

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1369/95

28.7.2000
Date of Decision :

N.B.Kamble Applicant.

Applicant in person Advocate for the
Applicant.

VERSUS

Union of India & Others. Respondents.

Shri R.K.Shetty Advocate for the
Respondents.

CORAM :

The Hon'ble Shri D.S.Bawej, 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

8/4/01
(D.S.Bawej)
Member (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1369/95

Dated this the 28th day of July 2000.

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

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

Narayan Bhimrao Kamble,
R/o 'Alankar' Survey No.67/1B,
Plot No.18, Vidyanagar,
Pune -411 032.

... Applicant

Applicant in person

V/S.

1. Union of India through
Secretary, Deptt. of Research &
Development Organisation & Scientific
Adviser to Defence Minister & Director
General Research & Development
Organisation, South Block, DHQ P.O.
New Delhi.

2. The Director,
Research & Development
Establishment (Engrs),
Dighi, Pune.

3. The Director,
Defence Metallurgical
Research Laboratory,
Kanchan bag, P.O. DMRL,
Hyderabad.

... Respondents

By Advocate Shri R.K.Shetty

..2/-

ORDER

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

The applicant is serving as Scientist 'C' in Defence Research & Development Establishment (DRDS) (Engrs.), Dighi, Pune, w.e.f. 1.7.1985. After completion of 5 years, the applicant was eligible on 1.7.1990 to be assessed by the Assessment Board in 1990 for the next promotion as Scientist 'D' in terms of DRDS Rules 1979 issued under SRO-8 on 30.12.1978. The order for calling the Scientists for interview was issued on 7.3.1991 but the applicant though eligible did not get the interview call. Feeling aggrieved by this, the applicant has filed the present OA. in Sept.1995.

2. The main case of the applicant is that as per DRDS-1979 Rules and further amendment as per SRO 186 dated 2.8.1985, the Assessment Board of 1990 has to restrict its assessment upto 1.7.1990 and any amendment to Rules after 1.7.1990 will not have retrospective application. Therefore the Assessment Board - 1990 which met in 1991 should have called the applicant for interview as the applicant was entitled for the same as per the extant rules as applicable on 1.7.1990.

3. The applicant has sought the following reliefs :-
(a) to grant the grade of Scientist 'D' w.e.f. 1.7.1990.
(b) Financial compensation of Rs.5 lakhs.

4. The respondents have filed written statement. At the outset, the respondents have taken the plea that OA. is barred by limitation as the challenge of the results of the Assessment Board of 1990 have been made in 1995. On merits, the respondents submit that DRDS-1979 Rules have been amended as per SRO 11-E dated 10.8.1990. The Assessment Board for 1990 was held as per the amended Rules as due to administrative reasons Assessment Board 1990 could not be held before the issue of SRO-11-E. Therefore, the Assessment Board of 1990 adopted the crucial date as 30.9.1990 in terms of the extant rules. As per the amendment SRO-11-E, the Internal Screening Committee (ISC) has to first determine the eligibility of the Scientist for assessment by the Assessment Board based on the review of confidential reports. A Scientist securing less than 60% average marks based on the confidential reports is not eligible for assessment. The applicant was considered by ISC for 1990 Assessment interview but the applicant did not secure 60% marks based on the record of service. Therefore, he was not called for interview before the Assessment Board of 1990. Therefore, the applicant has no case to claim for promotion as Scientist 'D' from 1.7.1990 and the OA. deserves to be dismissed. The respondents also point out that the applicant had filed OA.No.284/92 for the same promotion which was dismissed as per the order dated 29.5.1995.

5. The applicant has filed rejoinder reply reiterating his stand taken in the OA. while controverting the submissions of the respondents. As regards the OA.No.284/92, the applicant

contends that the same was filed for promotion to Scientist 'F' while the present OA. concerns specifically for promotion from Scientist 'C' to Scientist 'D' and grounds taken as entirely different. The applicant also maintain that the OA. is not barred by limitation.

6. We have heard the arguments of the applicant who appeared in person and Shri R.K.Shetty for the respondents.

7. We will first take up the plea of limitation raised by the respondents. Respondents contend that the OA. filed in 1995 seeking relief of promotion from 1.7.1990 as Scientist 'D' is barred by limitation. After careful consideration of the facts of the case, we are inclined to support the contention of the respondents. As brought out by the applicant, the candidates were called for interview by the Assessment Board as per letter dated 7.3.1991. It is the grievance of the applicant that he was not called for this interview. Therefore, the cause of action arose to the applicant with the issue of the letter dated 7.3.1991. The OA. has been filed on 17.7.1995. The applicant in the OA. against para III has stated that the same is filed within the limitation period. However, the applicant has also filed a Misc. Application seeking condonation of delay in filing OA. stating that the applicant did not know about his name not being included as per the letter dated 7.3.1991. He further states that he came to know of the same in 1994, when he represented on 9.8.1994 and followed by the reminders dated 3.10.1994,

30.11.1994 and 29.12.1994. The applicant has not brought on the record any of the representations said to have been made in 1994. We find it hard to accept the reason advanced by the applicant for the delay in filing the OA. that he did not know of the letter dated 7.3.1991 when a large number of his colleagues in the same organisation were called for interview and also promoted as Scientist 'D'. It is obvious that the applicant kept quiet and raised the issue when in the subsequent Assessment Boards also he was not called for the interview. In the light of this fact situation, the present OA. filed in 1995 with the cause of action arising in 1991 is barred by limitation in terms of Section 21 of the AT Act, 1985. Delay has to be explained with reference to the date of cause of action and failure to avail the legal remedy. In the present case, no satisfactory reasons have been advanced to warrant condonation of delay. A person who sleeps over his grievance loses his right as well as remedy as held by the Hon'ble Supreme Court in the case of Ratan Chandra vs. Union of India, JT 1993 (3) SC 418. In this connection, we also refer to the recent judgement of the Apex Court in the case of Ramesh Chand Sharma vs. Udhampur Kamal and others, 2000 (1) SC SLJ 178, wherein the Hon'ble Supreme has held that the Tribunal was not right in deciding the OA. on merits over looking the statutory provisions contained in Section 21 of the A.T.Act,1985. The present OA. therefore deserves to be dismissed on account of being barred by limitation.

8. The respondents have taken another ground in opposing the present OA. that the applicant had filed OA.NO.284/92 earlier seeking the same relief as sought through the present OA. The applicant, however, has contested this submitting that in the present OA. he has sought only promotion from Scientist 'C' to 'D' while in OA.No.284/92 he had prayed for promotion as Scientist 'F' after antedating his promotions from the post of Junior Scientific Officer onwards. Respondents made available the copy of the OA.NO.284/92. We have carefully gone through the OA. and order dated 29.5.1995 dismissing the OA. OA.NO.284/92 had been filed challenging non consideration of Scheduled Caste Scientists as per the reservation policy and thereby the applicant who belongs to Scheduled Caste category was not given the promotions as due for the post of Junior Scientific Officers onwards against the reservation quota. If this promotion was allowed as due as per the applicant, then all other subsequent promotions need to be antedated and the applicant is entitled for promotions upto Scientist 'F' on the deserved seniority. In the present OA., non promotion as Scientist 'D' with reference to particular assessment year has been challenged. Therefore, we are of the view that the issues under challenge in the two OAs. are distinct and there is no substance in the stand of the respondents.

9. Since we have held above that OA. is barred by limitation, we decline to go into the merits of the relief prayed for.

10. The applicant has filed three Misc. Applications No.718/99, 719/99 & 720/99. They were ordered to be considered at the time of final hearing. M.P.No.718/99 had been filed seeking interim order to the respondents to consider the case of the applicant for Assessment Board 1997. This prayer has no relevance to the main relief prayed for in the present OA. and this Misc. Application therefore stands rejected. Misc. Application No. 719/99 has been filed bringing on record the order of the Principal bench in OA.No.743/91 (Shri Rajeshwar Kumar vs. Union of India dated 30.1.1992) on the plea that his case is covered by this order. Since we are not going into the OA. on merits, this Misc. Application does not call for any order. Misc. Application No. 720/99 has been filed to bring on record that the applicant has since been promoted as Scientist 'D' from 1.7.1999 and this promotion should be granted from 1.7.1990 as prayed for in the present OA. Further, the clearance by the Internal Screening Committee for the Assessment Board 1999 be treated for promotion as Scientist 'E' and review DPC be held to promote applicant as Scientist 'E' from 1.7.1990. Prayer for promotion as Scientist 'E' does not flow from the main prayer in the present OA. Further, we have held that the OA. is not maintainable for promotion as Scientist 'D' from 1.7.1990. Therefore, this Misc. Application stands rejected.

(1)

: B :

11. The relief for compensation of Rs.5 lakhs does not sustain in view of our findings above. In any way, such a claim is not maintainable before the Tribunal in terms of Rule 14 of A.T. Act, 1985 as held by Hon'ble Supreme Court in the case of H. Mukerjee vs. S.K. Bhargava, 1996 SCC (L&S) 1045.

12. In the result of the above, the OA. is dismissed as being barred by limitation with no order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

D.S.BAWEJA
(D.S.BAWEJA)

MEMBER (A)

mrj.