

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 39/98

The Fifth of January 2000 DATE OF DECISION: 05/01/2000

Shri S.B. Ambadey Applicant.

Shri D.B. Walthare Advocate for
Applicant.

Versus

Ministry of Defence & 5 Others-----Respondents.

Shri R.G. Agarwal Advocate for
Respondent(s)

CORAM

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

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

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to
other Benches of the Tribunal?
- (3) Library.

} No

B.N. Bahadur

(B.N. BAHADUR ,)
MEMBER (A).

05/1/2000

CENTRAL ADMINISTRATIVE TRIBUNAL

NAGPUR CIRCUIT BENCH

----- (MUMBAI BENCH) -----

O.A.No.39/98

Dated this the *Fifth* Day of *January* 2000.

Coram : Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Surendra Bakaram Ambadey,
Occupation Service (Labour Unskilled),
FS/445/5494, Ordnance Factory,
Ambajhari, Nagpur-440 021.

.. Applicant.

Applicant by Shri D.B. Walthare, Adv.

Vs.

1. Union of India,
Ministry of Defence, through
Director General, Ordnance
Factory, Calcutta.
2. The General Manager, Ordnance
Factory, Ambajhari, Nagpur.
Nagpur - 440 021
3. The Dy.General Manager, (Admin).
Ordnance Factory, Ambajhari.
Nagpur - 440 021
4. The Asstt.Works Manager, (Admin).
Ordnance Factory, Ambajhari,
Nagpur - 440 021
5. The Foreman L.B.
Ordnance Factory, Ambajhari,
Nagpur - 440 021
6. Shri Givischandra.
Occupn. Service (Steno)
FS - 496/5883, Ordnance Factory.
Dehradun.

Respondents by Shri R.G.Agarwal, Counsel

ORDER

Per Shri B.N. Bahadur, Member (A)

The applicant in this OA, Shri Surendra Bakaram Ambade seeks the relief, from this Tribunal, for quashing and setting aside the impugned order dated 26.4.1995 (annexure A-1) and seeks



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a direction, in substance, that the respondents be directed to promote the applicant on the post of L.D.C. and pay arrears from the date on which respondent No.6 secured the benefits. Consequential benefits like seniority and fixation of pay etc. have also been claimed as reliefs.

2. The facts of the case, as brought forth by applicant, are that respondent No.6 whose date of birth is 7.5.1954, and who was appointed in the Department on 7.3.1980 was not eligible to appear in the examination held on 19.5.1981 for selection for promotion to L.D.C. Applicant claims that he is senior to Respondent no.6 (Shri Girish Chandra), but the said Girish Chandra is promoted as L.D.C. denying the promotion to the applicant. Applicant who appeared ⁱⁿ the examination on 19.5.1981 was successful, and was called for oral test / interview, where also he was declared successful. However, wrongful charges has been made against him vide letter dtd. 15.7.1981. No Charge-Sheet or disciplinary case was pending on the date of holding examination for promotion to the post of L.D.C. or on the date of declaration of the result.

3. The applicant has pointed out that he had joined as unskilled labour in the establishment of the respondents on 15.11.1976, after securing a legal discharge from the Defence Services, and is fully entitled to this promotion. He avers that the waiting list of successful candidates does not expire till all such candidates are absorbed, and seeks support from O.M. of

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Ministry of Defence dated 4.4.1983 (Annexure A-7). The applicant has filed a number of Annexures for seeking support of his case, and points out the chronology of his case. He contends that the application of Respondent No.6 for appearing for selection for LDC should have been rejected in view of orders at annexure A-2. Applicant contends that the punishment imposed on him is unjustifiable and thus seeks the reliefs as stated above.

4. The Respondents in the case have ^{filed BnB} the written statement in reply. They have stated that applicant was empanelled at sl.no.22 of merit list drawn for the post of L.D.C, after examination of 19/20.5.1981, having been found suitable. The panel which was drawn on 29.9.1981 was valid upto 20.3.83 i.e. for 18 months. When the applicants turn came for appointment as L.D.C., disciplinary proceedings were in progress against him. After conclusion of these proceeding, the penalty inflicted was in force for next two years. By the time applicant became eligible, the panel had lapsed. In fact this is the argument taken by the Respondent Department in the impugned order also.

5. Further on in the written statement, the Respondent has replied to the contentions made parawise. Apart from points already made or their details, it is also stated that Shri Girish Chandra was fully eligible to appear for the examination, since his date of birth as recorded in service book is 12.8.1958 and not 7.4.1954 as alleged by the applicant.

6. It is seen that in their reply to the M.P. filed by the applicants for condonation of delay, the Respondents have taken

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a plea against maintainability of this application. They aver that since the cause of action had arisen before 1.11.1982 the Act does not empower the Tribunal to take cognisance of this grievance.

7. We have heard learned counsel for both sides. The learned counsel for the applicant took us over the documents containing the facts of the case and averred that the Respondents have given different replies at different times, giving different grounds. In this connection he mentions the letters addressed by the Factory Administration to the applicant as available at A-18, A-19 and A-7 viz. pages 50, 51 and 31. The letter at A-18 is dated 18.11.1983 and letter at page 31 is dated 4.4.1983. In the letter dated 18.11.1983, the applicant is informed that his case was not considered for higher appointment since a penalty was operating on him. The letter at page 31 is infact a circular letter.

8. The learned Counsel for the applicants particularly drew our attention to paragraph 3 of circular letter at pages 31/32 where it is stated that there would be no limit on the period of validity of list of selected candidates prepared to the extent of declared vacancy either for direct recruitment or for departmental competitive examination. The Counsel for the applicant cited 3 judgements in support of his case. These are (a) AIR 1990 SC 1308 (b) 1997 (3) ATC 205- Bombay CAT (c) AIS LJ CAT (V) 1990 (1). He made the point that if the grounds denying applicant his due are correct than his case should have been a case for consideration under the sealed cover procedure. Defending the

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point regarding limitation, it is asserted that the cause of action arose on 8.12.1994 whereas the OA was filed on 3.11.1997. Learned counsel stated that delay was not excessive and even suggested, feebly, that it was a case of continuous cause of action. A case was cited for justifying the argument regarding life of panel viz. 1992 LAB.I.C2200.

9. Arguing the case on behalf of the respondents the learned counsel first took the point regarding limitation, asserting that the prayer is hit by limitation. The learned counsel reiterated the facts and arguments made in the written statement and asserted that all facts as stated therein were against the applicant and that the case could not succeed. He made the point that the malice attributed amounted to vague allegations, and that making such allegations was not sustainable in law. He also reiterated the point made regarding maintainability of the O.A. and strenuously argued that the Tribunal had no powers to entertain an application where the cause of action (grievance) arose before 1.11.1982.

10. Counsel for respondents also handed over to us, at the time of arguments a copy of a letter of Ordnance Factory Board addressed to all Factories which, according to the learned Counsel for the respondents, showed clearly that the validity period of the select list was 18 months. Counsel for respondents also handed over copies of another letter dated 27.2.1984 and its enclosure.

11. We have carefully considered all papers in this case as also the arguments made before us by learned counsel on either side.

12. The admitted position of important dates are as follows:-
Date of examination / interview for post of L.D.C. 19/20.5.1981
Chargesheet memo issued to applicant (Annexure L-11) - 2.4.1982
Date of appointment order of Respondent No. 6 - 3.11.1981
Date of punishment order (A-15) -18.11.1982.

13. At the outset we must go into the question of maintainability and limitation raised by the respondents in this case. It is clear that the point of grievance comes on the date that the Respondent No.6 was promoted and this is stated to be 3.11.1981. Now, the arguments may be raised that because the application (O.A.NO.226/92) was entertained, it has to be concluded that limitation was condoned at that time and this litigation is a continuation of the earlier process. Even assuming, for arguments sake that this is accepted, it will be essential to go into the issue of maintainability of the present O.A., on the facts and circumstances obtaining in this case.

14. The question of maintainability is something that was never gone into, when the earlier O.A. was disposed of, obviously because the disposal of the application was made with the limited purpose of allowing a further representation to the applicant. Now as stated above the applicant should have approached the Tribunal for legal redress latest in 1983. This he did not do. Now we turn to the provision contained in Section 21 of the Administrative Tribunals Act. The provisions

of this Section clearly stipulate that applications against grievances in cases where the cause of action had arisen at a date earlier than 3 years preceding 1.11.1985 cannot be entertained by the Tribunal. Thus, there is strong support of law available to the Respondents when they make the statement to the effect that "the Act does not empower the Tribunal to take cognizance of a grievance arising out of an order made prior to 1.11.1982". Respondents have further submitted as follows. "An application against an order made before 3 years immediately preceding the date of setting of the CAT is time barred and as such, the Hon'ble Tribunal has no powers to condone the same".

15. We are fully convinced that the legal stand being argued above by the respondents is fully valid and this application is not maintainable in law in view of the position discussed above. The fact that this Bench of the Tribunal had earlier allowed the limited relief of another representation cannot save the applicant of this legal position which clearly goes against him.

We are not going into the ^{Main Bench} merits of the issues raised since the O.A. is not maintainable in the first place. We must mention that some judgments ^{were B.S.} cited by the Learned Counsel for the applicants. Such of these as related to issues of limitation/maintainability were gone through. None of them comes to the help of the cause of the applicant.

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16. In view of the discussions above, this application is hereby dismissed with no order as to costs.

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

MEMBER (J)

B.N. Bahadur
(B.N. BAHADÚR)

MEMBER (A)

05/01/2000

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