfully superseded and inspite of his representation, his grievance was not redressed by the department. The cause of action in the matter is a continuing cause of action, therefore, OA is within limitation. He has cited APJ 1992 Vol. 21 ATC Page 126, in his support. On the other hand, it was argued by the learned counsel for the respondents that the case of the applicant is hopelessly time barred. Grievance of the applicant in matter of promotion arose in the year 1986 and second time in the year 1987 but the applicant kept quite and did not raise any dispute at that point

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of time. Even if, he had made any representation in the year 1988 as per his claim by Annexure A/4 then also filing the case in the year 1995, does not help him. In the matter of promotion, pay fixation is consequential and not the main relief, therefore, the applicant cannot successfully claim that he has a continuous cause of action.

9. We have heard the rival arguments, In our opinion, the case of the applicant is hopelessly time barred. Six persons as alleged by the applicant were promoted in the year 1986 and out of which 2 persons listed at Sl. No. 5 & 6 of the promotion order were alleged to be the applicant's junior. In that case the applicant should have immediately represented against such promotion, but he did not do so. Then again, when 2 persons said to be applicant's junior were promoted in the year 1987 the applicant did not make any representation challenging their promotion. The grievance of the applicant for ignoring him from being promoted arose to him when 2 promotion orders were passed promoting the applicant's alleged juniors. The applicant had not specifically challenged the action of the respondents of promoting 2 of his juniors, all what he represented through Annexure A-4 was that vacancies of Highly Skilled Refrigerator Mechanics were available, therefore, he should be also promoted. The representation of the applicant dated 29.06.1993 (Annexure A-5) was made against the promotion of Prithvi Raj, which may be a candidate of 3rd batch of Highly Skilled Refrigerator Mechanics to be promoted.



therefore, the applicant cannot derive any limitation for filing the present OA from Annexure A-5 also, because that representation related to a person who is not a party in the case. This is settled law that in respect of promotion, the grievance of a particular person arises only when he is ignored for such promotion. The applicant cannot challenge the promotion order passed many years ago in favour of somebody who is applicant's junior, on the ground of drawing lesser pay than such promotee. Ignoring the applicant from being promoted in the year 1986 and thereafter in the year 1987 as per the contentions of the applicant cannot be a continuous cause of action. Promotion of a candidate is a one time action in that regard and therefore, the same has to be challenged as and when ignoring the claim of the applicant, somebody junior to him has been promoted. Infact, in this matter the applicant had not even properly and timely represented to the department against such action and the representations which he ^{is} citing as Annexure A-4 and Annexure A-5 against promotion orders of respondents no. 6 to 9 are not representations in the eye of Law. This is also settled law that repeated representations or delayed representations do not save the limitation for the applicant. It seems that the applicant has been sleeping over his rights and is guilty of laches.

10. We have considered the MA for condonation of delay. In view of the above discussion we come to the conclusion that there are no sufficient reasons

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for condoning the delay in the instant matter, the MA, therefore, deserves to be dismissed and consequently the OA also deserves to be dismissed as time barred.

11. Even considering the case on merits, we are of the opinion, that the applicant has not been able to establish undisputedly that he was senior to the private respondents and the respondent no. 5 & 6 were accorded wrong seniority in the Unit where the applicant has been working. If these two persons had come on transfer to the Unit, where the applicant was also working then their placement in the seniority list should have been timely challenged by the applicant which he has failed to do. The applicant had also not been able to show that his name comes within the zone of 20% highly skilled mechanics for being further promoted as HS-II, in terms of three graded scheme. No such seniority list showing the seniority position of the applicant was submitted by the applicant, therefore, the claim of the applicant that he is senior to the private respondents is difficult to accept. There is no material available on record to verify the contentions of the applicant. It was for the applicant to have established that he was holding a particular position above the private respondents in the seniority list. The applicant cannot claim to be senior only on the basis of Annexure A-1, in which names of the candidates have been shown who had passed the trade test for the post of Refrigerator Mechanic Skilled Grade-II. In this list, the date of appointment has not been shown for comparing as to who was appointed first in time, whether



the applicant or the private respondents. We are also not able to accept the so called seniority list Annexure R-1 relied upon by the respondents. This seems to be only an extract copy of seniority list. This does not show the seniority position of the candidates on a particular date as it existed then. It also does not show other relevant details, which may help us to conclude that who of the candidates entered into which grade and when. But in any case, it was for the applicant to have established his claim of seniority above the private respondents which he has failed to do in the instant case. Consequently OA deserves to be dismissed.

12. Therefore, the OA and MA are hereby dismissed. Parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
Admn. Member

8/10/2001

(A. K. MISRA)
Judl. Member

Joshi