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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 35/2004
~~TA No.~~

~~199x~~

DATE OF DECISION 11.02.2004

Subhash Chandra Sharma

Petitioner

Mr. Ashok Thakwani

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. M.K. Misra, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *W*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

M.K. Misra
(M.K. Misra)
Administrative Member

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 35/2004

Date of decision: this the 11th day of February, 2004

Hon'ble Mr. J K Kaushik, Judicial Member

Hon'ble Mr. M.K. Misra, Administrative Member

Subhash Chandra Sharma son of Shri Lal Chandra Sharma, aged 57 years, R/o Gha 45, Bapu Nagar, Bhilwara Official Address DET Rural, Chhitorgarh (Raj.).

.....Applicant

(By Advocate Mr. Ashok Thakwani, for applicant)

versus

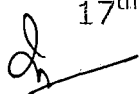
- (1) Union of India through
the Secretary, Ministry of Communication,
Department of Telecom, Sanchar Bhawan,
New Delhi.
- (2) Deputy Director General (Personnel),
Deptt. of Telecom, Sanchar Bhawan,
New Delhi.
- (3) Chief General Manager,
Telecom, Rajasthan Circle,
Jaipur (Raj.)
- (4) Telecom District Manager,
TDM, Chhitorgarh (Raj.).

.....Respondents.

ORDER

BY J K KAUSHIK, JUDICIAL MEMBER:

Shri Subhash Chandra Sharma has filed this Original Application with a view to make the dry bones of history to live and has challenged his alleged supersession in regard to promotion to selection grade Junior Engineer vide letter dated 17th February, 1987 (Annexure A/2) by filing the Original





Application on 09.02.2004. He has inter alia prayed for the following reliefs:

"a) In view of above the respondents may kindly be directed to decide the representation of the applicant within a specified period after considering the same objectively by a speaking order.

b) That the respondents may be directed to continue to allow the salary after calculating the same as per the decision of removal of pay anomaly w.e.f. the date of junior was allowed.

c) That respondents may be directed not to affect any recovery or to re-fixation the salary after revising the same."



2. The case came up for admission today and we have heard Mr. Ashok Thakwani, the learned counsel for the applicant at a great length and have anxiously considered the pleadings and the records of the case. The factual scenario of this case depicts that the applicant was initially appointed as Mechanic/Technician on 01.06.1965 and was promoted as Engineering Supervisor w.e.f. 03.11.1973, of which the nomenclature came to be changed as Junior Telecom Officer. It has been averred that the applicant is senior to one Shri Gaffar Mohammed and in the seniority list for the feeder post, the name of the applicant was placed at Serial No. 17 that of his next junior at Serial No. 20.

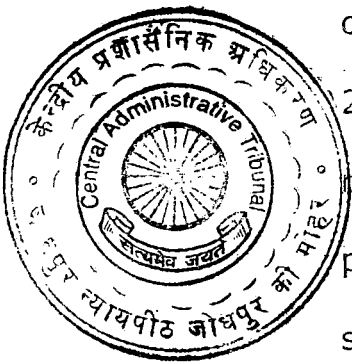
3. The further facts of the case are that the aforesaid junior to the applicant was allowed promotion to selection grade vide order dated 17th February, 1987 whereby the said promotion was made effective from 01.04.1985. The case of the applicant

was ignored despite the fact that even in the gradation list of Junior Engineer, the name of the applicant is placed at Serial No. 221 and the name of Shri Gaffar Mohammed at Serial No. 225 in Annexure A/3. There was nothing adverse against the applicant and no disciplinary inquiry or charge-sheet was either pending or contemplated against him. A representation was made to the higher authorities vide letter dated 13.03.1987 and the same came to be rejected vide communication dated 29.10.1990 (Annexure A/5). The applicant made ample efforts to the authorities and through letter dated 20.11.2002 his prayer was rejected on entirely different ground. The applicant filed an appeal on 10.02.2003 for removal of pay anomaly and stepping up of his pay vis-à-vis junior employee but of no response. A reminder dated 15.09.2003 was submitted but the same has not been decided so far. The Original Application has been filed on diverse grounds mentioned in para 5 and its sub-paras.



4. Mr. Ashok Thakwani, the learned counsel for the applicant has reiterated the facts and grounds mentioned in the Original Application and has tried to persuade us that the applicant is senior to Shri Gaffar Mohammed who came to be promoted to selection grade Junior Engineer w.e.f. 01.04.1985. He has made us to traverse the gradation list as well as the comparative chart showing the various dates in regard to the applicant and Shri Gaffar Mohammed indicating various events. Mr. Ashok Thakwani has strived hard, laying emphasis on the prayer No. 1 read with the Annexure A/7, requesting for a direction to the respondents to decide the representation.

5. We have considered the submissions advanced by Mr. Ashok Thakwani, the learned counsel for the applicant. During the arguments, it was enquired from Thakwani as to whether this is a case of stepping up the pay by removing pay anomaly or it is a case of promotion. Mr. Thakwani has submitted that the applicant was superseded in the matter of promotion to the post of selection grade Junior Engineer vide communication dated 17th February 1987 (Annexure A/2) and since his junior was granted the promotion superseding the applicant, the junior started getting more pay. Mr. Thakwani was confronted with another question regarding the limitation as to how the Original Application is within limitation and on this he submitted that the case of the applicant was rejected vide communication dated 29.10.1990 (Annexure A/5) and subsequently he has made a representation on 10.02.2003 (Annexure A/7) which is still pending. Mr. Thakwani avoided direct answer to the query and submitted that the Original Application was within limitation and the applicant would be satisfied if a direction is given to the authorities to decide his representation.



6. Now advertent to the factual issues at the cost of repetition the initial cause of action has arisen to the applicant on 17th February, 1987 when his next junior was promoted to the post of selection grade Junior Engineer. His representation has been rejected vide letter dated 29.10.1990 and if this date of rejection is taken the date of cause of action, the applicant ought to have filed this Original Application by 29.11.1991 as per Section 21 of Administrative Tribunals Act, 1985, but the same has been filed

[Signature]

only on 09.02.2004. Thus, there is a delay of about over 12 years in filing of this Original Application. As regards the submission of the representation vide letter dated 10.02.2003, the same shall not give any fresh cause of action since the same is not provided by any statutory rules and if at all any appeal is provided the same is to be filed within a maximum period of 45 days and not after a period of about 12 years. Repeated and non-statutory representation would not extend the limitation. This proposition of the law has been settled by the Apex Court in a Constitution Bench consisting of 7 judges in the case of **S.S. Rathore vs. State of Madhya Pradesh**; [AIR 1990 SC 10].

The contents of para 20 and 22 are relevant and are extracted as under:-



"20. 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 have 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 representations not provided by law are not governed by this principle.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

Thus, applying the aforesaid proposition of the law, the

Original Application is highly blated and is time barred.

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7. Admittedly, in this case the prayer has been made for removal of pay anomaly but the pay anomaly has arisen because of the promotion of the junior. The junior is in fact getting the higher pay only because he was promoted to the higher post and the applicant was not so promoted. Thus, in fact this is not a case of pay anomaly simpliciter, rather it is a case of supersession in the matter of promotion. Admittedly, no application for condonation of the delay has been filed on behalf of the applicant. Now, we have to see the effect of filing of the application which is not within the time prescribed in the Section 21 of Administrative Tribunals Act, 1985. The law position on this is stands concluded by the Hon'ble Supreme Court in the case of **Ramesh Chand Sharma etc. vs. Udham Singh Kamal and others**, 2000 (1) A.T.J. 178, wherein their Lordships were dealing with the case of promotion. In that case the Original Application was entertained on merits by the Tribunal despite the fact that there was no application for condonation of delay. Their Lordships of the Supreme Court turned down the judgement of the Tribunal holding that until and unless there is an application for condonation of delay and the delay is condoned. The Tribunal should not examine the merits of the case. Applying the statement of law laid down by the Hon'ble Supreme Court in the instant case, we are left with no option except to reject this Original Application on the ground of limitation, since the same is barred by limitation and no application for condonation of delay has been filed and question of considering and condoning the delay for good and sufficient reasons does not arise. If that be



[Signature]

so, we do not think there is any necessity to examine this case on merits.

8. Looking the matter from yet another angle, the Administrative Tribunal is to adjudicate the disputes and complaints and cannot entertain application only to issue a mechanical order to dispose of a representation. This is provided under Section 19 of the Administrative Tribunals Act, 1985. The similar issue came for adjudication before coordinating Bench of the Tribunal at Ernakulam Bench in case of **G. Muthusamy vs. The Divisional Personnel Officer, Southern Rly. and Ors.** [2002(2) SLJ (CAT) 230] wherein it has been held that the Central Administrative Tribunal can entertain the application for adjudication and not for seeking an order to dispose of the representation. Thus, the main relief prayed for in the Original Application also cannot be granted.

9. In the result, we are of the firm opinion that the Original Application is barred by limitation as per Section 21 of Administrative Tribunals Act, 1985 and the same deserves to be dismissed on the ground of limitation alone without going on merits. Accordingly, the Original Application stands dismissed in limini at admission stage itself.


(M.K. Misra)
Administrative Member


(J.K. Kaushik)
Judicial Member

Kumawat



Copy of order with copy of OA
Sent to Respondent No-1 to 4
vide No. 64 to 67 dtd. 16/2/04

Regd DD. copy of order sent
to Applicant vide No. 98 dt. 3-3-04

Applicant order copy
Sent
As per D.D.

De
24/3

Part II and III destroyed
in my presence on 23/10/13
under the supervision of
station officer (1) as per
order dated 18/10/13

D.K. Sharma
Section officer (Records) 23.10.2013