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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 21.12.2000

O.A. No. 37/1997 & connected
MA No. 22/1997

Balwant Shah Singh S/o Shri Nihal Shah, aged about 60 years,
R/O Near School No.7, Ward No.8, Purani Abadi Sriganganagar,
last employed on the post of SR. Telegraph (Master) Telegraph
Office, Sriganganagar.

... Applicant

Vs

1. The Union of India, through Secretary to Ministry
of Telecommunication, Department of Telecom, Sanchar
Bhawan, New Delhi.
2. The Chief General Manager Telecom, Rajasthan Circle,
Jaipur.

... Respondents

Mr. J.K. Kaushik, Counsel for the Applicant.

Mr. Vineet Mathur, Counsel for the Respondents.

CCRAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

O_R_D_E_R
P.R.
(HON'BLE MR. GOPAL SINGH)

In this application under Section 19 of the
Administrative Tribunals Act, 1985, applicant Balwant Shah
Singh has prayed for setting aside the impugned order dated
26.10.1994 and for a direction to the respondents to consider
the candidature of the applicant for grant of promotion under
the BCR scheme at par with his next junior with all conse-
quential benefits.

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Gopal Singh

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2. Applicant's case is that he was initially appointed as a Telegraphist on 13.12.1957 with the respondent and he was promoted to the post of Telegraph Master (T) on passing the qualifying examination. The respondent department introduced Biennial Cadre Review Scheme in the department effective from 30.11.1990. The applicant being eligible for consideration for grant of benefits under the said scheme was allowed promotion to the higher Selection grade vide letter dated 30.11.1990 (Annexure A/4), and the said promotion was regularised with effect from 17.12.1992. The respondent department withdrew the aforesaid promotion of the applicant on the ground that he was not considered fit for promotion by the DPC in terms of Telecom Directorate letter dated 06.11.1992. Vide respondents' letter dated 21.12.93, while some of the juniors to the applicant were allowed to continue on the promotional post. Contention of the applicant is that there is nothing adverse in his service records and as such his case should not have been ignored for promotion. Hence, this application.

3. In the counter, it has been pointed out by the respondents that Ministry of Communication letter dated 06.11.'92, prescribed the procedure for promotion under BCR Scheme. As per this procedure, promotion to Grd. IV from Grd. III ~~xxx is~~ provided on seniority-cum-fitness basis subject to obtaining the minimum bench marks which is "good" except for SC/ST candidates where it is only seniority-cum-fitness basis. The applicant's case was considered alongwith others on the basis of this criteria by the DPC held on 14.12.'93, and the applicant was not found fit for promotion to Grade IV and accordingly the adhoc promotion given to the

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applicant was withdrawn vide letter dated 21.12.1993 (Annex A7). It has, therefore, been averred by the respondents that there is no infirmity in the action taken by the respondents and the application deserves to be dismissed. The respondents have also contested the application on the ground of limitation. It has been pointed out by the respondents that the representation dated 19.9.1994 of the applicant was considered and rejected vide respondents' letter dated 26.10.1994 (Annexure A/1). The applicant further represented his case vide representation dated 19.12.1994 and 16.2.1996. The grievance of the applicant arose on 26.10.'94 when his first representation was rejected and he has filed this application on 21.1.1997 much beyond the period of the limitation. It has, therefore, been submitted by the respondents that the application is hit by limitation.

4. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

5. We will first deal with the objection of the respondent in regard to limitation. It is seen from record that first representation of the applicant dated 19.9.'94 was rejected on 26.10.'94. He submitted further representation on 19.12.9 and 16.2.96 in this regard. We are of the view that once his representation was rejected vide respondents' letter dated 26.10.'94, the applicant should have sought redressal of his grievance through a legal forum. Repeated representations do not give fresh cause of action in the ~~XXXX hands~~ of the applicant. The applicant himself has admitted in the M.A. that he should have filed the Original application by 26.6.'96 as per rule of limitation. However, the Original application has been filed on 27.1.'97 i.e., above 07 months after the limitation period was over. The cause shown by the applicant in the M.A. seeking ~~condonation~~ of delay in submission of the O.A. are

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also not convincing. It is pointed out that the applicant retired on superannuation on 31.8.1995. In this MA, the applicant has submitted that he had been pursuing his matter with the higher authorities constantly with a hope of positive result. It has also been submitted by the applicant that subject matter of the OA relates to promotion and grant of higher pay scale being infringement of fundamental rights gives recurring cause of action. We are afraid, we cannot agree with the arguments adduced by the applicant. The applicant had retired on 31.8.95, and the grievance arose to him on 26.10.94. we have already pointed out that repeated representations do not save the limitation. Moreover, this was a cause of promotion and it cannot be said that it give rise to recurring cause of action. Thus, we are firmly of the view that this application is hopelessly barred by limitation and can be dismissed on that ground alone.

6. Coming to merits of the case, a perusal of records reveals that the applicant was considered for promotion from Grd. III to Grd. IV by the DPC held on 14.12. '93, but he was not found fit for promotion in accordance with the norms laid down by Ministry of Communication letter dated 06.11.1992. It has already been mentioned that this letter dated 06.11.1992 provides the procedure for promotion under the BCR Scheme. For promotion to Grd. IV from Grd. III, the bench marks of "good" is prescribed. It is seen from the DPC proceedings that the case of the applicant alongwith others was considered on the basis of bench marks of "good". However, the applicant did not obtain good performance for the last five years. Hence, he was not considered fit for promotion.

(Signature)

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7. The applicant has, however, contended that he has never been communicated adverse remarks in this Confidential report and, therefore, adverse Confidential report, if any, (i.e., OR below the bench marks of "good") should have been ignored for the purpose of consideration of the case of the applicant for promotion. Learned Counsel for the applicant has also cited the case of Smt. G. Chenkamalam Vs Union of India and Ors. 1998 (2) SLJ 334. In this case the Bangalore Bench of the Central Administrative Tribunal considered "good" category OR to be adverse in the face of prescribed bench marks of "very good" and accordingly, the applicant was allowed to file representation against "good" Confidential report and on consideration if that made a difference, review DPC directed to be held.

8. We have already pointed out that the applicant had retired on superannuation on 31.8.1995. The present grievance arose to him when he was declared un-fit for promotion to Grade IV by the DPC held on 14.12.1993, and subsequently when his representation was rejected on 26.10.1994. At the present juncture, we do not consider it appropriate to allow the applicant to make a fresh representation against the Confidential reports which were below the bench mark of "good", in line with the judgment cited by the applicant, since the application is hit by limitation.

9. In the circumstances, we are of the view that this application is devoid of any merit and deserves dismissal.

10. The Original Application alongwith MA is accordingly dismissed with no order as to costs.


(GOPAL SINGH)
Adm. Member.


(B.S. RAIKOTE)
Vice Chairman

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Part ~~2~~ and ~~3~~ destroyed
in my presence on 30/02/07
under the supervision of
Section officer as per
dated 10/11/06

Section officer (Recon)