

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 939/94

30-8-2007
Date of Decision :

Suresh Pardeshi Applicant.

Shri R.P.Saxena Advocate for the
Applicant.

VERSUS

Union of India & Others. Respondents.

Shri R.R.Shetty for
Shri R.K.Shetty Advocate for the
Respondents.

CORAM :

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

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

(i) To be referred to the Reporter or not ? *✓*

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

(iii) Library *✓*

D.S.Baweja
(D.S.Baweja)
Member *✓*

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.939/94

Dated this the 31st day of August 2000.

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

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

Suresh Pardeshi,
Assistant General Manager
(Canteen Stores Department),
"Adelphi" 119, M.K.Road,
Bombay 400 020.

... Applicant

By Advocate Shri R.P.Saxena

V/S.

1. Union of India,
through the Secretary,
Ministry of Defence,
New Delhi.

2. Board of Control,
Canteen Service,
New Delhi.

3. General Manager,
Canteen Stores Department,
Ministry of Defence,
"Adelphi", M.K.Road,
Bombay.

... Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

O R D E R

(Per : Shri D.S.Baweja, Member (A))

The applicant was promoted as Assistant General Manager (AGM) in Canteen Stores Department on 14.8.1986. The applicant states that though this promotion was termed as on adhoc basis

but the same was against a regular vacancy and after due screening. He was continued with spells of 6 months each with breaks of one or two days. The applicant was placed on the panel dated 13.11.1987 for regular promotion. The panel was notified for 11 persons and the applicant was last in the panel. The panel was valid for one year from 14.10.1987 or till the same was exhausted ^{or} and whichever was earlier. Vide order dated 16.11.1987, 9 persons from the panel were regularly promoted. By a separate order of the same date, the applicant along with Shri D.P.Dhapodhkar were promoted on officiating basis w.e.f. 14.10.1987. Subsequently, the name of one Shri Vinod Kumar who was under disciplinary proceedings was exonerated of the charges, was interpolated in the panel enlarging panel to 12 persons as per order dated 19.11.1988 and applicant was pushed to 12th place. The applicant continued on officiating promotion. However, suddenly as per order dated 26.11.1989 officiating promotion was discontinued from 13.4.1989 retrospectively indicating the reason that the panel had since expired on 13.4.1989. By another order issued on the same date, the applicant along with Mr.Dhapodkar were promoted on adhoc basis for a period of six months. Thereafter, the applicant was continued on promotion on 6 months basis with breaks of one or two days. DPC was again convened on 23.9.1993. A panel of 5 persons was notified on ²⁹10.1993. The applicant was placed at Sr.No. 3 of the panel. The applicant had been regularised only from 29.10.1993 inspite of the fact that he had been continuously working from 14.8.1986. The applicant, therefore,

represented on 6.12.1993 for counting his earlier service for seniority but this representation was rejected as per letter dated 21.12.1993. Feeling aggrieved by the same, the present OA. has been filed on 1.8.1994.

2. The applicant has sought the following reliefs :-

- (a) to declare that the applicant is entitled to count his entire service rendered on adhoc basis on the post of AGM with effect from 14.8.1986 for the purpose of seniority and for determining his eligibility for further promotion as Deputy General Manager.
- (b) to declare on the basis of the relief at (a) above, the applicant became eligible to be considered for promotion to the post of Deputy General Manager by the DPC held in February, 1994.
- (c) In the alternative, to hold and declare that once the applicant was empanelled in the panel dated 13.11.1987 and promoted thereon, the respondents were not entitled to cancel the regular promotion and once again subject the applicant to fresh selection in 1993.
- (d) declare that the applicant is regularly promoted as AGM from 14.10.1987.

(e) To direct respondents to hold review DPC to consider the case of the applicant for promotion to the post of Deputy general Manager.

3. Main grounds on which the applicant has built up his case are as under :-

(i) Since the applicant was promoted on adhoc basis against a regular vacancy from 14.8.1986 and continued thereafter till the placement on the panel dated 29.10.1993, the applicant is entitled to count the entire adhoc service for the purpose of the seniority.

(ii) The applicant is entitled to be considered for promotion for the post of DGM counting his entire adhoc promotion service as AGM.

(iii) After the placement of the applicant on the panel dated 13.11.1987 effective from 14.10.1987, the applicant cannot be subjected to fresh selection in the year 1993.

(iv) The panel dated 13.11.1987 could not lapse till all the persons from the panel are promoted. There were vacancies after 13.11.1987 due to retirements and the applicant could be regularly promoted against these vacancies.

4. The respondents in the written statement at the out set have taken the plea that the OA. is barred by limitation as the cause of action arose to the applicant on 14.8.1986 and the

present OA. has been filed only on 1.8.1994. It is further contended that entertaining of claim after a long delay will unsettle the settled position. On merits, the respondents take the stand that seniority of an adhoc promotee is to be counted only from the date of regularisation and hence the applicant has no cause of action. It is admitted that the name of the applicant was placed in the panel dated 13.11.1987 but he could not be promoted due to non availability of the regular vacancy till the panel was valid even after granting 6 months extension to the currency of the panel as per the extant rules. It is because of the fact that adhoc promotions to the post of Deputy general manager (DGM) could not be regularised awaiting finalisation of the recruitment rules. Thereby the resultant vacancies due to promotions to DGM in AGM grade, promotions were also made on adhoc basis and had to be continued so. Promotions to DGM grade after finalisation of recruitment rules got further due to litigation in various Benches about seniority and finally in 1994 only DPC could be held. In the mean time, DPC was held in 1993 for filling up the vacancies of AGM arising due to normal wastage and the applicant was placed on the panel dated 13.11.1987. As regards the contention of the applicant that panel would not exhaust till all the persons are promoted is not tenable as the panel lapses after the currency period is over. Those who are not regularly promoted have to undergo selection again. With these submissions made in the written statement, the respondents plead that the applicant is not entitled for the reliefs prayed for and the OA. deserves to be dismissed.

5. The applicant has filed rejoinder reply reiterating his stand in the OA. that since his initial appointment was in accordance with the prescribed procedure against regular vacancy and worked on promotion uninterrupted for a long period, then on regularisation, he is entitled to count the period of adhoc promotion for seniority.

6. Heard the arguments of Shri R.P.Saxena and Shri R.R.Shetty for Shri R.K.Shetty for the applicant and respondents respectively.

7. During the hearing, it was revealed by the respondents that two posts of AGM were surrendered as per order dated 31.10.1987, i.e. before the issue of the panel. This point was not brought out in the written statement. It was also noted that respondents had not brought out clear position with regard to the vacancies of AGMs particularly those arising due to adhoc promotions to the post of DGM. Therefore, the respondents were directed to file additional written statement. The respondents filed additional written statement accordingly. However, during further arguments, the position brought out with regard to occurrence of the vacancies was still vague and the respondents were directed to file further written statement indicating the details of the vacancies assessed for the DPC held in 1987. The respondents have filed the further written statement after serving the copy on the applicant. These additional written statements as we deliberate subsequently bring out the details

which the respondents did not come out while filing the first written statement. The applicant has filed rejoinder reply to the first additional written statement. The contents of the second additional written statement were controverted by the applicant during arguments. We will consider the merits of the reliefs prayed for keeping in view the submissions made in the additional written statements.

8. Before going into the merits of the reliefs sought for, we will deliberate on the plea of limitation raised by the respondents. The respondents have contended that the OA. filed on 1.8.1994 seeking relief of counting period of service of adhoc promotion from 14.8.1986 for seniority or alternatively from 14.10.1987 the applicant was placed on the panel dated 13.11.1987 is barred by limitation. The applicant, however, in the rejoinder reply has reacted to this stating that the OA. has been filed well within the limitation period after his representation dated 6.12.1993 was rejected. Considering the facts of the case and reliefs prayed for, we are inclined to find merit in the ground of limitation raised by the respondents. The applicant has sought relief of counting of his entire adhoc service from 14.8.1986 onwards till date of regularisation in 1993 on the plea that he was promoted against a clear vacancy. Since the applicant was placed on the panel dated 13.11.1987 with the stipulation that the past adhoc service will not count for seniority then the prayer to count the adhoc service from

14.8.1986 is barred by limitation. Even the alternative prayer of counting service from the date of promotion from 14.10.1987 as per panel dated 13.11.1987 is hit by limitation impediment when looked at in the context of the panel dated 13.11.1987. In pursuance of the panel dated 13.11.1987, the applicant was promoted on officiating basis as per order dated 16.11.1987 while the other 9 persons on the panel were given regular promotion on the same date. Therefore, this point gave first cause of action to the applicant. If the applicant was of the opinion that he was promoted on 14.8.1986 against a regular vacancy, then order dated 16.11.1987 made him clear that his promotion even on being placed on the panel is not regularised. The further cause of action arose when the respondents as per order dated 26.11.1989 discontinued even officiating promotion from 13.7.1989 on the ground that the currency of the panel had expired. With the break of one day, the applicant was promoted on adhoc basis as per order dated 26.11.1989. The applicant at least now knew as per the order dated 26.11.1989 that his placement on the panel dated 13.11.1987 did not regularise his adhoc promotion from 14.8.1986 and he was not given the benefit of the panel dated 13.11.1987. The applicant kept quiet thereafter fully aware of status of his promotion as AGM till he was placed on the panel in 1993. Placement on the panel dated 29.10.1993 does not give cause of action to claim regular promotion from 14.10.1987 when applicant knew that he had not been allowed the benefit of regularisation of the adhoc promotion from 14.10.1987 as per panel dated

30.11.1987. The applicant was also being promoted on adhoc basis on 6 months basis with breaks of one or two days thereafter for several years. Any representation made after notification of the 29.10.1993^Q panel date and rejection of the same will not extend the limitation period which has necessarily to relate back to order dated 16.11.1987 or at least with the issue of the order dated 26.9.1989 (Annexure-G). The applicant has not made any whisper of averment as to why he did not make any representation in 1989 or thereafter or sought legal remedy. The applicant in his representation dated 6.12.1993 produced by the respondents has indicated that he has been working on adhoc basis since 14.8.1986. In fact the placement on the panel dated 29.10.1993 is not material to the relief sought by the applicant. The applicant seeks the benefit of regular promotion from 14.10.1978^{1987 h} as per panel dated 13.11.1987 and therefore this issue is independent of the panel dated 29.10.1993. In the face of these observations, we are unable to accept the contention of the applicant that rejection of his representation by order dated 21.12.1993 gives him the cause of action to agitate the matter through the present OA. We have no hesitation to conclude that the claim is stale, suffers from delay and laches and is barred by limitation.

9. We note that the applicant even on taking the ground of limitation by the respondents has not filed any application for condonation of delay. Delay cannot be overlooked while making an

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adjudication of a petition which involves claim of retrospective promotion as held by the Hon'ble Supreme Court in the case of Administrator of Union Territory of Daman & Diu vs. R.D.Valand, 1996 (8) SLR 617 (SC).

As held by the Hon'ble Supreme Court in Ramchandra Samatha & Ors. vs. Union of India, 1993 (2) SLR 811 SC the delay deprives a person of the remedy available in law. A person who has lost the remedy by lapse of time loses his right as well.

In regard to specific provisions on limitation in Section 21 of the Administrative Tribunals Act, 1985, we refer to the recent judgement of the Apex Court in the case of Ramesh Chand Sharma vs. Udhamp Singh Kamal & Ors. 2000 (2) SC SLJ 89 cited by the respondents during the hearing. In this case, the OA. was filed after 3 years of the cause of action. No prayer for condonation of delay made. The respondents took the plea of limitation. The Tribunal ignoring the ground of limitation went into OA. on merits and allowed the relief prayed for. The matter was taken in the appeal before the Apex Court. The Hon'ble Supreme Court set aside the order of the Tribunal noting that the Tribunal erred in admitting the application barred by delay under Section 21 of the Administrative Tribunal's Act, 1985.

In the case of Prakash K. & Anr. vs. State of Karnataka & Ors., 1997 SCC (L&S) 482, while dealing the delay, the Hon'ble Supreme Court in para 3 have observed as under :-

" Though Mr.Bhagwath contends that the applicants have approached this Tribunal within one year of the date of the cause of action, that may not be technically correct. The cause of action arose when the select list was prepared which they knew as unconstitutional even as early as on 17.11.1993. This apart, we are of the firm view that the limitation provided under Section 19 of the Administrative Tribunals Act, 1985, does not come in the way of exercising our discretion and reject an application, if the application suffers from laches. This is the view we have already taken in *Nagaraja v. Director general and Inspector General of Police*. This Tribunal cannot act mechanically and grant the relief only on the ground that an applicant has approached this Tribunal within one year of the cause of action and he has made out a good case on merits, ignoring the realities and the effect of the relief on the administration and private parties. This Tribunal cannot shut its eyes to the inconvenience and injury that would result to the private respondents who have joined the service already."

In the present case, the DA. filed with reference to rejection of the representation dated 6.12.1993 by an order dated 21.12.1993 may be within the limitation but for going on merits, the delay has to be looked at with reference to the reliefs prayed for. The applicant claims the benefit of the panel dated 13.11.1987 for which the adverse order was first passed on 16.11.1987 and thereafter on 26.9.1989 which gave the cause of action for the reliefs prayed for.

Therefore, keeping in view the facts of the case as observed above and the law laid down by the Hon'ble Supreme Court in the above cited judgements, we have no hesitation to reach the conclusion that the DA. is barred by limitation and deserves to be dismissed on this account alone.

10. Inspite of our findings above of OA. being barred by limitation and suffering from delay and laches, we have considered the OA. on merits in view of the fact that elaborate arguments were heard from both the sides. We find that even on merits the applicant has no case. The respondents in the additional written statements have brought out that the DPC in 1987 was held for 13 vacancies as on 31.12.1986 which included 4 chain vacancies on account of adhoc promotion to the post of DGM. Only 12 persons were eligible and all the 12 persons were placed on the panel. The respondents have given the details of the adhoc promotions name-wise to the post of DGM and resultant vacancies in AGM grade. It is brought out by the respondents that the applicant was promoted in 1986 against the resultant vacancy on account of adhoc promotions to DGM. The respondents have explained that 4 resultant vacancies had been taken into account for holding DPC in 1987 did not materialise due to delay in holding of DPC for regularisation due to non finalisation of promotions of DGM of recruitment rules. The recruitment rules were finalised in 1988 but thereafter the DPC could not held due to pending litigation for seniority in the various Benches of the Tribunal. Thus, there were only 9 clear vacancies for regular promotion. Even after the extension of currency of the panel for a further period of 6 months, DPC for regular promotion to the post of DGM could not take place. The applicant being at Sr.No.12 of the panel after interpolating the name of the person under sealed cover could not be regularly promoted. The DPC for regular promotion to the post of DGM was held only in 1994 after the litigation was

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over. However, since some vacancies in the cadre of AGM had arisen due to retirement, the DPC for AGM promotion was held in 1993. Thus the applicant continued to be promoted on adhoc basis against the resultant adhoc vacancy. The applicant cannot be entitled **for regular** promotion against the adhoc vacancy till the person on adhoc promotion in the higher post is regularised. This issue has been recently examined in OA.No.1290/93, K.N.R.Pillai vs. Union of India by the same Bench wherein the claim of the applicant for counting the period of adhoc service for promotion as AGM against the vacancies arising due to adhoc promotions to the post of DGM was rejected as per order dated 24.4.2000. In view of what is held in OA.NO.1290/93, we are of the opinion that the case of the applicant must fail even on merits.

11. Both the sides have cited the following orders :-

Applicant

- (a) Ajit Kumar Rath vs. State of Orissa & Ors.
2000 (1) SLR SC 622.
- (b) T. Vijayan & Ors. vs. Divisional Railway Manager & Ors., 2000 SCC (L&S) 444.
- (c) Shri L.Chandra Kishor Singh vs. State of Manipur & ors.
- (d) Mr.Mariam Koshi & Ors. vs. Union of India,
1988 (4) SLJ 1019.

Respondents

A.K.Sharma & Anr. vs. Union of India,

1991 (1) Supreme 171.

The applicant has cited the judgements to support his contention that adhoc promotion service against a clear vacancy if continued for a long period and followed by regularisation counts for seniority. However, in view of the facts of the case as detailed in para 10 above and our findings that the adhoc promotion was against a resultant adhoc vacancy, the cited judgements do not apply to the case of the applicant and are therefore not being reviewed here.

12. Before parting with the OA., we must record our disapproval of the action of the respondents for not coming out with factual position first time in the written statement. The respondents made only general submissions in the written statement without giving the specific details with regard to availability of vacancies and ^{as} to why the applicant could not be regularly promoted. During hearing, the respondents have to be repeatedly directed to file additional written statements to get the true picture of the facts. Full records are available with the respondents and respondents are expected to place every thing before the Tribunal and assist in proper adjudication in the matter. The respondents in the present case have failed to discharge this function. We expect that Respondent No. 2 will take note of our observations and take suitable steps to avoid any such instances in future.

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13. In the result, we find that the OA. is not only barred by limitation, suffers from delay and laches but is ^{also} devoid of merits. The OA. is accordingly dismissed with no order as to costs.

SL-JW /
(S.L.JAIN)

MEMBER (J)

D.S.BAWERIA
(D.S.BAWERIA)

MEMBER (A)

mrj.