

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1294/94

Date of Decision : 10.4.2002

Artificial Limb Centre
Employees Union & Ors.

Applicant

Shri S.P.Saxena

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.K.Shetty

Advocate for the
Respondents

CORAM :

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

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

- (i) To be referred to the reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library yes

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1294/94

Dated this the 10th day of April 2002.

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

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

1. The Artificial Limb Centre
Employees Union through its
Secretary, Shri L.S.Painollie,

2. G.R.Sitaram

3. -----

4. T.G.Gujar

5. -----

6. V.K.Kamble

7. S.S.Jambhulkar

8. S.S.Pawar

9. A.V.Guhagarkar

10. S.B.Panhale

11. M.Kannabirar

12. -----

13. G.E.Raju

14. -----

15. -----

...Applicants

All are working in the
O/O Commandant, Artificial
Limb Centre, Wanwari,
Pune.

By Advocate Shri S.P.Saxena

vs.

1. Union of India
through the Secretary,
Ministry of Defence,
South Block, DHQ PO,
New Delhi.

2. The Director General of
Armed Forces Medical Services,
Office of DGAfms, DHQ PO,
New Delhi.

3. Commandant,
Artificial Limb Centre,
Pune.

..2/-

4. -----
5. -----
6. Avtar Singh Aidhen,
7. R.S.Negi,
8. Surjeet Singh,
9. Shaikh Aziz Eliyas,
- 10.-----
- 11.-----
- 12.K.Sekar,
- 13.-----

...Respondents

By Advocate Shri R.K.Shetty

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 for the declaration that the promotions of Respondents No. 4 to 13 to their present posts are in violation of Rules, to quash and set aside the said promotion with the direction to the Respondents No. 1 to 3 to fill up the vacancies so created in accordance with the Rules on year to year basis, consider the Applicant Nos. 2 to 14 along with others for the promotion to their next higher post by review DPC with consequential benefits.

2. "Artificial Limb Centre Pune Group 'C' and 'D' (Industrial) Posts Recruitment Rules, 1978" under Article 309 of the Constitution of India were framed regulating the method of Recruitment to certain Group 'C' and 'D' (Industrial) posts in the Artificial Limb Centre, Pune which came into force w.e.f. 11.9.1978 (Ex-'A'). Various vacancies sanctioned on permanent

Dec - /

..3/-

basis under the said Rules were not filled up by the Respondent No.3 when such vacancies fell vacant, but the Respondent No.3 kept these unfilled vacancies for years together illegally and thereafter filled the said vacancies by promotion by clubbing them in total violation of Rules and law on the subject with a malafide intention to benefit the Respondents No.4 to 13 who would have not become eligible for consideration for appointment/promotion if the vacancies were filled when they occurred.

3. "Artificial Limb Centre Pune (Group 'C' and 'D' Posts) Recruitment Rules,1992 came into force w.e.f. 30.5.1992 which were framed under Article 309 of Constitution of India which supersedes the earlier "Artificial Limb Centre Pune, Group 'C' and 'D' (Industrial & Non Industrial) posts Recruitment Rules,1978 (Ex-'B'). The amended Rules contained in SRO 118 dated 11.5.1991 are applicable to the posts.

4. The President also published another set of Rules in Gazette of India being SRO NO.119 dated 11.5.1992 called "Artificial Limb Centre Pune (Group 'C' and Group 'D' Posts) Recruitment Rules,1992 which came into effect from 30.5.1992 (Ex-'C').

5. As per SRO 118 dated 11.5.1991, the said Rules are applicable to the posts detailed below :-

..4/-

See -

- a) Chief Limb Fitter
- b) Limb Fitter
- c) Limb Maker (Carpenter)
- d) Limb Maker (Leather Fabric and Cartalmad)
- e) Boot/Shoe Maker (Surgical)
- f) Bench Fitter
- g) Hosiery Knitter
- h) Carpenter
- i) Boot Maker (Ordinary)
- j) Lasker/Mazdoor
- k) Leg Training Instructor.

6. SRO No.119 Ex-'C' relates to following posts :-

- a) Leading Hand Technical
- b) Supervisor Technical Gr.III (Limb Maker)
- c) Supervisor Technical Gr.II (Limb Fitter)
- d) Supervisor Technical Gr.II (Limb Maker)
- e) Supervisor Technical Gr.I (Limb Maker)
- f) Storeman Technical

7. The applicants claim is that the Respondent No.3 in total violation of the Rules applicable at relevant time had promoted/appointed the Respondents Nos. 4 to 13 who are junior to the applicants to higher posts ignoring the claims of many other senior employees for their promotion showing favour to the Respondents No.4 to 13 from time to time in not filling up the promotion/direct vacancies. The Applicant No.1 in the representative capacity of Union had represented the matter to Respondent No.3 but Respondent No.3 did not heed to the points raised by Union and continued to show undue favour to his favourite employees in a pick and choose manner which resulted in supersession of many eligible and senior employees of the Respondent No.3 including the applicants. The Respondent No.3

By -

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had issued Circulars within the department calling for the application from the eligible candidates for the posts mentioned in para 4.10 'A' to 'K'. There is no provision of calling for applications from the candidates when they are nearly to be promoted. The promotion to the above posts has to be by the relevant DPC but the respondents have grossly deviated from the Rules, conducted the test and promoted persons of their choice in an arbitrary manner by pick and choose. The vacancy should be filled as soon as they fall vacant and these vacancies should not be allowed to accumulate for years, Rules of Recruitment and Promotion applicable at the relevant time should be observed in ordering promotions of employees either by promotion or by direct recruitment. Due to omission/commission of the respondents, the chances of the applicant are affected. Promotion of Respondents No. 4 to 13 have caused great resentment among all the employees. The Applicant No.1 had also approached the Office of the Assistant Labour Commissioner by making an application about illegal promotion by Respondent no.3, also served Strike Notice dated 6.6.1994 but due to conciliation proceedings in which management assured to consider the grievance of the employees, the proposed strike was dropped (Exhibit-'M').

8. During the pendency of the OA., the name of Applicants No.3,5,12,14,¹⁵ and Respondents No. 4,5,10,11,13 were deleted from time to time.

P.S. -

..6/-

9. Shri Avtar Singh Aidhen, Limb Fitter (Respondent No.6) and Shri R.S.Negi, LST (Respondent No.7) were promoted vide order dated 19.1.1993 (Exhibit-'J').

10. As S.E.Aziz, LMC (Respondent No.9) was promoted to the post of LHT, Shri K.Sekar, L.M.L.F.C. (Respondent No.12) was promoted to the post of Limb Fitter and Shri Surjeet Singh, LMC (Respondent No.8) was promoted to the post of Limb Fitter vide order dated 26.2.1993 (Exhibit-'K' OA.page 40).

11. The applicants have filed this OA. before the Tribunal on 21.10.1994 challenging the promotion order dated 19.1.1993 and 26.2.1993. The first representation against the said promotions is dated 15.3.1993 followed by representations dated 21.4.1993, 2.11.1993, 3.11.1993, 15.10.1993 which were not replied at all. If we calculate the period of limitation which begins to run w.e.f. 19.1.1993 and 26.2.1993, the OA. filed on 21.10.1994 is not within one year from the date of cause of action accrues. Period spent in pursuing the representations, cannot be taken into consideration as the remedy is not prescribed by the Rules.

12. If we examine the matter keeping in view the first representation dated 15.3.1993 and further representations enumerated above, when none of them were replied by the respondents, the period begins to run w.e.f. 15.3.1993 and even allowing the period of 1 1/2 years from the date of first representation, the claim is not barred as the period expires on 15.9.1994.

Signature

..7/-

13. The applicants have claimed in para 3 of the OA. that the application is not hit by Section 21 of the Administrative Tribunals Act, 1985. As such, the claim of the applicants is not based on a plea of condoning the delay.

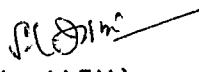
14. It is true that the Applicant NO.1, the Union had also approached the Office of the Assistant Commissioner by making grievance about illegal promotion given by Respondent No.3 and had also served said notice on 6.6.1994 on Respondent No.3 which proceedings terminated vide letter dated 27.6.1994 (Ex.'M'). On perusal of Exhibit 'M', it is clear that vide notice dated 6.6.1994 threatening to go on strike on 22.6.1994 over 10 points charter of demands which was seized in conciliation immediately and the strike was averted. The demand in respect of item No.3,4 and 5 relates to alleged violation of existing rules in which the management stated that there has been no cases of violation of existing rules and also assured to give a due consideration to any specific suggestions and views of the union for removing its grievances and to take appropriate action. The time spent during conciliation proceedings commences from 6.6.1994 till 27.6.1994 cannot be excluded for counting the period of limitation for the reason that though it was or it may be an industrial dispute, but the said authority, i.e. Assistant Labour Commissioner (C) Pune was not competent to promote or cancel the promotion order of the respondents and applicants respectively. The matter agitated there cannot be said to be a bonafide litigation in respect of the matter in dispute. Even the said period of 22 days is

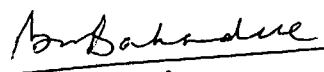
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excluded, still the claim of the applicants cannot be held to be within the period of limitation, though such exclusion is not justified in view of the fact that grievance is raised after a period of more than one year.

15. In the result, we do not find that the OA. is within the prescribed period of limitation but is barred by time, deserves to be dismissed and is dismissed accordingly, without going into the merits of the claim, with no order as to costs.


(S.L.JAIN)
MEMBER (J)


(B.N.BAHADUR)
MEMBER (A)

mrj.

Order/Judgement despatched
to Applicant dependent (s)
on 19/4/2

