

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 181/2003

Date of Decision: 29.09.2003

R.G. Singh

Applicant

Shri G.S. Walia

Advocate for Applicant(s)

Versus

Union of India & anr.

Respondents

Shri S.C. Dhawan

Advocate for Respondents

CORAM: HON'BLE SHRI S.G. DESHMUKH.
HON'BLE SHRI S.P. ARYA.

MEMBER (J)
MEMBER (A)

1. To be referred to the reporter or not? No
2. Whether it needs to be circulated to other Benches of the Tribunal? No
3. Library. Yes

29/9/03
(S.P. ARYA)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.181/2001

THIS THE 29 TH DAY OF SEPTEMBER, 2003

CORAM: HON'BLE SHRI S.G. DESHMUKH. .. MEMBER (J)
HON'BLE SHRI S.P. ARYA. .. MEMBER (A)

R.G. Singh @ Ram Gopal Singh
working as Junior Engineer
Grade I - CNW Lokmanya tilak Terminus
(Kurla Terminus), Central Railway,
Kurla, Mumbai. .. Applicant

By Advocate Shri G.S. Walia.

Verssus

1. The Union of India, through
General Manager, Central Railway,
Headquarters Office,
Mumbai CST, Mumbai-400 001.
2. Divisional Railway Manager
Mumbai Division, D.R.M.'s Office,
Mumbai CST, Mumbai-400 001. .. Respondents

By Advocate Shri S.C. Dhawan.

O R D E R
Hon'ble Shri S.P. Arya. Member (A)

This OA seeks for order and direction to the respondents to consider the applicant for the post of Section Engineer in the scale of Rs.6500-10500 in respect of vacancies which were notified by Notification dated 05.6.1997 and for promotion with consequential benefits on the ground that non consideration of the applicant for the post was illegal and violative of Article 14, 15 and 16, arbitrary, unwarranted, against the principle of natural justice.

2. A preliminary objection that OA is barred by

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...2.

by limitation as provided in the Administrative Tribunals Act 1985 (hereinafter referred to as Act) has been raised by the respondents. We accordingly have heard the counsel for the applicant and counsel for the respondents on the ~~basis~~^{point} of limitation and also perused the records on the file.

3. It is argued by counsel for applicant that on non-consideration, he moved an appeal to DRM (P) on 10.01.1998. A communication dated 26.8.1999 from DPO-II regarding disposal of his appeal was received by him. Thereafter, he filed another appeal to CPO (M) on 06.12.1999, the result of which has not been communicated. It is therefore claimed that the limitation starts from 06.6.2000 i.e. after lapse of six months time, the date he sent the second appeal to CPO (M). He would thereafter get one year time for filing the OA i.e. he could file the OA by 06.6.2001. The OA, is accordingly argued to have been filed in time.

4. The counsel for the respondents had rebutted the contention of the applicant and has argued that the limitation would start from 26.8.1999 when the appeal was decided by the competent Authority finally and OA could have been filed only before 26.8.2000.

5. For better appreciation of the period of limitation as given in the Act, Section 20 & 21 is quoted below:-

...3.

20. Applications not to be admitted unless other remedies exhausted:- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance.

(2) For all the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) If a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation.- (1) A Tribunal shall not admit an application, -

(a) in 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.

6. From the plain reading of the above sections, it would be clear that OA can be filed within one year from the date on which final order has been made. The OA is not to be admitted ordinarily unless the applicant satisfies that he has availed all the remedies available to him under service rules for redressal of his grievance. No statutory rule has been shown for appeal or representation against non-consideration for promotion. However, if a person feels aggrieved for non-consideration in promotion process, he cannot be debarred from making appeal / representation to the authority competent to decide the same. In this case, the applicant made an appeal to the competent authority which was decided by him vide his order dated 28.8.1993 as required by Section 20 (2) (a) of the Act and the limitation period under the Act would start from 28.8.1993.

7. Under Section 20 (2) (b) six months period is available for limitation, if an appeal preferred or representation made has not been disposed off finally by the authority and limitation period in that case would start after six months of the date of making the appeal / representation. But such representation or appeal should have been made under statutory provisions of provisions of relevant service rules. In the present case, the applicant has made second appeal to the CPO (M) but no such statutory rule or provisions of service

rules have been shown where such a remedy of preferring the appeal against the order of competent authority was available to him. Therefore, we find that the applicant could not get the benefit of six months for limitation as provided under Section 20 (2) (b) of the Act.

8. Counsel for respondents has relied on the Full Bench Judgement of the Apex Court in S.S. Rathore Vs. State of Madhya Pradesh [1989 (1) ATC 413] where it was held as under:-

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21 It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court's jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

22. It is proper that the position in such cases should be uniform. Therefore, in every

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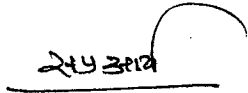
such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation".

9. In Bhoop Singh Vs. Union of India & Others [(1992) 21 ATC 675] the Hon'ble Supreme Court had held "xxxxx Inordinate and unexplained delay or laches 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 remains silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief."

10. We are bound by the ratio propounded by the Hon'ble Supreme Court. The limitation period in the present case would start from 26.8.1999. The present OA was filed on 26.02.2001. The second appeal filed by the applicant is not provided under any statutory or service rules. This cannot be the foundation for counting the limitation period. No application for condonation of delay has been filed. Repeated representations, not provided under service rules cannot be taken into consideration for limitation purposes.

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10. As discussed above, we find that the OA is barred by limitation and is therefore not maintainable. We need not go into the merit of the OA. The OA is dismissed as it is barred by limitation. No order as to costs.


(S.P. ARYA)
MEMBER (A)


(S.G. DESHMUKH)
MEMBER (J)

Gajan