

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 500/2000

DATE OF DECISION: 22/06/2001

MES Mazdoor Sangh, Pune & 6 Ors.

Applicant

Shri K.K.Waghmare

-----Advocate for
Applicant.

Versus

Union of India & 4 Ors.

-----Respondents.


Shri R.K.Shetty

-----Advocate for
Respondents.

Coram:

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Smt. Shanta Shastry, Member(A).

1. To be referred to the Reporter or not? |
2. Whether it needs to be circulated to
other Benches of the Tribunal? | x
3. Library. ✓


(SHANTA SHASTRY)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:500/2000
DATED THE 22ND DAY OF JUNE,2001

CORAM:HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

1. MES Mazdoor Sangh, Pune
Affiliated to Bharatiya Pratiraksha,
Mazdoor Sangh, Pune
Represented by Shri Mahendra B Shah,
Sr.Mech. (Ref. & Airconditioning) HS I,
working in the office of Garrison Engineer,
residing at S.No.11, New Hill View Top
Chavan Nagar, Dhanakawdi,
Pune - 411 043.
2. MES No.167758,
Shri P.V.Mohanan,
Electrician HS II,
working in the office of
Garrison Engineer,
(North),
Pune - 411 001.
3. MES No.167386,
Shri C.B.Sankpal,
Ref. Mech. HS II,
working in the office of
Garrison Engineer
(North),
Pune - 411 001.
4. MES No.167308,
Shri B.C.Deshpande,
Ref. Mech.
working in the office of
Garrison Engineer,
(North),
Pune - 411 001.
5. MES No. 167377
Shri A.B.Deshmane,
Ref. Mech.,
working in the office of
Garrison Engineer,
(North),
Pune - 411 001.
6. MES No.167385,
Shri A.R.Dighe,
Ref. Mech.
Working in the office of
Garrison Engineer,
(South),
Pune - 411 001.

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7. MES No. 154552,
Shri W.B.Pote,
Electrician,
working in the office of
Garrison Engineer
(North),
Pune - 411 001.

... Applicants

By Advocate Shri K.K.Waghmare

V/s.

1. Union of India,
Through The Secretary,
Ministry of Defence,
New Delhi.

2. Engineer-in-Chief's Branch,
Army Headquarters,
DHQ PO, New Delhi - 110 011.

3. Chief Engineer,
Southern Command,
Manekji Mehta Road,
Pune - 411 001.

4. Chief Engineer,
Manekji Mehata Road,
Pune Zone,
Pune - 411 001

5. Commander Works Engineer,
Mayo Road,
Pune - 411 001.

... Respondents

By Advocate Shri R.K.Shetty

(ORAL)(ORDER)

Per Smt.Shanta Shastry, Member(A)

The application is made for a prayer to direct the respondents to implement the provisions of DOPT order dated 15/10/84 regarding Bench Mark percentage applicable to HS II and HS I of Electrician w.e.f. 24/6/1987 and to fill up 41 posts of HS II and HS I of Electricians and subsequently promote the applicants with retrospective effect from 24/6/89. A further prayer is made for a direction to the respondents to give promotion to the applicants w.e.f. 88/89 without conducting the

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trade test and pay all arrears of pay and allowances arising out of the retrospective promotion with all consequential benefits.

2. The learned counsel for the applicant submits that the Government of India in the Ministry of Defence issued a letter dated 15/10/84 regarding treatment of industrial workers of MES in pay scales recommended by third pay commission. Based on the unanimous recommendations of the anomalies committee, the sanction of the President was given to upgrade certain posts from Semi Skilled to Skilled Grade and by way of guidelines certain percentages were earmarked for the different categories like HS -I and HS-II and Skilled Grade. Initially, applicants trade i.e. Electrician was not included in the list of common category of skilled jobs in the MES. Later on the applicants who were working as wiremen were designated as Electrician and their trade was included in 1987 vide letter dated 24/6/86. It is the contention of the applicant that inspite of the inclusion of the category of electrician the respondents have failed to implement the order dated 15/10/84.

3. The learned counsel for the respondents submits that according to the OM dated 15/10/84, the jobs are to be created and filled up as per the requirements. It has been clearly stated in the OM in clause b(ii) that it will be depending on the functional requirement and therefore it was not considered necessary to fill up all vacancies at that particular time. Thereafter, now the respondents have added some more posts vide their order dated 23/10/2000. Some posts have also been reduced. This shows that vacancies are to be filled as and when required and it is not mandatory that they should all be filled at the same time.

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4. The learned counsel for the applicants submits that they have been representing since 1991. However, there is no reply. The learned counsel for respondents has raised preliminary objections. The first objection is that MES Mazdoor Sangh which is the first applicant in this OA is not at all a recognised Union and there is nothing to show that it has been authorised to file the application. Secondly, the applicants are claiming promotion from 1989 in the year 2000 i.e. after a lapse of 11 years. Thus, the application is barred by limitation and therefore deserves to be dismissed on that ground itself.

5. We have heard the learned counsel for both the sides and have given consideration to their pleadings. It is very clear from the various orders issued for filling up of the posts in the HS - I and II that it depends purely on the functional requirement and it was not necessary that they should have filled up all the vacancies immediately. The OM dated 15/10/84 is merely by way of guidelines and therefore the respondents cannot be forced to implement the same without there being proper need. Now that some requirement has arisen, the respondents have taken action to sanction some more posts and in course of time the necessary promotions will follow.

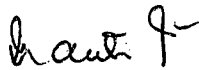
6. In our view, therefore the applicants' case has no merits. As regards, the point of limitation, the learned counsel for the applicant has argued that until and unless the representation made by the applicants is finally rejected, the limitation cannot be said to have started. He has relied on a decision of the Calcutta Bench of the Tribunal in OA-106/87 reported in 1991, 18 ATC 149. In our view this cannot come to the rescue of the applicants as it has been repeatedly held that even if representation is made and if it is not decided within a period of six months, the limitation can be extended to that extent

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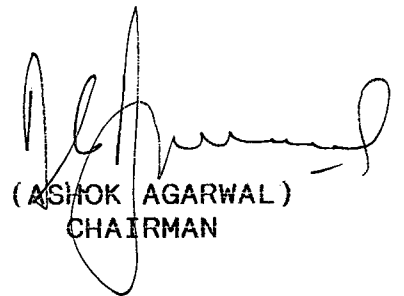
only. It has been held in the case of S.S.Rathore V/s. State of MP AIR 1990 SCC-10 that the cause of action, shall be taken to arise on the date of the order of the Appellate Authority disposing of the appeal or the representation. Where no such order is made within six months after making such an appeal or representation, the cause of action would arise from the date of expiry of six months. Repeated unsuccessful representations do not extend the period of limitation. The judgement is of the Supreme Court of a later date and rules the field. particularly when the earlier judgements ~~was~~^{is} cited by applicant ^{was by} a single Bench of the Tribunal.

7. In our view therefore, even on the ground of limitation the application deserves to be dismissed. We therefore do not want to go into the aspect of the Union being recognised or otherwise.

8. In the facts and circumstances of the case, the OA is dismissed as barred by limitation as well as on merits. No costs.



(SHANTA SHASTRY)
MEMBER(A)



(ASHOK AGARWAL)
CHAIRMAN

abp.