

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.119/08

Thursday this the 2nd day of July 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

C.K.Velayudhan,
Retd. First Grade Football Coach,
Sports Authority of India.
Residing at Chrukunnath Ammu Bhavan,
Medical College Post, Kozhikode.

...Applicant

(By Advocate Mr.U.Balagangadharan)

Versus

1. Union of India represented by Secretary,
Ministry of Youth Affairs and Sports, New Delhi.
2. Director General,
Sports Authority of India,
Indira Gandhi Indoor Stadium,
I.P.Estate, New Delhi - 110 001.

...Respondents

(By Advocate Mrs.K.Girija)

This application having been heard on 2nd July 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-3 order dated 18.12.2000 by which the persons at Serial No.46 to 49 who are his juniors have been given adhoc promotions to the selection grade. The applicant has made the Annexure A-4 representation dated 19.10.2004 against the aforesaid promotions of his juniors stating that his retirement was due within six months and any delay in his promotion will affect his pension and



other retirement benefits. The respondents have considered the aforesaid representation and vide Annexure A-5 letter dated 19.1.2005 informed him that he was considered by the DPC held in 2001 for promotion to selection grade but his name was not recommended for promotion as he has not secured the minimum bench mark required for promotion. The applicant has made further representation to the same authority vide Annexure A-6 dated 13.5.2005 followed by the Annexure A-7 representation dated 29.9.2006 to the higher authority, namely, the Secretary, Ministry of Youth Affairs and Sports, New Delhi. Thereafter, he had approached this Tribunal by the present O.A on 26.2.2008.

2. Learned counsel for the applicant has submitted that even if the gradings in his ACR were not adverse, they should have been communicated to him as they were below the bench mark and they have an adverse impact on his promotional prospects. In this regard, he relied upon the judgment of the Apex Court in Dev Dutt Vs. Union of India and others (AIR 2008 SC 2513) wherein it has been held that "fairness and transparency in public administration requires that all entries whether poor, fair, average, good or very good in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service must be communicated to him within a reasonable period so that he can make a representation for its upgradation." He has also argued that there is no delay or laches in the case as there was sufficient explanation for approaching this Tribunal after seven years from occurring the cause of action. He relied upon the judgment of the Apex Court in Ashok Kumar



Vs. State of Bihar and others (AIR 2008 SC 2723) wherein it has been held that "the High Court had fallen into error in not holding that the appellant had sufficiently explained why the writ petition could not be moved or why it was moved after 4 years of the decision of the State Government. Since the appellant had filed a representation/review of the decision of the State Government, it was expected by him that an order should be passed on the said representation/review. Therefore, in our view, the delay in moving the writ application against the decision of the State Government was sufficiently explained by the appellant and, therefore, the writ petition ought not to have been dismissed on the ground of delay and laches."

3. On the other hand, learned counsel for the respondents submitted that this O.A is badly hit by delay and laches. She has pointed out that the promotions of his juniors were made way back on 18.12.2000 by the Annexure A-3 order. The applicant was well aware of the order but he did not make even a representation against the same for a long period. The first representation made against the said order was on 19.10.2004 ie. after a period of about four years. The respondent department has promptly responded to his representation vide Annexure A-5 letter dated 19.1.2005. Thereafter, the applicant has only made repeated representations to the same authority and the higher authority. He approached this Tribunal for the redressal of his grievance only on 26.2.2008. She has also pointed out that the applicant has not made any application for condonation of delay along with this O.A.



4. We have heard the counsel for the parties. The applicant has already retired from service on 31.5.2005. We fully agree with the learned counsel for the respondents that this case is badly hit by delay and latches. The applicant was well aware that his juniors were promoted to the selection grade vide Annexure A-3 order dated 18.12.2000 but he did not make even a murmur of protest against the said promotion for the reasons best known to him. He has made the first representation only after four years stating that his retirement was due within six months and delay in his promotion will affect his pensionary benefits. Even though the respondents have replied to the aforesaid representation on 19.1.2005, the applicant had engaged himself in continual representations to the authorities and did not approach this Tribunal for his grievances in time. According to sub section (1) Section 21 of the Central Administrative Tribunal's Act, 1985, 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) of Section 20 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.

5. On merits, on application of the judgment of the Apex Court in Dev Dutt's case (supra) with retrospective effect, the applicant is only entitled for a notice with regard to gradings in his confidential report prior to the year 2001. The competent authority may consider his representation for expunction of the remarks but only on upgradation of his CR to the bench



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mark or above it, he would be entitled for consideration for promotion. In case the applicant is found suitable for promotion, the promotion already granted to his juniors has to be cancelled. It is a settled law that the promotions granted cannot be withdrawn after several years and unsettle the seniority of the persons in the promoted cadre. Moreover, the applicant has already retired from service in the year 2005.

6. In the above facts and circumstances of the case, in our considered view, it is not practical for the respondent department to reopen the case of the applicant after eight years and, therefore, this O.A. deserves to be dismissed both on the grounds of delay and laches as well as on merits. Accordingly, the same is dismissed. There shall be no order as to costs.

(Dated this the 2nd day of July 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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