

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 263 OF 1993.

Date of Decision : 10.11.1998.

B. D. Tapkire, Petitioner.

Shri B. S. Thingore, Advocate for the Petitioner.

Versus

Union Of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the Respondents.

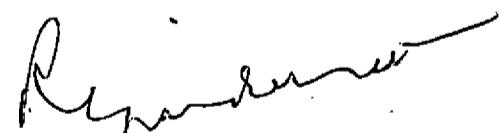
CORAM

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(i) To be referred to the Reporter or not ? *no*

(ii) Whether it needs to be circulated to other *~~~*
Benches of the Tribunal ?



(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 263 OF 1993.

Dated this Tuesday, the 10th day of November, 1998.

CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

B. D. Tapkire, (Retired).
Divisional Chief Catering
Inspector,
O/o. Sr. Divisional
Commercial Manager,
Western Railway,
Bombay Central,
Bombay 400 008.

... Applicant

(By Advocate Shri B.S. Thingore)

VERSUS

1. Union Of India through
its General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. The Chief Commercial Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

... Respondents

3. The Divisional Railway
Manager,
Western Railway,
Kothi Compound,
Rajkot (Gujarat).

(By Advocate Shri V.S. Masurkar.)

: OPEN COURT ORDER :

{ Per.: Shri R. G. Vaidyanatha, Vice-Chairman }

This is an application filed under
Section 19 of the Administrative Tribunal Act, 1985.
Respondents have filed reply opposing the application.



We have heard the Learned Counsels appearing on both sides.

The applicant who was working as Manager came to be promoted as a catering Inspector in 1972. Later, due to some enquiry he was reverted and suspended on 17.08.1973. Then it appears that three charge-sheets were issued against the applicant from time to time. In two charge-sheets there was penalty of censure and in one charge-sheet there was a minor penalty of stoppage of two sets of passes for one year. There was also a fourth charge-sheet which came to be dropped. The applicant's main grievance is that the order of reversion and suspension dated 17.08.1973 was illegal since the reversion was done without holding any enquiry and contrary to principles of natural justice. The applicant was making number of representations to the respondents regarding his grievance. The applicant received the latest reply from the respondents dated 06.04.1992 rejecting the claim of the applicant. The applicant's case is that, he should have been regularly promoted as a Catering Inspector in 1970. The applicant has, therefore, approached this Tribunal seeking a direction to the respondents to promote him w.e.f. 30.04.1970, to quash the order of reversion dated 17.08.1973 and grant him financial benefits from 17.08.1973 as if he was continuously holding the post of catering Inspector and for a direction that the two recent replies sent by the respondents dated 06.04.1992 and 20.03.1992 be quashed. He also prays for interest @ 18% per annum and costs.


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2. Respondents have filed reply justifying the action taken by them in reverting the applicant at the relevant time. It is stated that the applicant was involved in number of serious irregularities and due to this, he was reverted and then placed under ^{97.15} suspension. ~~It is~~ It is stated that the application is barred by limitation, delay and laches. That the recent reply given in 1992 will not give any fresh cause of action to the applicant. That the applicant is not entitled to promotion with retrospective effect from 30.04.1970.

3. The Learned Counsel for the applicant mainly contended that the order of suspension and reversion dated 17.08.1973 is illegal and liable to be quashed. He further stated that consequently the applicant is entitled to his promotion retrospectively from that date with all consequential monetary benefits. The Learned Counsel for the respondents while supporting the orders of the respondents submits that the application is barred not only by limitation but also by principles of delay and laches.

4. Though there is a prayer that the applicant must get promotion retrospectively from 30.04.1970, no material is placed before us and no argument was addressed as to how and why the applicant is entitled to get promotion from 30.04.1970. Even otherwise, if the applicant was not given promotion on 30.04.1970, the applicant cannot challenge the same in O.A. filed

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twenty-three years later in 1993.

5. It is true that on the face of it, there is no indication as to why and how the order of reversion and suspension was made ^{under order} dated 17.08.1973. The Learned Counsel for the respondents explained that since this was an adhoc promotion and in view of the involvement of the applicant in irregularities, the authorities found him not suitable and reverted him.

The main obstacle coming in the way of the applicant is about undue delay in approaching the Tribunal. The applicant retired from service on 30.04.1992. Even then he has taken one more year to approach this Tribunal.

6. The Learned Counsel for the applicant submitted that the applicant was making repeated representations and he got the latest reply from the respondents in 1992 and, therefore, the applicant has approached this Tribunal within one year from the date of last reply.

7. In our view, sending repeated representations will not arrest limitation or save limitation. When the applicant came to be suspended and reverted in 1973, he got an immediate cause of action to challenge the same by approaching a Court or Tribunal. Nodoubt, he had made a representation and on record we find that respondents have sent a reply on 23.09.1974 itself rejecting his claim, which is found at page 28 of the

paper book. In this letter, the applicant has been told that his promotion was purely on adhoc basis and he has no claim. Then he was told that his promotion in the usual course will be considered after the fraud case is decided. Therefore, atleast on 23.09.1974 the respondents gave him an indication that they are not going to change their order and applicant will be considered in the usual course of promotion. Therefore, the applicant got a right to move the Court or Tribunal challenging the order of reversion. But from 1973, the applicant kept quite for nearly nineteen years and he has approached this Tribunal in 1993.

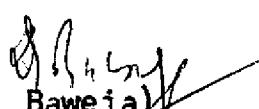
8. We are not impressed by the argument of the Learned Counsel for the applicant that the applicant could come to the Tribunal after the last reply which was given in 1992. Infact, in one of the recent replies dated 20.03.1992 which is at page 17 of the paper book, there is a clear mention that ~~against his earlier representation~~ a reply has already been given about reversion by letter dated 10.05.1988. These two latest replies at pages 16 and 17 of the paper book are given since the applicant made fresh representations in 1991 and 1992. Therefore, we hold that the recent reply of 1992 will not give a fresh cause of action to the applicant to approach this Tribunal.

9. In the facts and circumstances of the case we find that the applicant is approaching this Tribunal in 1993 challenging his order of reversion about twenty years earlier dated 17.08.1973 through the present



application, is hopelessly barred by limitation, besides being hit by the principles of delay and laches. In the circumstances, we find no merit in the application.

10. In the result, the application fails and is dismissed. No costs.


(D.S. Baweja)

Member (A)


(R.G. Vaidyanatha)
Vice-Chairman

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