

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:914/93

DATE OF DECISION: 2nd May 2000

Shri N.A. Wani Applicant.

Shri V.M. Bendre. Advocate for
Applicant.

Versus

Union of India and others. Respondents.

Shri S.S.Karkera for Shri P.M.Pradhan. Advocate for
Respondents

CORAM

Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L. Jain Member(J)

(1) To be referred to the Reporter or not? yes

(2) Whether it needs to be circulated to no other Benches of the Tribunal?

(3) Library.

yes

J.L.Jain
(S.L.Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:914/93

the 2nd day of MAY 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L.Jain, Member(J)

N.A. Wani
Residing at 18-B
Parijat (Postal)
Colony, Dhule.Applicant.

By Advocate Shri V.M.Bendre.

V/s

1. Union of India through
The Secretary
Ministry of Communication
New Delhi.
2. Post Master General
Aurangabad.
3. Chief Post Master
General, V.T. Bombay.Respondents.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 to set aside and quash the order of the Disciplinary Authority dated 5.11.1988, order of the Appellate Authority dated 16.6.1989, Reviewing Authority dated 31.12.1990, order dated 2.11.1992 rejecting the representation, order of the President of India dated 6.1.1992, denial of promotion on ground of minor punishment, as they are illegal, arbitrary, without application of mind alongwith consequential benefits.

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2. After passing competitive examination conducted by the department, the applicant who joined the services with effect from 1.6.1977 was promoted as L.S.G. with effect from 5.10.1979. As the name of the applicant is not included in the gradation list of the cadre, applicant represented the matter vide representation dated 13.6.1984 Annexure V which was replied by letter dated 13.9.1991 Annexure VI stating that his name was included in the list of 1985 which was communicated in 1990 and is suitably placed, still he has any grievance, he may submit representation. The applicant submitted representation dated 30.10.1991 Annexure VII.

3. The applicant was served with the charge sheet dated 15.10.1988 under Rule 16, he submitted the representation dated 2.11.1988, the Disciplinary Authority imposed minor penalty of recovery from the pay of the applicant to the loss incurred vide order dated 5.11.1988, an appeal dated 29.1.1989 against the same was submitted which was decided vide order dated 16.6.1989 communicated to the applicant on 29.11.1989, revision dated 8.1.1990 against the same was submitted which was rejected vide order dated 31.12.1990 communicated to the applicant on 17.1.1991, submitted an application to the President of India on 15.7.1991 which was rejected vide order dated 6.1.1992 served on the applicant on 14.2.1992.

4. The applicant submitted the representation dated 7.11.1989 Annexure A XII against refusal to relieve for promotional post, further representations in continuation of the

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same dated 14.9.1990 Annexure XIV, 1.6.1992 Annexure XV, 4.7.1992 Annexure XVI, submitted his case to Staff Adalat - Annexure XVII, reminder dated 13.7.1992 requested for personal hearing vide his representation dated 7.8.1992 which was rejected on 2.11.1992 after superannuation of the applicant on 31.10.1992.

5. The grievance of the applicant is that Shri Y.M. Nimdeokar was his next senior and Shri K.G. Chatterjee was next junior in the cadre of LSG, therefore his name should appear between these two persons, i.e. below serial No. 231 while he was placed at Serial No. 454. After circulation of the gradation list in the year 1990, he submitted representation as he was having no opportunity to submit it earlier. He could not be considered for promotion at the proper time, due to this error. In respect of the charge sheet, he alleged that the fraud was committed by Extra Departmental Sub Post Master, he was not connected with the said fraud. He was considered for promotion on 13.10.1989 which was during the currency of the punishment imposed and on the recommendation of the D.P.C. he was placed at serial No.1 in the panel but not relieved to join the said promotional post, representations against the same could not serve any fuitful purpose. Hence this OA for the above said relief.

6. The claim is resisted by the respondents on the grounds that the gradation list corrected upto 1.7.1985 is in supersession of the earlier circle gradation list published on 1.7.1983 and the name of the applicant could not be interpolated between 231 and 231 B as he was not permanent, hence he could not be considered for the promotion, as such there was no denial. The

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seniority is arranged according to 2/3rd and 1/3rd examination (seniority) quota. The applicant has passed 1/3rd examination quota in 1978, hence his seniority was correctly fixed. No official junior to the applicant has been promoted earlier and as such his plea is misconceived in respect of denial of promotion also.

7. The claim is further resisted regarding refusal to relieve for promotional post on the ground that the applicant was found guilty under Rule 504 (iii) of Post and Telegraph Vol. VI Part II read with Rule 426(6) and Rule 523(3) and Rule 3(i)(ii) and Rule (2) (i) of the Conduct Rules 1964, was not entitled to be promoted. The applicant during the currency of the penalty was further served with charge sheet, always remained under cloud. Hence could not be promoted. The OA is sought to be dismissed as devoid of merit.

8. The applicant has filed this OA on 1st April 1993, claiming that the OA is within the limitation as prescribed under Section 21 of the Administrative Tribunals Act 1985. In the present OA the applicant has challenged the President's order dated 6.1.1992 regarding disciplinary proceeding and penalty. Thus the OA is barred by limitation as it is being filed beyond one year- the period prescribed for limitation.

9. Even on merits, in this respect OA has no merit for the reason that it is a case of minor penalty, the applicant disputed the charges levelled against him but he never demanded a detailed enquiry. Only on the basis of resisting the charges, detailed enquiry can not be ordered. The penalty imposed is also not such which requires holding of detailed enquiry in view of Rule 16(1A) of C.C.S. (CCA) Rules.

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10. The respondents have brought on record the facts as under :

Sl. No.	Rule No	Date of issue of Charge-sheet.	Date of Punishment
1.	16	15.10.1988	5.11.1988
2.	16	26.9.1989	16.1.2990
3.	16	25.9.1989	8.1.1990
4.	14	2.5.1990	27.3.1991.
5.	16	31.10.1991	31.12.1991

11. It is true that in respect of charge sheet dated 31.10.1991 penalty was awarded on 31.12.1991 which is a 'Censure'. In view of case of I.A. Qureshi V/s State of M.P. even this penalty bars the applicant for his consideration for promotion.

12. In respect of charge sheet dated 15.10.1988, 25.9.1989, 2.5.1990 penalties were recovery in number of intalments. Even if, the penalty is taken to be one time penalty in each case, the applicant was not under cloud only for the period commencing from 5.11.1988 to 25.9.1989, 16.1.1990 to 2.5.1990 and 27.3.1991 to 31.10.1991.

13. D.P.C's are said to have been held on 11.4.1991, 26.10.1991, 1.3.1992. In D.P.C. dated 11.4.1991 and 26.10.1991 the applicant was not considered while in D.P.C. dated 1.3.1992 the applicant was considered and found unfit. For non consideration on 11.4.1991 and 16.10.1991 the applicant claims that has filed representation. We have perused the representations of the applicant dated 1.6.1992, 4.7.1992, 6.7.1992, 13.7.1992, 7.8.1992 which was replied vide letter dated

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2.11.1992, we are of the firm option that he has never represented his case in respect of the said D.P.Cs and his case was only in respect of his empanelment and denial of promotion in view of the same.

14. Regarding D.P.C's held on 11.4.1991, 26.10.1991, 1.3.1992 and not consideration of the applicant, the applicant neither represented the ^{grievance} nor pleaded in OA. Hence after lapse of more than 8years, [✓] the applicant canot be permitted to make a new case for which there is no foundatiion either in representation or in OA.

15. It is true that the applicant was empanneled in D.P.C. of 1989 but was not relieved and correctly not relieved as he was under cloud on account of the fact that charge sheet was issued on 15.10.1988 which could be finalised only by 5.11.1988. The second charge sheet was issued on 26.9.1989 which could be finalised on 16.1.1990.

16. Regarding wrong seniority, it is suffice to mention that there was no error in the applicant's seniority and as admitted during the course of the hearing that no junior to the applicant in promotional quota was promoted earlier to D.P.C. of 1989.

17. In the result we do not find any merit in the OA, it is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L.Jain
(S.L.Jain)
Member(J)

B.N.Bahadur

(B.N.Bahadur) 02/05/2000
Member(A)

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