

Central Administrative Tribunal
Lucknow Bench, Lucknow.

O.A. 593/92
WITH
O.A. 253/95

Tuesday, this the 20th day of March, 2001.

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri A.K. Misra, Member (A)

OA-593/92 & OA-253/95

R.K. Srivastava aged about 60 years
S/O Sri Nirankar Prasad Srivastava, R/O H.N. 424/108 KA
Mahboob Ganj, Amberganj Road,
Lucknow.

...Applicant.

(By Advocate: Shri A.K. Shukla)

Versus

1. Director General,
Council of Scientific and Industrial Research,
Rafi Marg, New Delhi-1.

2. Director, Industrial Toxicology Research
Centre, Lucknow.

...Respondents.

(By Advocate: Shri A.K. Chaturvedi)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J):

The aforesaid two applications have been filed by the same applicant impugning the action taken by the respondents giving him certain punishments.

2. The learned counsel for the applicant has submitted that when OA 593/92 was filed by the applicant, he had impugned the orders passed by Respondent 2 dated 27.7.1992 by which a punishment of stoppage of increments for two years without cumulative effect had been passed against him. On appeal filed against the disciplinary authority's orders, the appellate authority, Respondent 1 had reduced the punishment to one of reduction of pay for one year without cumulative effect. The appellate authority's order passed on 24.3.1993 has been impugned in the subsequent application filed by the applicant (OA 253/95), in which the applicant has taken

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a ground that his promotion to the next higher post of Technical Officer 'C' has not been considered from the due date, that is w.e.f. 1.6.1990. Learned counsel for the applicant has referred to the representation made by the applicant in this regard dated 8.4.1996 (Annexure A-5) to Respondent 1 which, according to him, has still not been replied to.

3. Admittedly, the representa^{tion}/ had been made during the pendency of the O.A. which has been pointed out by the respondents in the supplementary counter reply filed by them on 19.3.2001. In the circumstances, learned counsel for the applicant prays that a direction may be given to the respondents, in the first instance, to consider the aforesaid representation made by the applicant in 1996 and dispose of the same in accordance with law.

4. The respondents have, however, submitted by their order dated 27.12.1995, ^{that is} they have modified the earlier memorandum dated 6.2.1995 regarding the promotion of the applicant as Technical Officer 'C' and had to change the date of promotion keeping in view the currency of the aforesaid punishment orders. They have accordingly stated that the date has been changed from 27.7.1993 to 01.6.1994 after completion of the penalty.

5. In the amendment application moved by the applicant by MP 688/2001, he had prayed that the O.M. dated 27.12.1995 passed by the respondents should be quashed and set aside. In this amendment application, he has referred to the representation to the respondents dated 8.4.1996. Shri A.K. Shukla, learned counsel, has submitted that in the representation, the applicant has raised the issue that he being an optee for promotion under erstwhile bye laws 71(b) could not have been assessed for promotion along with the optees of MANAS/Revised MANAS Scheme. According to him, if he had been correctly assessed under bye laws 71(b) of CSIR, then he would have been promoted from the due date, that is

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1.6.1990 and not as erroneously stated by the respondents earlier as 27.7.1993 which has been later modified by the impugned O.M. dated 27.12.1995 as 1.6.1994. Learned counsel for the respondents has, on the other hand, submitted that taking into consideration the punishment orders passed by the disciplinary authority dated 27.7.1992 and the appellate authority dated 24.3.1993, the effective date of promotion of the applicant has been taken as 1.6.1994, as the increment of the applicant fell due on 1.6.1994 ^{1/2} after the currency of the punishment imposed on him by the competent authority. He has, therefore, submitted that there is nothing illegal about the modification done vide O.M. dated 27.12.1995 which has merely corrected the errors and given the effective date of promotion of the applicant as 1.6.1994 instead of the erroneous date, that is 27.7.1993 as previously ordered. Learned counsel for the applicant has, however, very vehemently submitted that a direction may be given to the respondents to consider and dispose of the subsequent representation made by the applicant dated 8.4.1996 which is admittedly pending.

6. In the representation made by the applicant on 8.4.1996, it is seen that the ^{1/2} main crux of ^{the} argument is with regard to his promotion under the erstwhile Bye-laws 71(b) which, according to him, has entitled him to the next higher promotion of Technical Officer 'C' w.e.f. 1.6.1990. According to the applicant, under the provisions of the Bye-laws he relies upon, there was no bar of CSIR giving promotion merely because the disciplinary proceedings ~~were~~ pending and

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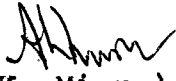
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punishment orders were passed. Taking into consideration the fact that the applicant is in effect challenging the promotion orders passed by the respondents subsequently based on the provisions of Bye-laws 71(b) which, according to him, entitles him for promotion w.e.f. 1.6.1990, that part of the representation ^{for relief} is barred by limitation. To a specific query made by us during the course of hearing, learned counsel has not been able to show that the applicant had even made a representation in this regard prior to the representation dated 8.4.1996. In this view of the matter, the claims of the applicant with regard to his promotion to the post of Technical Officer 'C' w.e.f. 1.6.1990 are rejected as bar ^{red} by limitation.

7. With regard to the second claim raised by the applicant on the validity of the O.M. dated 27.12.1995, we also find no good grounds to interfere in the matter. Taking into account the fact that the competent authorities had passed punishment orders, namely, the disciplinary authority's order dated 27.7.1992 read with the order of the appellate authority dated 24.3.1993 and the effect of the same, there is no legal infirmity in the O.M. dated 27.12.1995 as admittedly on 27.7.1992 the punishment orders were in operation.

8. Taking into account the facts and circumstances of the case, the prayer of the learned counsel for the applicant for a direction to the respondents to dispose of the applicant's representation dated 8.4.1996 is, therefore, rejected.

9. In the result, for the reasons given above, O.A. 593/92 and OA 253/95 are dismissed. No order as to costs. Let a copy of this order be placed in OA 253/95.


(A.K. Misra)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

'SRD'