

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR.

OA No.45/98

Date of order: 20-04-2001

Jagdish Raj Mathur son of Shri Anand Raj Mathur aged about 37 years, resident of Naya-bas-mehro-ka chowk, Jodhpur, at present employed on the post of Refrigerator Mechanic in the office of AGE (E & M) -II Garrison Engineer Air Force Jodhpur.

...APPLICANT

V E R S U S

1. Union of India, through Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Southern Command, Pune.
3. Commander Works Engineer, Air Force, Jodhpur.
4. Commander Works Engineer, Army, Jodhpur.

...RESPONDENTS



Mr. J.K. Kaushik, counsel for the applicant.

Mr. S.K. Nanda, counsel for the respondents.

CORAM

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

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(as per Hon'ble Mr. A.P. Nagrath)

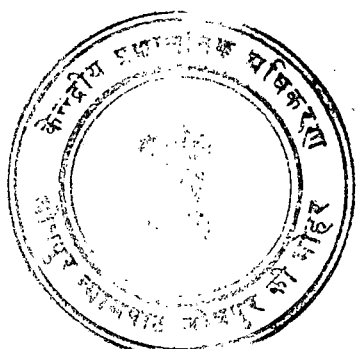
This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:

"That the impugned order dated 28.1.97, Annexure A/1 passed by 4th respondent, rejecting the claim of applicant, may be declared illegal and the same may be quashed and the respondents may be further directed to consider the candidature of applicant for promotion to the post of Ref/Mech Gde.II against the vacancies as on 15.10.84 under Fitment of Industrial Personnel Scheme and allow consequential benefits including the payments of difference of arrears alongwith interest at market rate."

2. It is admitted on either side, that the applicant was promoted as Ref/Mech. Grade.II w.e.f. 1.9.90 after having passed the requisite trade test.

3. Case of the applicant is that a scheme of Fitment of Industrial Personnel was introduced w.e.f. 15.10.84 by which 15 per cent of the skilled jobs were placed in Highly Skilled Grade-I Rs.380-560, 20 per cent in Grade-II Rs.330-480 and 65 per cent in skilled grade Rs.260-400. In this scheme promotions were ordered against the quota of Higher Skill Grade-II vide order dated 16.8.86. In the list of persons promoted, there was one Shri Sita Ram whose name was included. Applicant's plea is that Sita Ram's name was included erroneously as he had already been transferred out and released on 4.2.86 and that he being the next eligible person should have been promoted vide order dated 16.8.86 making the promotion effective from 15.10.84.

4. Respondents have opposed maintainability of this application on the grounds of laches and delays. In the written statement, it has been stated that the applicant never appeared in the trade test conducted in 1986 and that he passed the trade test subsequently on 8.9.1987 and was promoted w.e.f. 1990. It has been submitted that the OA is barred by limitation inasmuch as the claim



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pertain to the period of October, 1984. When the matter was taken up for hearing, learned counsel for the respondents vehemently opposed the application on the ground of limitation. On the other hand, learned counsel for the applicant submitted that the applicant had made a representation on 7.11.1996 which was disposed of by the respondents on 28.1.97 and communicated to the applicant vide letter dated 7.2.97. His contention was that reckoning from this date, the application was within the prescribed period of limitation as the final order rejecting the claim of the applicant was communicated only on 7.2.1997.

5. The question which arises for our consideration in these cases as to when did the right to sue first accrue to the applicant. The learned counsel for the applicant placed reliance on the principal enunciated by Hon'ble the Supreme Court, in the case of Sualal Yadav Vs. The State of Rajasthan SLR 1977(2)698. This case had arisen out of the dismissal order passed on a Sub-Inspector of Police and in the disciplinary proceedings, the charged official made a review application to the Governor under Rule 34 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 after a lapse of two years from the appellate authority's order. This review application was rejected by the Governor as not fit for review. In the writ petition filed in the High Court, the High Court held that the review application made to the Governor after a lapse of about two years was not maintainable on ground of unreasonable delay. This view of the High Court was not accepted by the Hon'ble Supreme Court, on the ground that the Governor had not dismissed the review application because of delay, but had entertained the same. In that view the Apex Court remitted



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the case back to the High Court for disposal in accordance with law. It is apparent that this case has no relevance as far as the instant application is concerned. Review in a disciplinary case is a statutory provision whereas disposal of representation is not a statutory provision in the matter and entertaining such a belated representation and its disposal cannot create a right.

6. The learned counsel for the respondents on the other hand relied on Bhoop Singh Vs. U.O.I. AIR 1992 SC 1414 to contend that the cause of action accrues on the date of the order which actually affects the right of the employee. A disposal of representation submitted belatedly does not create a fresh cause of action. He maintained that since the grievance relates to October, 1984 this application is hopelessly barred by limitation and deserves to be rejected.

7. Heard, the learned counsel on the either side, on the matter of limitation and have also perused the cases cited before us. In the case of Bhoop Singh Vs. U.O.I., the petitioner challenged the orders of termination of his service 22 years after the order was passed. The petitioner claimed relief at par with other similarly dismissed constables who had been granted relief by the Courts. It was observed by the Hon'ble Supreme Court that no attempt had been made by the petitioner to explain, why he remained silent for so long if he was interested in being reinstated and it was further observed as under:-

"7. It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been

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functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained."

8. In B.S. Bajwa & Anr. Vs. State of Punjab & Ors. ATJ 1998(1) 544 SCC, the case related to seniority. The applicants had entered into service in 1971-72 and filed a writ in 1984. It was held by the Apex Court that the question of seniority cannot be re-opened after a lapse of reasonable time because that results in disturbing the settled position. Delay itself was considered as sufficient reason to decline interference under Article 226 & the writ petition was rejected.

9. In S.S. Rathore Vs. State of M.P. 1990 SCC (L & S) 50, Hon'ble the Supreme Court had observed as under:-

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority, where a statutory remedy is provided, entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to first arise. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representation not provided

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by law are not governed by this principle."
(emphasis supplied)

It is clear from the above observations of the Apex Court that the right to sue accrues on the date when cause of action has first arisen and repeated unsuccessful representations not provided by law do not give a fresh right to sue.

10. In V.S. Raghvan Vs. Secretary to the Ministry of Defence, New Delhi and Ors. (1987) 3 ATC 602, the cause of action arose in the year 1973 and the applicant maintained that he had been making representations for getting the relief and his representation was disposed of only on 3.10.85 and he claimed the application to be in time. The plea of the applicant was dismissed by Madras Bench of the Tribunal on the ground, the cause of action arose only on 1973 and not in 1985 and that the application was barred by limitation.

There is no doubt that the instant case, the cause of action arose in August, 1985. The representation made after ten years and disposal of such belated representation does not provide a fresh cause of action. The limitation starts from the actual date when the order which is said to have adversely affected the right of the applicant was passed or the date on which the applicant claims the right accrued to him. Order in this case was passed in August, 1986.

11. It will be useful to refer to provisions of Section 21 on limitation. The same are reproduced as below:-

"Section 21(1) A Tribunal shall not admit an application, -

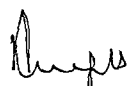
(a) in a case where a final order such as is mentioned in Clause(a) of sub-section (2) of


Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

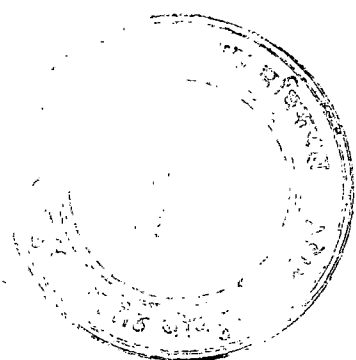
(b) in a case where an appeal or representation such as is mentioned in Clause(b) of sub-section (2) has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

It is clear from the above provisions that the Tribunal can admit an application only if it is filed within one year from the date on which such final order has been made. In this case the final order on which the grievances of the applicant has been based was made in 1986. He could have agitated the matter within one year from that date which he did not do. By merely filing a representation in the year 1996 and its disposal in 1997 does not create a fresh *cause* in the applicant to sue. In this view, this application is hopelessly barred by limitation and is liable to be dismissed. Consequently, we do not propose to go into merits of the case.

12. We, therefore, dismiss this application as barred by limitation. No order as to costs.


(A.P. Nagrath)
Admn. Member


(B.S. Raikote)
Vice Chairman



Receipt

Intouch

25/4/2001

Part II and III destroyed
in my presence on 28-3-02
under the supervision of
section officer as per
order dated 19/12/02

Section officer (Records)

Rev

25/4/01

(54 mos)

25/4/01