

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 506/99

Monday this the 23rd day of April, 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Saji N.M.
Stenographer Grade III
Customs House
Kochi-9.

...Applicant

[By advocate Mr.Sajan Mannali]

Versus

1. The Commissioner of Customs
CVustoms House
Kochi-5.

2. Union of India
represented by Secretary
Central Board of Excise & Customs
Ministry of Finance, Department of Revenue
North Block
New Delhi.

Respondents.

[By advocate Mr.M.R.Suresh, ACGSC]

The application having been heard on 23rd April, 2001,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A3, to declare that he is entitled to be promoted as Stenographer Grade III with effect from 1989 with all consequential benefits and also is entitled to be promoted to the post of Stenographer Grade II with effect from 1994 with all consequential benefits.

2. The applicant is working as Stenographer Grade III in the Customs House at Kochi. He joined as Lower Division Clerk on the 2nd of August, 1984. He came to the Customs House, Kochi on inter collectorate transfer on 26.7.88. In the year 1989 the Department invited applications for the post of

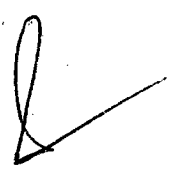


Stenographer Grade III from eligible LDCs. The Department denied the applicant the opportunity to appear for the said examination. Again in the year 1991 the Department invited applications for the post of Stenographer Grade III and then also the applicant was not permitted to appear for the examination. Ultimately in the year 1994, the Department invited applications for the post of Stenographer Grade III. He was allowed to appear for the examination and was promoted as Stenographer Grade III.

3. Now the applicant is claiming that he should be promoted as Stenographer Grade III with effect from the year 1989 and as Stenographer Grade II with effect from 1994. According to him, in the year 1989 itself he was fully qualified and the respondents have wrongfully denied him the right to appear for the examination.

4. Respondents contend that the applicant had not completed 2 years of regular service in the Kochi Commissionerate, which is the qualification prescribed for an LDC to appear for the examination for the post of Stenographer Grade III. The stand of the respondents is that the applicant was not qualified.

5. The applicant says that for promotion to the post of Stenographer Grade III, what is required is 2 years' regular service as LDC and it is not necessary to be in the concerned Commissionerate. It was as per A1 applications were invited




for the post of Stenographer Grade III. It is in pursuance of A1 that the applicant applied for the first time. In A1 it is stated thus:

"Applications are invited from eligible Lower Division Clerks of this Customs House who have completed a minimum of 2 years of regular service in the cadre and possess the following additional qualifications required for consideration for appointment to the temporary post of Stenographers Grade III on adhoc basis". (Emphasis supplied).


6. From A1 it is clearly seen that an LDC in order to be eligible to apply for the post of Stenographer Grade III should have completed minimum of 2 years of regular service in Cochin Customs House. The applicant admittedly did not possess 2 years of regular service in the Cochin Customs House as on the date of A1. A1 is not challenged. As long as A1 is not under challenge, the applicant cannot argue that what is required is only 2 years of regular service and it is not 2 years regular service in Cochin Customs House.

7. From the applicant's pleadings, it is seen that the cause of action arose in the year 1989. Again he got cause of action in the year 1991. When applications were invited for the post of Stenographer Grade III in the years 1989 and 1991 and though the applicant applied on both the occasions, and he was not permitted to appear for the examination he has not approached this Bench of the Tribunal. If he was really aggrieved, he would have approached and he should have approached. The learned counsel appearing for the applicant submitted that in the year 1989 itself, representation was submitted to the authority concerned projecting the applicant's grievance. No copy of any such representation is produced. A2



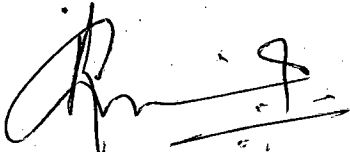
is a representation dated 28.1.99. Even if the applicant had submitted a representation in the year 1989 and even if he had made successive representations on the basis of that he cannot get over limitation. If any representation was made in the year 1989 after waiting for a period of 6 months from the date of the representation within 1 year thereafter he should have approached the Tribunal. He has not done so. Successive representations even if made cannot save limitation. So the claim of the applicant now put forward is hit by delay and laches and is also time barred.

8. The learned counsel appearing for the applicant drew our attention to the ruling in Renu Mullick Vs. Union of India and Anr. 1994 (50) ECR 481 (SC) wherein it has been held that only when transfer to another Collectorate made on request but service counts for qualification for promotion where total length of service in a grade is the criterion. This ruling cannot help the applicant for the reasons that the claim is barred by limitation, that the claim is hit by delay and laches and that in A1 it is specifically stated that for an LDC in order to apply for the post of Stenographer Grade III he should have completed minimum of 2 years of regular service in Cochin Customs House and it is not under challenge.



9. We do not find any merit in this OA. Accordingly the OA is dismissed.

Dated 23rd April, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A3 True copy of the memo No.S45/63/98-Estt.Custom dated 30.3.99 issued by the 1st respondent.
- A1; True copy of the circular No.30/89 relating to the qualification prescribed for the post of Stenographer Grade III dated 17.8.89.