

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.:1026/94

Dated this _____ the ^{3rd} ~~th~~ day of January 2001.

Shri J. Ramamurthy

Applicant

Mr.R.C. Kotiankar

Advocate for the
Applicant.

VERSUS

Union of India & Others

Respondents.

Mr.J.P. Deodhar

Advocate for the
Respondents.

CORAM :

Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches *no*
of the Tribunal ?
- (iii) Library. *yes*

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

H.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.1026/94

Dated this Wednesday the 3rd Day of January 2001.

Coram : Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A)

J. Ramamurthy,
Chief Administrative Officer,
Bhabha Atomic Research Centre,
Trombay, Bombay - 400 085.

.. Applicant.

(By Shri R.C. Kotiankar, Advocate)

Vs.

1. Union of India,
(Through: Secretary to
Govt. of India, Department of
Atomic Energy), Anushakti Bhavan,
C.S.M. Marg,
Bombay - 400 039.

2. Additional Secretary to Govt.
of India, Department of Atomic
Energy, Anushakti Bhavan,
C.S.M. Marg, Bombay - 400 039.

3. Shri C.G. Sukumaran,
Head, Personnel Division,
Bhabha Atomic Research Centre,
Trombay, Bombay - 400 085.

.. Respondents.

(By Shri J.P. Deodhar, Advocate)

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 seeking the following
reliefs:-

(i) Call for the records relating to selection
and appointment of Respondent No.3 to the post of
Senior Administrative Officer and after going
through the legality and propriety thereof be
pleased to set aside and/or quash the appointment
of Respondent No.3 to the post of SAO as
aforesaid.

Signature

- (ii) declare that the applicant is deemed to have been promoted to the post of Senior Administrative Officer w.e.f. the date Respondent No.3 was promoted to the said post with all consequential benefits including difference in pay and allowances as due and fix the interse seniority of the Applicant in the said post and also in the post of CAO appropriately;
- (iii) any other order/direction/relief as this Hon'ble Tribunal may consider appropriate in the facts and circumstances of this case; and
- (iv) grant cost of this application.

O.A. para 1 which deals with particulars of the order against which application is made is as under:-

"Department of Atomic Energy (DAE)'s letter No.20/3/8/91-CCS/794 dated September 9, 1993 - denial of promotion to the post of Senior Administrative Officer in pay scale - Rs.3000-5000 to the Applicant in the Department of Atomic Energy. Hereto annexed and marked as Exhibit 'A' is a copy of the aforesaid impugned letter dated 9.9.1993".

Annexure Exh. A-para 1 of the same is as under :-

"The undersigned is directed to refer to your letter dated July 21, 1993 addressed to the Additional Secretary, DAE seeking repatriation from deputation from AEES and a posting within the Centralised Cadre of the Department at Bombay".

On perusal of the same we are of the considered view that for the first time the applicant has raised his grievance vide letter dated 21st July, 1993.

2. In O.A. the applicant claims that he was promoted to the post of Administrative Officer-III (Group A pay scale Rs.3000-4500) with effect from 29.3.1984. He was empannelled for promotion to the post of Senior Administrative Officer by D.P.C. held in March 1989 and on the basis of his aforesaid selection the Cadre Authority offered him the post of Manager (Admn.) in

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the pay scale of Rs.3000-5000 in Heavy Water Project at Manguru (Andhra Pradesh). He conveyed his willingness to accept the above assignment vide his letter dated 6.9.1989.

3. The grievance of the applicant is contained in O.A. para 4 (iv) which is to the effect that the Respondent No.2 had initially offered the aforesaid post of Manager (Admn.) in Heavy Water Project at Manguru (Andhra Pradesh) to respondent No.3, who declined to accept the offer, as such as per rules, he is to be debarred for promotion to such post for a period of one year and the officer next in the panel is to be considered for promotion. Subsequently two vacancies of Sr.Administrative Officer occurred in Bombay during the validity of the said panel, the applicant being the next person in panel of Sr.Administrative Officer and having given the consent for a posting outside Bombay should have been considered for appointment against one of these vacancies. The respondent No.2 appointed respondent No.3, who had earlier declined to accept appointment as Manager (Admn.) Heavy Water Project at Manguru. The said action of the respondent has resulted in supersession of the applicant by his juniors in subsequent promotion to the next higher post i.e. Chief Administrative Officer and thereby resulted in perpetual financial loss affecting his pensionary benefits besides seniority in Chief Administrative Officer's post.

4. Thus the grievance of the applicant is in respect of promotional posting of respondent No.2, who has declined his

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promotion, hence as per rules he is debarred for promotion for one year and the applicant gets a chance being next person in the panel.

5. The respondents in para 5 of the written statement have averred as under:-

"(5) With reference to Para III, the respondents states that the application is time-barred with regard to his claim for promotion to the grade of Senior Admn. Officer against DPC's panel dated 19.12.1988 (a copy of which is annexed and marked herewith as Exhibit R-1) and as such the application is liable to be dismissed summarily under Section 21(1) of the Administrative Tribunals Act, 1985 on this ground alone. The applicant who belongs to the centralised administrative cadre and is expected to be well versed with the rules and procedures has filed the present application after a lapse of 4 years".

In para 13 of the written statement, the respondents have averred as under:-

"As such the promotion of Respondent No.3 (who was at S.No.7 in the panel) to the post of Sr.Admn. Officer in October 1989 was in order and it did not cause any injustice to the applicant who was down at S.No.13 in the panel. The Applicant's statement that promotion of Respondent No.3 had resulted in supersession of the Applicant by his juniors in subsequent promotion to the next higher post of Chief Admn. Officer is incorrect and not borne out of facts. The Applicant's allegation that his juniors had superseded in subsequent promotion to the next higher post of Chief Admn. Officer is not correct as none of his juniors were empanelled to the grade of Chief Admn. Officer".

6. Thus the grievance of the applicant is in respect of the action of the respondent No.2 in posting of respondent No.3 in October 1989. The applicant has filed this O.A. on 15.9.1994. Section 20(1) & 21(1)(a) of the Administrative Tribunals Act, 1985 is as under:-

"20(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies

...5..

By

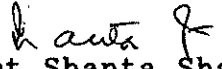
available to him under the relevant service rules as to redressal of grievances.

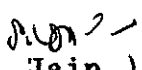
21(1)(a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made".

7.....On perusal of Section 20(1), it is apparent that the bar is in respect of the remedies available to the Government employees under the relevant service Rules as to redressal of grievances and none else.

8.....As stated above for the first time the applicant agitated his grievance vide letter dated 21st July, 1993. The Respondent No.2 appointed respondent No.3 in October, 1989, no service Rules prescribes that the applicant has to take recourse to the said Rule before the matter is brought to the Tribunal, the applicant kept silence for about quarter to four years to agitate the matter before the departmental authorities, which was even not necessary one and filed the O.A. after lapse of about five years for the relief in respect of cause of action accrued to him in October, 1989. The applicant's grievance is barred by time and his case also suffers from delay and latches.

9. In the result, O.A. deserves to be dismissed and is dismissed as barred by time and suffers from delay and latches with no order as to costs.


(Smt. Shanta Shastri)
Member (A)


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

H.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.6/2001 in OA.No.1026/94

Dated this the 7th day of June 2001.

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

Hon'ble Smt.Shanta Shastri, Member (A)

J.Ramamurthy

...Applicant

vs.

Union of India & Ors.

...Respondents

Tribunal's Order

The applicant has prepared this review petition under Rule 17 (i) of C.A.T. (Procedure) Rules, 1987 in respect of an order passed by this Bench on 3.1.2001 in OA.NO.1026/94 dismissing the OA. on the ground of Limitation, delay and laches.

2. The applicant has preferred the review on the following three grounds :-

(i) The representation made by Government Servants to competent authorities are recognised mode of redressal of grievance in service matter and same are treated as covered within the ambit of Section 20 of A.T.Act, 1985.

(ii) The promotion of Respondent No. 3 as Senior Administrative Officer is illegal in as much as blatant violation of Government orders and there is no period of limitation to challenge the said order.

(iii) In alternative, as abundant caution, the delay is sought to be condoned on the basis of various reported judgements mentioned in Review Petition.

3. Regarding point No. 1 as the facts stand, the Respondent No.3 was promoted in October, 1989 and the applicant agitated his grievance for the first time vide letter dated 21st July, 1993. The applicant kept silence for about quarter to four years to agitate the matter before the departmental authorities which was decided on 9th September, 1993. The applicant has filed the OA. on 15.9.1994. The finding recorded by this tribunal that the case of the applicant suffers from delay and laches is warranted on the facts of the case.

4. The filing of the delayed representation, the decision thereon does not give a cause of action to the applicant which unsettles the settled position after a period of five years.

5. Regarding point No. 2, we are of the considered opinion that merits of the case were not decided by the Tribunal, hence question of review in respect of the same does not arise. Regarding limitation in respect of void orders, it is suffice to mention that the order which is said to be void is operative until and unless it is set aside by the competent authority. If a person has got some benefit in view of the void order, the position has been settled and in the present case for a period of five years or so, such an action can not be challenged ignoring the provisions of Section 21 of the A.T. Act, 1985, as the said provision also applies to the void orders.

In alternative, as abundant caution, the delay is sought to be condoned on the basis of various reported judgements mentioned in Review Petition.

Regarding point No. 1 as the facts stands the Respondent was promoted in October 1989 and the applicant stated his grievance for the first time vide letter dated 21st July, 1993. The applicant took absence for about quarter to four years to take the matter before the departmental authorities which was held on 21st September, 1993. The applicant has filed the writ on 12.9.1994. The finding recorded by the Tribunal that the delay of the applicant suffers from delay and laches is warranted on the facts of the case.

4. The finding of the delayed representation, the decision that does not give a cause of action to the applicant which was settled position after a period of five years.

Regarding point No. 5, we are of the considered opinion that merits of the case was not decided by the Tribunal, hence question of review in respect of the same does not arise. Regarding limitation in respect of writ orders, it is suffice to mention that the order which is said to be void is operative until and unless it is set aside by the competent authority. It is also said that the writ is filed in view of the void order, the writ is settled and in the present case for a period of five years or so, such an action can not be challenged regarding the writ of section 51 of the A.T. Act, 1985, as the said provision also applies to the void orders.

6. Regarding point No. 3, on perusal of para 3 of the OA., we find the averment of the applicant is as under :-

"III. LIMITATION :

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985."

7. A person claiming the OA. to be within limitation cannot be allowed to be heard that too in review petition and alternatively, that if the OA. is to be treated as barred by time, the delay be condoned. In a review, a new case, not pleaded by the applicant, cannot be allowed to ^{be} made out.

8. In the result, we do not find any merit in the review petition filed by the applicant, the scope of which is as mentioned under order 47 Rule 1 C.P.C., rather it is an abuse of the process of the Law. The review petition deserves to be dismissed and is dismissed accordingly.

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(SMT.SHANTA SHASTRY)

MEMBER (A)

S.L. Jain

(S.L.JAIN)

MEMBER (J)

mrj.