

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH : JODHPUR.

I/10

Date of Decision : 30.04.03

O. A. NO.272/2001.

With

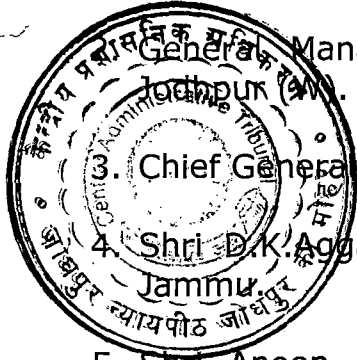
M.A. NO. 172/2001.

O.M.Kumbhar son of Shri Ganraj, aged about 58 years, resident of C/o SDE (GE), Telecom, Sribijaynagar, at present employed on the post of sub-Divisional Engineer (Group Engineer), Telecom, Sribijaynagar.

...Applicant

Vs.

1. Union of India through Secretary to Govt. of India, Ministry of Communication, Department of Telecommunication, Dak Bhawan, Sansad Marg, New Delhi.



2. General Manager Telecom, Rajasthan Western Region, Jodhpur (Raj).
3. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
4. Shri D.K. Aggarwal, D.G.M.Planning, Office of the GMTD, Jammu.
5. Shri Anoop Kumar, Telecom District Manager, Barmer, District Barmer.

...Respondents.

Mr.B.Khan, counsel for the applicant.
Mr.S.K.Vyas, counsel for the respondents.

CORAM :

Hon' ble Mr.Justice G.L.Gupta, Vice-Chairman,
Hon'ble Mr.A.P.Nagrath, Member (A).

O R D E R

(Per Hon'ble Mr.Justice G.L.Gupta)

The applicant was working as Sub-Divisional Engineer (Group Engineer) Telecom, Sribijaynagar during the period 97-98. He received communication dt. 16.6.1998

(Annexure A-I, wherein it was informed that the performance of the applicant was not satisfactory and more commitment was required and that he should overcome the deficiencies in future. In continuation to that communication he received further communication (Annexure A-2) dt. 18.7.1998 in which adverse entries were communicated to him. He made representation against such adverse entries, but the same was rejected vide communication dt. 26.3.1999. He preferred appeal to the Chief General Manager Telecom Respondent NO.3. The applicant was informed vide communication dt. 14.8.2000 that no appeal lay against the order rejecting the representation. Thereafter, the applicant made a petition on 15.6.2001 which was also rejected as was filed beyond a period of 2 years and 2 months. Hence, this O.A. challenging the adverse remarks recorded in the year 1997-98.



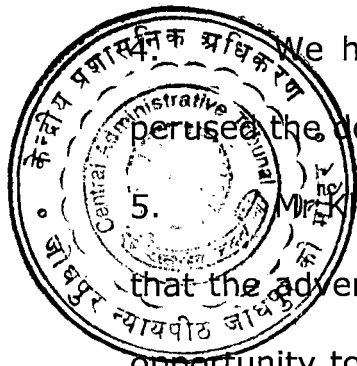
1.1. It is stated in the O.A. that the applicant had earned excellent reports earlier, but Respondent No.5 instructed Respondent No.4 to prepare some material against the applicant in order to damage his service career and that is why Respondent No.4 called his explanation on 15.1.1998 and recorded adverse entries.

1.2 Along with the O.A. the applicant has filed M.A. for condonation of delay.

2. In the amended reply filed on 5.12.2002, it is averred that the applicant's explanation had been called vide

communication (Annexure - R-1) and that in the communications (Annexures - R-2, R-3, and R-5), the applicant was advised to make improvements, but, he did not show improvement. It is further averred that this O.A. is liable to be dismissed on the ground of limitation alone, because the applicant did not file O.A. within the period of limitation from the date of rejection of his representation. It is denied that there is a provision of appeal against the order of rejection of the representation.

3. Rejoinder has been filed by the applicant stating that he did not receive the communication other than Annexure - R-1.



We have heard learned counsel for the parties and perused the documents placed on record.

5. Mr. Khan, learned counsel for the applicant contended that the adverse remarks were recorded without affording an opportunity to the applicant to improve. Relying on the case of Om Prakash Sharma Vs. Union of India (O.A. No.122/2000 decided on 10.9.2002) by this Tribunal, he submitted that the adverse remarks be quashed. His further contention was that the applicant was under the impression that appeal lay against the order of rejection of the representation and therefore the time taken by the applicant in filing the appeal should be excluded from the period of limitation.

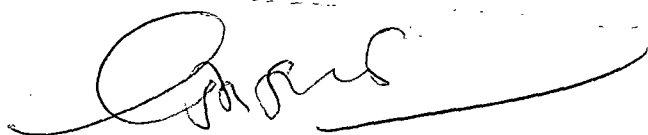
6. On the other hand, learned counsel for the respondents contended that the applicant was advised to make improvements in his performance during the year, but

he did not improve and therefore, the competent authority recorded the remarks in his ACR. He canvassed that the scope of judicial review is limited and hence the court should not interfere. His contention was that the O.A. should be dismissed being barred by limitation.

7. We have given the matter our thoughtful consideration. It is manifest that the remarks had been conveyed to the applicant vide communications dt. 16.6.1998 and 18.7.1998. The General Manager, Telecom rejected his representation vide communication dt. 7.10.1999 (Annexure A-3). This O.A. has been filed on 20.9.2001. Evidently, the O.A. has not been filed within the period of limitation provided under Section 21 of the Administrative Tribunals Act, 1985 and the application is liable to be dismissed on this ground alone.

8. As to the M.A. filed for condonation of delay, it may be stated that no good cause has been shown for condoning the delay. If the applicant instead of filing O.A. preferred an appeal before the higher authority against the remarks, it was his fault.

8.1. It is relevant to point out that in the O.A. it is averred that as per rules appeal lay against the order of rejection of representation against the adverse entries. Applicant thus insists even in this O.A. that there is a provision of appeal against the order of rejection of the representation. The learned counsel for the applicant however could not point out any provision which gives a right to appeal to a person whose representation against adverse



entry is rejected. During the course of arguments, it was frankly conceded that there is no provision of appeal against such rejection.

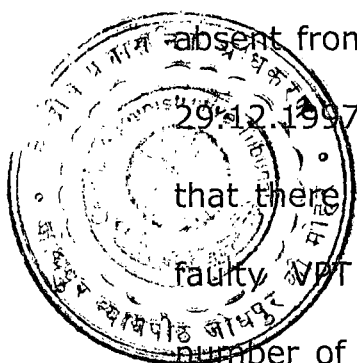
8.2. The fact remains that the applicant wasted time in preferring appeal which did not lie. There cannot be any justification of condoning the delay in such a matter and the M.A. is therefore liable to be dismissed.

9. Even on merits, we do not find any case in favour of the applicant. The documents (Annexures - R-1, R-2, R-3 and R-5 indicate that the applicant was informed time to time that he should achieve the targets and should be sincere to the duties. In the communication (Annexure - R-1) dt. 15.1.1998 his explanation was called as he was found to be

absent from duty place without permission. In the letter dt. 29.12.1997 (Annexure - R-2) applicant was communicated that there was no proper maintenance action of repairing of faulty VPT and he was directed to repair the maximum number of faulty VPT's and send daily reports. Similarly, in the communication (Annexure - R-3) dt. 22.1.1998, the applicant was directed to take all efforts to clear the wait list. In the communication (Annexure - R-5) dt. 3.3.1998, the applicant was cautioned to be more sincere and try to adhere to the targets in future.

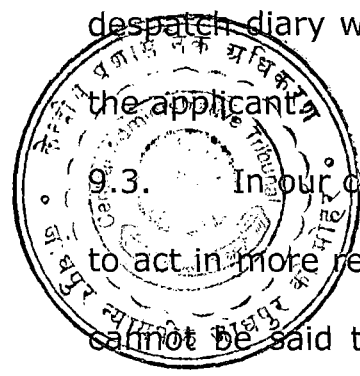
9.1. It is evident that during the period 1997-98, the applicant was advised to be more responsive and sincere.

9.2. The applicant's contention that he did not received the communications cannot be accepted. It is relevant to



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state that in the rejoinder the applicant has not denied to have received the communication (Annexure - R-1). In respect of other communications he has given vague reply that he did not receive the communications except (Annexure - R-1). The respondents have filed the Photostat copy of the despatch diary which shows that the letters had been sent to the applicant.



9.3. In our considered opinion, the applicant was advised to act in more responsive manner and work with sincerity. It cannot be said that the remarks have been recorded in the ACR of the applicant without pointing out his short comings during the year. The case of Om Prakash Sharma (supra) does not assist the applicant.

10. There is no merit in this O.A. and hence it is hereby dismissed. No order as to costs.

(A.P.NAGRATH)
MEMBER(A)

(G.L.GUPTA)
VICE-CHAIRMAN

B.

Handwritten signature/initials, possibly "R/C" or "R/C" with a large flourish.

Handwritten notes: R/C, m/s/s, 2/5/5

Part II and III destroyed
in my presence on 11-2-28
under the supervision of
section officer () as per
order dated 5/2/28

Handwritten signature: VGR
Section officer (Record)