

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH

AT HYDERABAD

....

O.A. No. 168/1994

Dated this, the 26th day of November, 1996

CORAM

HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN  
HON'BLE MR. TH. RAJENDRA PRASAD, ADMINISTRATIVE MEMBER

A.R.S.Vittal Rao,  
Executive Engineer,  
Upper Godavari Division,  
11-5-382/396, Red Hills,  
Central Water Commission,  
Hyderabad-500004. .... Applicant

(Applicant in person)

Versus

1. Union of India through  
Chairman, Central Water Commission,  
Sewa Bhavan,  
R.K.Puram, New Delhi-66.
2. The Secretary,  
Union Public Service Commission,  
Dholpur House,  
New Delhi.
3. The Secretary,  
D/o Personnel & Training,  
Govt. of India,  
North Block, New Delhi-1. .. Respondents

(By Advocate Mr. N.R.Devaraj, SCGSC)

The application having been heard on 26.10.96, this  
Tribunal, on the same day, passed the following:

JUDGMENT

(Per Hon'ble Mr. Justice M.G.Chaudhari, VC)

The applicant appeared in person. We have heard the  
arguments. As a retired person we have given [redacted] very careful  
consideration to the matter. We, however, find it impossible  
to help the applicant in any manner.

2. The applicant, Shri ARS Vittal Rao, [redacted] service

Commission) as Supervisor on 5.6.1958. He was promoted as

Assistant Engineer on adhoc basis on 21.1.1969. He was regularised in that post on 3.6.1977. He was thereafter promoted as Assistant Executive Engineer on adhoc basis on 17.7.80 and was regularised in that post on 5.4.84, subsequently he was promoted to the post of Executive Engineer, which is a Senior Class-I post, on 11.9.93. He retired on superannuation from that post on 31.12.93.

3. The applicant filed the instant OA on 31.12.93 with a prayer that the respondents may be directed to treat his appointment as Assistant Engineer to have been on regular basis with effect from 22.1.69 and extend him consequential benefits. The application was thus filed nearly about 23 years from the date with reference to which the relief has been claimed. It is difficult for us to understand how the OA was admitted without any objection as to limitation. whatever that might be, the respondents have responded by filing their reply.

4. When we asked the applicant to explain as to how he is seeking relief with reference to 1969 and what is the explanation for the delay, he argued that had he been promoted as A.E. on 22.1.69 he would have been entitled to be promoted as A.E.E. on 16.11.73 and consequently he would have been eligible to be promoted as Executive Engineer on 31.7.80 and as the respondents have promoted him from 11.9.93 instead of 31.7.80 he can seek the relief as relating to the wrong date of promotion as A.E.E. i.e., 11.9.93 and that is the cause of action, from which date, according to him, the application has been filed within time. The reason of the applicant is much too involved to be accepted.

5. The submission of the applicant is that the respondents made a mistake in the year 1969 by acting contrary to the Recruitment Rules and have preferred an outsider when he was

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available for promotion as A.E.E. as a departmental candidate and in doing so the respondents committed a breach of para 13 of the Central Water Engineering (Class II) Service Rules, 1964. If that mistake is correct--and he came to know that it was a mistake from certain decision of the Principal Bench of the Central Administrative Tribunal rendered in 1988--then consequentially all his promotions would stand ante-dated and he would thus be entitled to claim the benefit of promotion as Executive Engineer from 31.7.80. According to the applicant, since he has been deprived of the benefit of promotion as Executive Engineer for nearly 13 years, that has materially affected his pensionary benefits and to that extent he is suffering monetary loss.

6. The first hurdle in the way of the applicant is of limitation. The grievance sought to be made is relating to the year 1969. The proper stage for the applicant to agitate about the wrong done was when he was promoted as A.E. on 3.6.77. Thereafter when he was promoted on 11.9.93 as E.E. he did not claim with the respondents that his promotion ought to be ante-dated to 31.7.80. It must be remembered that by that time he had known about the decision of the Principal Bench rendered in 1988 to which he wants to refer and about the mistake that had been committed by the respondents much earlier. He did file representations firstly on 29.12.89 and thereafter on 14.9.90. He did not, however, approach the Tribunal within 18 months from the date of his <sup>first</sup> representation or even from the second representation. The order on the basis of which the OA seems to have been treated as in time is an order of his promotion to the post of E.E. dated 11.9.93. Against that order per se the applicant has no grievance.

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That order, therefore, could not ~~confer~~ afford him cause of action in relation to the grievance presently made.

7. The respondents have stated in their reply that the application is barred by limitation under section 21 of the Administrative Tribunals Act. The said objection must be upheld for the aforesaid reasons.

8. Even assuming that the point of limitation can be ignored, since the OA was admitted, the action of the applicant also suffers from laches. He did not make any grievance that he was entitled to be promoted as A.E. on 22.1.69 when he accepted the appointment to that post on 3.6.77. Thereafter when he was promoted as A.E.E. on adhoc basis and later on regularised, he did not raise any such dispute. He made some grievance for the first time in the year 1989.

Presumably taking the representations into ~~action~~ account and some orders in some other proceedings, the respondents themselves promoted the applicant to the post of E.E. on 11.9.93. The applicant accepted that promotion and did not raise any claim for retrospective benefit thereof by filing a representation. Therefore, approaching the Tribunal for the first time on 31.12.93 in respect of a grievance of the year 1969 clearly amounts to laches. There is no extenuating circumstances to overlook the same.

9. Thirdly, the applicant is also ~~barred~~ estopped by principle of acquiescence; as stated earlier, he accepted promotion as A.E. on 3.6.77, thereafter as AEE firstly on adhoc basis on 17.7.80 and then on regular basis on 5.4.84 and also accepted the promotion as Executive Engineer on 11.9.93 without demur. His own conduct in accepting these promotions amounts to having given up his claim to have been promoted as A.E. on 22.1.69.

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10. Turning to paragraph 13(3) of the Recruitment Rules, that provides for 33% promotion for Diploma holders in the Commission. The proviso to that clause confers discretion on the Appointing Authority to fill up vacancies if required number of suitable eligible officers is not available from a particular category by promotion of suitable eligible officers from other categories mentioned under other sub-rules of that Rule, subject to the condition that the overall proportion of vacancies to be filled from among the officers of either category shall be maintained as prescribed. Sub-rule (4) of Rule 13 provides in clear terms that no officer shall have any claim for promotion under this rule as of right. These provisions therefore do not create any vested right in the applicant to be promoted as A.E. It is not possible to go at this length of time into the question as to whether the proportion of 33% was maintained and in what manner it was filled up. In the absence of any challenge to that within a reasonable period of time thereafter, such a question is not possible to be reopened.

11. The respondents on their part have stated that the applicant could not be promoted as A.E. on regular basis w.e.f. 22.1.69 for want of vacancies in the quota allotted for Diploma holders and therefore he was promoted on regular basis w.e.f. 3.6.77. It is not possible to enquire into the correctness of this statement ~~with~~ reference to the position as may have existed in 1969.

12. We, therefore do not find any merit, based on the allegation that there has been non-compliance of the Recruitment Rules, to be present in this case to help the applicant. It is well established that a settled position which has prevailed over a number of years ought not to be unsettled unless there is a compelling legal ground. Even though the applicant may say that by giving some notional ante-dated promotion nobody else would be affected, that cannot be accepted as a good ground because on principle others also would be entitled to

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make similar claim if the claim of the applicant were to be granted.

13. One more legal aspect that is necessary to be mentioned is that no cause of action that arose prior to 3 years preceding the date of establishment of the Bench of the Tribunal in this area, i.e., 30th June, 1986, lies <sup>within</sup> ~~within~~ the jurisdiction of this Tribunal, if the cause of action <sup>was</sup> ~~is~~ not agitated within a period of 6 months from 30.6.86. On the face of it, since the grievance relating to the year 1969 arose much prior to a period of 3 years preceding 30.6.86, the Tribunal has no jurisdiction to entertain the grievance of the applicant.

ORDER

O.A. dismissed. No order as to costs.

  
H. Rajendra Prasad  
Member (Admn.)

  
M.G. Chaudhari (J)  
Vice Chairman

26th November, 1996

  
Deputy Registrar (CC)

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CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI  
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 26-11-1996

ORDER / JUDGMENT

M.A/R.A./C.A. No.

O.A.No. 168/94. in

T.A.No.

(w.p. )

Admitted and Interim Directions

Issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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