

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

OPEN COURT/PREDELIVERY JUDGMENT IN OA NO.164/2001

Hon'ble Member (A) may kindly see the above Judgment for
approval / signature.



MEMBER (J)

Hon'ble Member (A) - (SPA)

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8/10/03

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.164/2001.

DATE OF DECISION : 7 .10.2003

Prem Kumar Jetly, ... Applicant.

Shri G.K.Masand ... Advocate for
Applicant.

Vs.

Union of India & Ors. ... Respondents.

Shri S.C.Dhawan ... Advocate for
Respondents.

Coram: Hon'ble Shri S.G.Deshmukh,Member (J),
Hon'ble Shri S.P.Arya, Member (A).

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


(S.G.DESHMUKH)
MEMBER(J)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.164/2001.

Tuesday, this the 7th day of October 2003.

Hon'ble Shri S.G.Deshmukh, Member (J),
Hon'ble Shri S.P.Arya, Member (A).

Prem Kumar Jetly,
C-103,
Avishkar Complex,
Kandivli (West),
Mumbai - 400 067.
(By Advocate Shri G.K.Masand)

...Applicant.

v.

1. Union of India, through the
General Manager, Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai.
2. Chief Mechanical Engineer,
Central Railway, Mumbai,
CST Mumbai.
3. Railway Board,
Rail Bhavan,
New Delhi.
(By Advocate Shri S.C.Dhawan)

...Respondents.

: O R D E R :

{S.G.Deshmukh, Member (J)}

The present O.A. is filed for quashing and setting aside the Order bearing No.Con. 433-V/A dt. 09.06.1992 reverting the applicant from the post of Sr. Mechanical Engineer to the post of Assistant Mechanical Engineer on the alleged ground of unsatisfactory performance and for a declaration that having been promoted in the year 1990 in pursuance of his selection through a validly constituted DPC, applicant had acquired a right to the said post and could not be reverted to the lower post except by following the procedure as prescribed under Railway Servants

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(Discipline & Appeal) Rules and provisions contained under Article 311 (2) of the Constitution of India.

2. It is the case of the applicant that after undergoing five years training in Mechanical Engineering of all trades which contribute in the manufacturing and repairing of items and parts of POH of Locomotives, Carriage and Wagons in Central Railway Workshop at Parel and after completion of the same he was posted as Supervisor in Foundries, Ferrous and Non-Ferrous, in Central Railway Loco Workshop at Parel on 11.03.1966. He was promoted to the post of Foreman & shop Superintendent in Foundry and thereafter he was promoted as Assistant Works Manager in June, 1983. The applicant was sent to Zambia Railways Workshop, KABWE under World Bank Project to modernize the Zambian Railway Workshop Foundry at Kabwe. He returned to Indian in March, 1987 and joined Central Railway Workshop at Parel as Assistant Works Manager. In December, 1990 he was selected and recommended by DPC for promotion to Sr. Scale, in pursuance of which he was promoted to Senior Scale in March, 1991. He worked in the promotional post only for one year & five months. He was reverted by the Respondent No.2 from the post of Senior Mechanical Engineer to the post of Assistant Engineer on the ground of unsatisfactory performance by order dt. 19.06.1992. It is the contention of the applicant that prior to the issue of order of reversion on the ground of unsatisfactory performance he was not served with adverse remarks in the year 1992. No letter or memorandum was issued to him alleging unsatisfactory performance. On the contrary, his work through out was exemplary and had been appreciated by various superiors. No adverse

remarks have been conveyed to him in his Confidential Report for years 1991-92. According to the applicant, he was reverted on account of mala fides on the part of the then Chief Workshop Engineer Shri N.N.Agarwal. The applicant had made a representation on 20.06.1992 to the Chief Mechanical Engineer, Central Railway, Bombay V.T. against the reversion order dt. 19.06.1992 followed by his representations dt. 19.11.1992, 23.04.1994, both of which have been replied by Dr.P.L.Bankar, Dy. Chief Personnel Officer working at Headquarters Office by his letter dt. 05.07.1994. The applicant had put strong objections to the contents of the letter dt. 05.07.1994 by his letter dt. 19.12.1995 addressed to the General Manager, Central Railway, Bombay V.T. He also made representation dt. 16.06.1993 addressed to the Chief Mechanical Engineer, Central Railway, Bombay V.T. regarding adverse entries furnished for the years 1991-92. He also wrote a letter to the Central Vigilance Commissioner on 23.02.1996. The representation to the Railway Board has been disposed of by letter dt. 12.04.2000.

3. The applicant has also filed Miscellaneous Petition (viz. M.P. No.534/2001) for condonation of delay in filing the O.A. on 25.06.2001.

4. The Respondents have filed counter affidavit and contended that the O.A. is barred by law of limitation as the applicant has sought to challenge his reversion from Senior Scale to Class - II which was ordered vide letter No.CON. 433 V/A of 19.06.1992. According to Respondents, the cause of action arose in the year 1992 and hence this O.A. is heavily barred by Law of

Limitation. The O.A. is filed on 23.02.2001. The Miscellaneous Petition for condonation of delay is filed on 25.06.2001. Thus, it is contended that the O.A. is liable to be rejected on this ground alone. There is no explanation for delay of over 8 years in approaching the Tribunal. It is contended that the short comings in the Senior Scale post have been communicated both verbally and vide letter dt. 05.02.1992. He was communicated adverse remarks in the ACR of the year 1990-91. He was reverted on the basis of his performance as per Rules. His representations dt. 20.06.1992 and 24.06.1992 were disposed of vide letter dt. 06.08.1992. The respondents have denied that Shri N.N. Agarwal had made false complaint against the applicant. It is contended that the applicant is trying to mix up the issue of minor penalty with that of reversion. His reversion is based on his performance. He was considered for promotion to the post of Senior Scale and subsequent DPC met on 08.09.1994 and was not found fit for the said promotion by the Selection Committee. His representations were duly considered in August, 1992 only. Thus, the cause of action arose in the year 1992. The O.A. is hopelessly barred by law of limitation. The applicant was promoted to Senior Scale on ad hoc basis and due to his unsatisfactory work performance he was reverted as per rules. There is no violation of principles of natural justice. It is within the powers of the Competent Authority to revert any officer on the ground of unsatisfactory performance in terms of Railway Board's letter No.E(NG) I-82-PM I - 68 dt. 28.04.1982. It is contended that Junior Scale, Senior Scale and J.A. Grade Posts are Group 'A' posts for which DPC is convened at Board's

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level and selection of such posts are based on the merit. The applicant was not inducted into Jr. Scale/Group 'A' cannot claim promotion to Senior Scale as a matter of right.

5. We have heard Learned Counsel appearing on both sides and perused the materials available on record.

6. In view of the pleadings of the parties, the first question that arises for consideration is as to whether the application is within time and if it is beyond time whether the delay in approaching the Tribunal deserves to be condoned. The Miscellaneous Petition is filed by the applicant on 25.06.2001 after filing of the counter reply by the Respondents. The application under section 19 of the Administrative Tribunals Act, 1985 is governed by the provisions contained in Section 21 of the Act regarding limitation. The provision reads as under:-

" (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."

7. In the instant case, the applicant has been reverted from the post of Senior Mechanical Engineer to the post of Assistant Mechanical Engineer by the Respondents by order dt. 19.06.1992 on the ground of unsatisfactory performance. The Learned Counsel for the Respondents submitted that the O.A. is hopelessly barred by limitation. He relied on S.S.Rathore Vs. State of M.P. {11 ATC 913 SC}, Bhoop Singh Vs. Union of India {(1992) 21 ATC 675},

State of Karnataka Vs. S.M.Kotrayya {1996 6 SCC 267}, Secretary to the Govt. of India Vs. Shivram Mahadu Gaikwad {1995 30 ATC (SC) 635}, Ramesh Chand Sharma Vs. Udhamp Singh Kamal {1999 (8) SC 550}. The Learned Counsel submitted that repeated representations on the same issue does not enhance the cause of action.

8. The applicant has mentioned in para 6 of his O.A. that even though there is no statutory requirement, applicant has nevertheless made umpteen number of representations for redressal of his grievance. The representations claimed to have been made should have been statutory representations. Non-statutory representations and repeated representations cannot extend the limitation.

9. It is not at dispute that the order in question was served on him on 19.06.1992. According to him, he made representations on 20.06.1992, 24.06.1992. Both the representations were replied by letter dt. 06.08.1992. It is mentioned that his representations dt. 20.06.1992 and 24.06.1992 against the order of reversion dt. 16.06.1992 have been carefully considered by the Competent Authority, his Confidential Reports for the period 1991-92 have been correctly initiated by DRM BSL and reviewed by CME and he was reverted not only based on his performance in 1991-92 but also for the earlier period. Thus, his representations were disposed of on 06.08.1992 itself. If the representations made by him are considered to be statutory representations, then the limitation has to be counted from the date when the statutory representations have been disposed of.

 The applicant has to explain the delay from 06.08.1993 when the

period of limitation expires. The representation made to CVC dt. 23.02.1996, certainly cannot be said to be a statutory representations provided under any of the Rules and that the reply given to that cannot be taken as starting point for limitation. The applicant is seeking the relief of quashing the order dt. 19.06.1992. If the applicant is considered to have made the statutory representation, then the limitation has to be counted from 06.08.1992 when his representations were disposed of by the Competent Authority. The unexplained delay by itself is a ground to refuse the relief prayed for by the applicant. I have mentioned that the repeated representations cannot extend the limitation as the applicants representations were disposed of on 06.08.1992. The applicant ought to have filed the O.A. within a period of one year from 06.08.1992. There is no satisfactory explanation for not approaching Tribunal for a period of more than 8 years. There is no valid explanation on record for coming to conclusion that case of delay is made out. The O.A. is filed on 23.02.2001 and the limitation starts from 06.08.1992. We find that the O.A. is hit by bar of limitation. Any exercise to examine the applicant's case on merits would therefore be futile. The result is that this application is dismissed as being barred by limitation. No orders as to costs.

ARYA
(S.P. ARYA)
MEMBER (A)

DESHMUKH
(S.G. DESHMUKH)
MEMBER (J)

B.