

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

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ORIGINAL APPLICATION NO.: 191/95

19.1.2000
Date of Decision :

Shri G. M. Paneria Applicant.

Shri P.A.Prabhakaran 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.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 f

D.S. Baweja
(D.S.Baweja)
Member (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.191/95

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Dated this the 19th day of January 2000.

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

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

G.M.Paneria,
R/o.199/2309,
C.G.H.S.Quarters,
Kane Nagar,
Bombay-400 037.

...Applicant

By Advocate Shri P.A.Prabhakaran

V/S.

1.Union of India through
Director (Quality Assurance)

2.Smt. V.L.Jayaraman, UDC

3.Shri N.H.Khandare, UDC

All in the office of
Director (Quality Assurance)
1st Floor, Aayakar Bhavan,
M.K.Road, Bombay-400 020.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R

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

The applicant joined as Lower Division Clerk (LDC) in 1964 in the office of Director (Quality Assurance), Mumbai. He was promoted as Upper Division Clerk (UDC) in short spells on

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adhoc basis in 1985 from 4.3.1985 to 6.4.1985 and 15.4.1985 to 29.5.1985. From 1.9.1985 he was again promoted on adhoc basis and continued till 17.3.1989 as per promotion order dated 15.6.1989 when he was regularly promoted, 87.5% of the posts of UDC are to filled up on seniority cum fitness and the balance 12.5% through a limited competitive examination. A limited competitive examination was held in 1986 as a result of which Smt.V.L. Jayaraman (Respondent No.2) and Shri N.H.Khandare (Respondent No. 3) have been promoted as UDC on 25.7.1986 and 14.9.1987 respectively. Since the applicant had been already promoted as UDC in 1985, he did not appear in the examination. In the seniority list of UDC issued as on 1.1.1994, Respondents No. 2 & 3 though promoted subsequently have been shown senior to the applicant. It is because the applicant's promotion has been treated as regular only from 17.3.1989. The applicant contends that his promotion was termed as 'adhoc' only from 1985 onwards because of stay operating against Writ Petition filed in the High Court by the general category UDCs as per which all promotions were to be subject to the outcome of the Writ Petition. The applicant further submits that one Kum. P.M.Patil who appears at S.No. 1 in the promotion order dated 15.6.1989, filed OA.NO.888/89 claiming seniority for the period termed as 'adhoc'.

This OA. was allowed as per the order dated 23.12.1993 with the direction to hold review DPC for the purpose of preparing a panel for regular promotion instead of adhoc as on 1.9.1985 when a vacancy existed. The applicant contends that he is entitled for

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(12)

the similar benefit. The applicant if allowed seniority from the date of original promotion, i.e. 1.9.1985, he would be eligible for promotion to the next post of Superintendent against the reservation quota vacancy. The applicant therefore represented for the same but this representation was rejected as per order dated 19.1.1995. Feeling aggrieved by this rejection, the present OA. has been filed on 30.1.1995.

2. The applicant has sought the following reliefs :-

(a) to direct respondents to hold review DPC for selection to the post of UDC as on 1.9.1985 considering the applicant along with other eligible candidates.

(b) to redraw the seniority list dated 1.1.1994.

(c) to hold fresh or review DPC for the post of Superintendent to be appointed in the year 1995 after action at (a) & (b) above and provide applicant due place in the cadre of Superintendents.

3. The respondents have filed written statement. At the outset, the OA. is opposed as being barred by limitation under Section 21 of A.T.Act, 1985. On merits, the respondents submit that the applicant was promoted purely on adhoc basis in 1985. Respondents No. 2 & 3 were promoted on regular basis from 25.7.1986 and 14.9.1987 respectively after undergoing the due process of selection against 12 1/2^{1/2} quota for limited competitive examination and therefore are senior to the applicant. Applicant

(B)

though eligible did not appear and therefore cannot compare himself with them. As regard the claim of benefit of order dated 23.12.1993 in OA. No. 888/89, the respondents submit that this order was in "personnam" and further there existed only one vacancy on 1.9.1985. Therefore the applicant is not entitled for the same relief. The adhoc promotion as per the extant rules were reviewed and DPC was held in 1989 to regularise the promotions against the vacancies subject to the outcome of the Writ Petition. The respondents with these pleadings state that applicant has no case and the OA. deserves to be dismissed.

4. Before we go into merits, we will examine whether the OA. is hit by the limitation as pleaded by the respondents? We note that the applicant has sought the relief of holding review DPC to treat the applicant promoted on regular basis from 1.9.1985 and thereafter allow seniority as UDC accordingly and give promotion to the post of Superintendent. The applicant was allowed regular promotion as per the order dated 15.6.1989. This is the order by which the applicant is aggrieved and therefore with this letter the cause of action arose. The applicant could have made representation against the same. If no reply was received or representation was rejected, then the applicant ⁴~~is~~ so desired could have sought legal remedy. But we find that the applicant did not represent against the order dated 15.6.1989 as neither there is any averment to this effect in the OA. nor has any representation has been brought on the record to show that he was aggrieved by the order dated 15.6.1989 and has been pursuing the

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matter. The applicant appears to have kept quiet and woke up only after the order dated 23.12.1993 in OA.NO.888/89 filed by one of his colleagues who was also covered by the regularisation order dated 15.6.1989. Only then the applicant started making representations with first one being dated 8.2.1994 followed by reminders. The respondents have replied his representation as per the letter dated 19.1.1995. Thereafter, the applicant rushed to the Tribunal by filing the present OA. on 30.1.1995 as the promotions to the next grade of Superintendent were likely to take place and the applicant expected promotion against the reservation quota. The applicant in para 3 of the OA. has stated that the OA. is filed within the limitation period as prescribed in Section 21 of the Administrative tribunal Act, 1985. This is stated so since the applicant has reckoned cause of action with reference to the letter dated 19.1.1995. But 19.1.1995 letter cannot be taken as giving a cause of action. Cause of action first arose when the applicant was promoted on adhoc basis in 1985 and second time when the order dated 15.6.1989 giving regular promotion was issued. Delay, if any has to be explained at least with reference to cause of action, i.e. "right to" sue arose due to the order dated 15.6.1989. The decision in an OA. filed by a vigilant applicant cannot give a cause of action and to cover up the delay of several years. In this connection, we refer to the judgements of Hon'ble Supreme Court in the case of State of Karnataka & Ors. vs. S.M.Kotrayya & Ors., 1996 SCC (L&S) 1488. In this case, on coming to know of the order in an OA. filed by some other employees, applicants filed OA. seeking the

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similar relief. The Tribunal allowed the OA. condoning delay in filing the OA. The matter was taken before the Apex Court in an appeal. The Hon'ble Supreme Court set aside the order of the Tribunal observing as under in para 8 :-

"8. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not proper explanation at all. What was required of them to explain under Sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

In the present case also the situation is not only the same but the applicant has not given any explanation for the delay since 1989. No application for condonation of delay has been filed. Even after the plea of limitation has been taken by the respondents in the written statement, the applicant has not reacted. Keeping in focus the facts of the case and the law laid down by the Hon'ble Supreme Court in the above referred judgement, we have no hesitation to subscribe to the plea of the respondents that the present OA. is barred by limitation.

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5. Even on merits also we find that the applicant has not made out a case. The applicant's only argument is that since Kum. P.M.Patil has been allowed the benefit as per the order dated 23.12.1993 in OA.No.888/89, the applicant also deserves the same benefit of regularisation from 1.9.1985. On going through the order dated 23.12.1993, we find that facts pleaded are distinct. It is noted that the applicant in OA.NO.888/89 was promoted on adhoc basis in 1983 and claimed regularisation from 1.9.1985 when the vacancy arose for the seniority quota. After noting the existance of one vacancy on 1.9.1985, the Bench ordered to hold DPC for regular promotion of the applicant against the vacancy. In the present case, there is no such averment. The respondents have submitted that there was only one vacancy on 1.9.1985. This has not been controverted by the applicant. The applicant has also not brought out whether more vacancies for the senirotly quota were available on 1.9.1985 when the applicant was promoted on adhoc basis. In the absence of any such details, the relief prayed for cannot be allowed on the ratio of the order dated 23.12.1993. Therefore, on merits also the OA. does not survive.

6. In the result, the OA. is not only barred by limitation but is also devoid of merits. The OA. is accordingly dismissed with no order as to costs.

S.L. Jain

(S.L.JAIN)

MEMBER (J)

mrj.

D.S. Baweja

(D.S.BAWEJA)

MEMBER (A)