

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 229/98

MONDAY the 8th day of APRIL 2002

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

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

Subhash I. Kingner  
Residing at  
Ranga Ready Chawl  
Room No.2, S.V. Road,  
Chunabhatti Santacruz (W)  
Mumbai.

...Applicant.

V/s

1. Union of India through  
The General Manager,  
Western Railway Headquarters  
Churchgate, Mumbai.

2. Chief Engineer  
Western Railway,  
Churchgate, Mumbai.

...Respondents.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

{Per S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for the direction to the respondents to include the name of the applicant in the panel dated 12.4.1996 (Exhibit A -1) with the declaration that the respondents, <sup>action</sup> in taking into account uncommunicated adverse remarks for the purpose of promotion is illegal, arbitrary and against the law.

*P. Jain*

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2. The applicant has stated that the respondents had conducted the selection for the post of Head Clerk in the pay scale of Rs. 1400 - 2300 and the panel for selection was notified on 12.4.1996 (Exhibit A -1). He was not selected in the selection though he was senior to the many employees who were empanelled. The grievance of the applicant is that the respondents have taken into account the Annual Confidential Reports for the year 1992-93, 1993 - 94, 1994 - 95 and the promotions were effected on the basis of the performance in the ACRs. The applicant was not communicated any adverse entry in the ACR for the year 1991-92, 1992 - 93 and 1993 - 94.

3. The respondents in para 11 of the written statement stated that the post of Head Clerk is a non-selection post and promotion to this post is made on the basis of evaluation of CRs of the last three years from the date of consideration of promotion. The proposal for filling up the post of Head Clerk was initiated on 12.4.1996 and for this purpose the CRs of the year ending 31.3.1993, 1994 and 1995 were taken into consideration for deciding the promotion of eligible staff including the applicant. The respondents had placed on record Exhibit R - 7 which is an acknowledgement of the applicant (OA page 55 and 56) by which the applicant was communicated adverse entries in the Confidential report for the year ending 31.3.1994 on 13.12.1996. The said fact clearly makes out that while the selection was made on 12.4.1996 the adverse entry for the year ending 31.3.1994 was existing and it is admitted by the respondents that it has been taken into consideration.

P. (gmu) / ...3...

4. The learned counsel for the respondents stated that the applicant has filed this OA on 19.2.1998 while he has represented on 19.4.1996. He has further stated that thereafter the Union represented on behalf of the applicant on 14.2.1997 which was replied to the Union on 6.3.1997. The learned counsel for the respondents argued that repeated representations do not give rise to fresh cause of action. As such the period for counting the period of limitation is to run with effect from 19.4.1996. On calculation the OA is beyond 1 1/2 years, which is barred by time in view of Section 21 of the Administrative Tribunals Act 1985.

5. The Learned counsel for the respondents also argued that in view of order dated 12.4.1996 as many as 27 persons were empanelled, out of which number of persons are junior to the applicant but none of them have been arrayed as respondents. Even in representative capacity none has been arrayed. As such the OA suffers from the defect of non joinder of necessary parties.

6. The learned counsel for the applicant remained absent, as such we could not get his assistance. We are proceeding to decide the matter under Rule 15 of the CAT Procedure Rules 1987.

7. Keeping in view the facts regarding limitation and the non-joinder of necessary parties, we are of the considered view that the OA is barred by time and also suffers from the defect of non-joinder of necessary parties.

J. C. Shrivastava

8. The applicant who is not vigilant about his rights is not entitled to any relief even if some right exists in his favour or adverse entries in ACRs for the year ending 31.3.1994 were taken into consideration. The right may be existing but remedy to relief is barred.

9. In the result the OA deserves to be dismissed and is dismissed accordingly. The applicant to bear the cost of the respondents amounting to Rs. 650/- (Rs. 500/- as Legal practioner's fee and Rs. 150/- as other charges).

*Shanta S*  
(Smt. Shanta Shastry)  
Member(A)

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

NS