

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW**

**Original Application No.140/2009**

**Reserved on 28.08.2014.**

**Pronounced on 18<sup>th</sup> September 2014.**

**HON'BLE MR. NAVNEET KUMAR, MEMBER (J)**

**HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Jitendra Kumar Khare, aged about 56 years, son of Shri Vijai Bahadur Singh Khare, resident of C-1083/2, Indira Nagar, Lucknow.

**...Applicant.**

**By Advocate: Sri U.C. Sahai.**

**Versus.**

1. Union of India through its Secretary, Ministry of Agriculture, Government of India, Krishi Bhawan, New Delhi-110011.
2. Indian Council of Agricultural Research (ICAR), through its Director General, Krishi Bhawan, New Delhi-110011.
3. Director General, Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi-110011.
4. Director, Central Institute of Subtropical Horticulture (CISH), Rehman Khera, Post Office Kakori, Lucknow.

**...Respondents.**

**By Advocate: Sri Deepak Shukla.**

**O R D E R**

**Per Ms. Jayati Chandra, Member (A).**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

“(i). To direct the Opposite Parties to consider and provide promotion to the Applicant on the post of T-II-

*J. Chandra*

3, category-II w.e.f. 29.04.1989 or from 29.04.1991 and consequently provide subsequent promotions from the dates on which the Applicant become entitled in the light of his promotion to the post of T-II-3, category-II w.e.f. 29.04.1989/29-04-1991 and to place the Applicant in T-7-8, category-III w.e.f. 29-04-2008.

(ii). To direct the Opposite Parties to provide the Applicant all the consequential service benefits and the arrears of the financial benefits in the light of his promotion to T-II-3, category-II w.e.f. 29-04-1989/29-04-1991 within the time provided by this Hon'ble Court.

(iii). To direct the Opposite Parties to pay the Applicant interest @ 12% on the arrears of financial benefits which the Applicant became entitled to in the light of his promotion to T-II-3, category-II w.e.f. 29-04-1989/29-04-1991.

(iv). To issue any other order or direction as considered appropriate, just and proper by this Hon'ble Tribunal in the facts and circumstances of the case.

(v). Cost of the Original Application be awarded to the petitioner.”

**2.** The facts of the case as averred by the applicant are that the applicant was appointed as Technical Assistant T-1, Category-I in CSSRI (ICAR), Karnal w.e.f. 16.02.1976. He was promoted on the post of T-2, category-I w.e.f. 01.07.1982 at CSSRI, Karnal. He was transferred from CSSRI, Karnal to the Director of Pulses Research (now IIPR), Kanpur w.e.f. 28.04.1984. He was transferred from IIPR, Kanpur to CIHNP (now CISH) at Lucknow on the post of T-2, category-I w.e.f. 09.04.1987. He was promoted to T-2, category-I to T-I-3, category-I at CIHNP (now CISH), Lucknow w.e.f. 01.01.1988.

**3.** The post of T-II-3, category-II fell vacant at CISH, Lucknow on 29.04.1989 due to Sri P.L. Sankhwar,

*J. Chandra*

joining the U.P. State Government Services as Naib Tehsildar. From the Fundamental Rules, Part-I, the lien in respect of Central Government Servants joining in State Government Service, will be governed by the Government of India, Ministry of Finance Letter dated 16.11.1967. According to the said order the lien in respect of permanent/quasi-permanent Govt. Servants should be for a period of two years and further period of one year under certain conditionality. Sri P.L. Sankhwar joined the State Govt. Service w.e.f. 30.04.1989. Therefore, he maintain lien up to 29.04.1991. Sri Sankhwaqr had neither resigned nor made any request for extension of his lien beyond two years and therefore, his lien terminated on completion of two years on 29.04.1991/29.04.1991. The post of T-II-3, category -II become vacant w.e.f. 29.04.1989 or at least the post of T-II-3, category -II was a promotion quota post as per the then existing Rules, which provide 33-1/3% promotional quota. This has already been admitted by the respondents vide letter dated 21.09.1998 and by CISH by letter dated 01.12.2008 (Annexure-1 and 2). The applicant was working on the post of T-II-3, category w.e.f. 29.4.1989. Thereafter, he became entitled to promotion to the said post vacated by Sri Sanhkwar as there was no person having the requisite eligibility. The applicant had the essential qualification for promotion to the post of T-II-3, category-II w.e.f. 01.07.1987 as he had completed 5 years of service on the post of T-II, category-I. The respondents have manipulated the rules by maintaining the lien of Sri Sankhwar for 12 years i.e. from 29.04.1989 to 24.04.2001 on the ground that Sri P.L. Sankhwar offered to resign on 24.0-5.1992 and

*J.Chandee*

accordingly his lien was suspended w.e.f. 17.03.1994 and thereafter on receipt of his resignation on 24.11.2000, the vacancy of T-II-3, category-II become a clear vacancy w.e.f. 24.01.2001. The vacancy was kept open to accommodate one Sri B.P. Shukla.

4. A DPC meeting was held on 30.01.1995 and Sri B.P. Shukla was promoted w.e.f. 01.01.1995 on the post of T-II-3, category-II thereby controverting their own statement that the post vacated by Sri P.L. Sankhwar became available only on or 24.04.2001. In the meantime, the category bar between category-I and category-II was removed. As a consequence the applicant and B.P. Shukla were placed in T-II-3, category w.e.f. 01.01.1995 rendering the promotion granted to Sri B.P. Shukla w.e.f. 30.01.1995 redundant. The applicant does not claim his seniority vis-à-vis Sri B.P. Shukla, but it pertains to his entitlement of being placed in T-II-3 category -II post for which he become entitled on the date when Sri P.L. Sankhwar had joined the service of State Govt. i.e. on 29.04.1989 or from 29.04.1991 that is the date on which the lien period of Sri P.L. Sankhwar should have come to an end. The ICAR, New Delhi by means of letter dated 08.06.2007 had issued instructions to all the Directorates and the Institutes/Departments under it to hold the meeting of DPC well in time strictly to adhere to the legitimate expectations of the employees in the matter of promotion in order to avoid frustration. The applicant raised matter of his promotion from time to time but the respondents fail to pay any heed.

*J. Chaudhary*

5. The respondents have cited the eligibility requirement for promotion to the post of T-II-3, category-II by means of letter dated 2/4.6.2005 without mentioning these are the qualifications, which pertain to the direct entry candidates. Rule-6.6 of the ICAR Technical Rules are relevant in his case, which provides determining the eligibility of a person for grant of merit based promotion. The applicant gave his first representation on 10.03.1997 (Annexure-7) and subsequently, on 22.10.1997, 11.11.1997, 21.11.1997 and 22.12.1997. By letter dated 29.12.1997 (Annexure-13) the respondents informed the applicant that the applicant may submit his grievance in accordance with rules after constitution of Complaint Cell. The applicant by his representation dated 31.12.1997 (Annexure-14) requested for putting his grievance before the Competent Authority. Subsequently, he gave reminders dated 23.01.1998, 23.03.1998, 24.04.1998, 18.07.1998, 23.02.1998. Instead of addressing his genuine grievance the respondents by letter dated 06.01.2000 declined to forward his representation to be Director General. By letter dated 29.03.2004 the Administrative Officer of the Institute intimated the applicant that the grievance of the applicant had already been replied to and therefore no representation by the applicant will be accepted nor any communication will be made with him in this regard. The same stand was taken in the letter dated 01.09.2004. Further, the respondents sent letter dated 07.01.2004 by which he was informed that no seniority list of technicians are maintained while rejecting his representation dated 16.07.2003. The applicant is of the view that his representations were being delayed

*J. Chandra*

deliberately so that he attain the age of superannuation which he did w.e.f. 30.05.2012.

**6.** The respondents have filed their Counter Affidavit denying the claim of the applicant and have raised the technical objection on the ground of delay. According to them the applicant seeks promotion on the post of T-II-3, category-II w.e.f. 29.04.1989 or from 29.04.1991. As such, the OA is highly belated and time barred as per Section-21 of the Administrative Tribunals Act, 1985 having been filed in 2009 is liable to be dismissed on this ground alone.

**7.** Coming to the merits of the case the respondents have stated that the applicant was transferred from IIPR, Kanpur to CIHNP (now CISH) at Lucknow on the post of T-2, category-I w.e.f. 09.04.1987 with the condition that he will be junior most in the T-2, category-I. He was granted merit based promotion to the post of T-I-3 as per ICAR letter dated 27.08.1984. This was not a departmental promotion.

**8.** It is admitted that the post of T-2, category-3 (Plant Physiology) fell vacant on lien basis on 29.04.1989. Since the lien was not vacated there was no clear vacancy on 29.04.1991 as claimed by the applicant. The post which lien was held by Sri Sankhwar become vacant w.e.f 24.01.2001 as Sri Sankhwar had informed on 24.05.1993 that he wished to resign from CISH his lien was suspended w.e.f 17.03.1994 but he gave resignation only on 24.11.2000 as such this post was vacated from 24.01.2001. This post so vacated was to be filled up by

*T. Chander*

direct recruitment. Apart from that, the applicant did not have the requisite 3 years experience in the post of T-II-3 to be eligible for promotion on 29.04.1989.

**9.** The promotion quota was 33 1/3% with effect from 06.09.1989 but this was only for Technical posts of T-1 from Supporting Staff & T-II-3 from T-I-3 posts. The applicant was the junior most in T-II category. The case of both applicant and Sri B.P. Shukla was considered and Sri Shukla was considered fit for promotion by the DPC. It is made clear that the promotion quota is always filled on selection basis and not by seniority basis. In any case as averred by the applicant himself the promotion issue with reference to Shri Shukla became infructuous on account of merger of Category-I and category-II posts w.e.f. 01.01.1995. The matter of promotion has been detailed elaborated by the respondents in Supplementary Counter Affidavit.

**10.** The applicant has filed a Rejoinder reply more or less reiterating his contentions as raised in the OA.

**11.** We have heard the learned counsel for both the parties and perused the entire material available on record.

**12.** The learned counsel for the applicant has placed reliance on the following judgments:-

1. **S.S. Rathore vs. State of Madhya Pradesh (1989) 4 SCC-582.**
2. **M.R. Gupta vs. Union of India & Others (1995) 5 SCC-628.**

*J. Chandra*

3. **State of Madhya Pradesh vs. Yogendra Shrivastava (2010) 12 SCC-538.**

4. **Union of India & Others vs. Shantiranjan Sarkar (2009) 3 SCC-90.**

5. **S.M. Munawalli vs. State of Karnataka (2002) 10 SCC-264.**

**13.** The learned counsel for the respondents has placed reliance on the following judgments:-

1. **S.S. Rathore vs. State of Madhya Pradesh (1989) 4 SCC-582.**

2. **Shiba Shankar Mohapatra & Others vs. State of Orissa & Others (2010) 12 SCC-471.**

3. **Bharat Sanchar Nigam Limited vs. Ghanshyam Dass (2) and Others (2011) 4 SCC-374.**

**14.** The present OA the applicant has claimed promotion on the post of T-II-3, category-II w.e.f. 29.04.1989 or from 29.04.1991 but he has filed the present OA only on 27.03.2009. As such, the OA is highly time barred as per Section-21 of the Administrative Tribunals Act, 1985. Section-21 of the Administrative Tribunals Act, 1985 reads as follows:-

“21. Limitation.—

(1) 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.

*T. Chandan*

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

**15.** Although, the applicant preferred a representation dated 31.12.1997 (Annexure-14) to the respondents, requested for putting his grievance before the Competent Authority followed by reminders dated 23.01.1998, 23.03.1998, 24.04.1998, 18.07.1998, 23.02.1998. The **Hon'ble Supreme Court in the case of S.S.Rathore Vs. Union of India & Ors, AIR 1990 SC 10** has held that the repeated representation does not extend the period of representation.

**16.** In **Karnataka Power Corporation Ltd through its CMD and Another Vs. K.Thangappan and Another 2006 (4) SCC 322** also, the Hon'ble Supreme Court has held that mere making of representations cannot justify delay.

*J.Chandru*

17. In the another case of **Shri Bhoop Singh Vs. Union of India & Others, (1992) (3) SCC 136** (**Para 8**) decided by three Judges Bench it has been held that inordinate & unexplained delay or latches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief.

18. In **Union of India & Ors Vs. M.K.Sarkar 2010(2) SCC 58** (**Para 14**) after considering the judgment State of Bihar Vs. Kamleshwar Pd Singh, it has been clarified by the Hon'ble Supreme Court that the limitation has to be counted from the date of original cause of action and stale matters should not be entertained.

19. Even in **P.K.Ramachandran Vs. State of Kerala & Another JT 1997 (8) SC 189** it has been held by Hon'ble Supreme Court that:-

"The law of limitation may harshly affect a particular party but it has to be applied with all its rigor when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the Hon'ble High Court was, thus, neither proper nor judicious. The order condoning the delay, therefore, cannot be sustained."

20. Similarly in, **State of Karnataka Vs. S M Kotraya 1996 (7) Scale 179** it was again held by Honble Apex Court that

"It is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) and (2) of Section 21, but they

*J.Chandru*

should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the tribunal should be required to satisfy itself whether the explanation offered was proper explanation as prescribed under Section 21 of the Administrative Tribunal Act 1985. In view of above, it is the duty of the court to see whether the delay has been properly explained by the person who is approaching the court after inordinate delay. Accordingly filing of an application does not entitle the person to claim condonation of delay.”

**21.** Therefore, the OA is liable to be dismissed on the ground of delay and latches. The cases relied by the applicant are also of no help, as the facts and circumstances of the cited cases are entirely different to the case in hand.

**22.** Coming to the merits of the case, the applicant has claimed promotion vice vacancy made available by correctly terminating the lien of Shri Shankhwar on 29.04.1991. The respondents have apart from contending that the said post was legally vacated only from 24.01.2001 have claimed that the vacancy was to be filled in through the direct recruitment quota. Their contention is that a promotion quota post became available only 1995. Both the applicant and the said B.N. Shukla were in the field of eligibility and were considered in the D.P.C.. Sri Shukla was selected in the DPC. Be that is it may the applicant himself has stated that the promotion issue with regard to Shri Shukla became redundant shortly after by a merger of posts. So the only issue that arises is the determination of availability of post under the promotion quota. The applicant has laid claim to the post which should have

*T.Chandru*

been counted as vacant in 1991 at the latest. The respondents case is that the said post come under the direct recruitment quota and not the promotion quota. The applicant has provided no breakup of the posts as to whether this post falls under the promotional quota or to be filled-up through direct recruitment.

**23.** In any case, earlier the promotion quota was 20% but subsequently the promotion quota was raised to 33.1/3% w.e.f. 20.09.1989 thereby increasing the post available for to be filled up for promotion quota. On this post as the case of both i.e. applicant and Sri B.P. Shukla was considered. The applicant has not challenged the eligibility of Sri B.P. Shukla, as he is not coming under the zone of consideration by the DPC. He has consistently projected his candidature but has said nothing in respect of Sri B.P. Shukla as he was eligible on that date or not. However, he has not challenged the findings of the DPC either in constituting or in its decision. Merely being eligibility does not give anybody right to be considered for promotion when the criterion of promotion is selection and not seniority.

**24.** In view of the above discussions, the OA is liable to be dismissed and is accordingly dismissed. No order as to costs.

*J. Chandra*  
**(Ms. Jayati Chandra)**  
**Member (A)**

*V.R. Agrawal*  
**(Navneet Kumar)**  
**Member (J)**