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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 26.11.93

OA 108/93

ASHOK KUKREJA

... APPLICANT.

V/s.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).
HON'BLE MR. O.P. SHARMA, MEMBER (A).

For the Applicant ... SHRI K.S. SHARMA.

For the Respondents ... SHRI U.D. SHARMA.

PER HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

Applicant Ashok Kukreja, being aggrieved by the impugned order dated 15.4.87 (Annexure A-1) by which his name from the select panel of 1983 year of vacancies of Junior Engineers in the Rajasthan Telecommunication Circle was cancelled, has filed this application u/s 19 of the Administrative Tribunals Act, 1985 (for short 'the Act'), praying for setting aside the impugned order at Annexure A-1 being violative of Articles 14 and 16 of the Constitution and for directions to the respondent to issue training orders and subsequently an appointment order to the applicant as Junior Telecom Officer and further for a direction not to fill up the existing and future vacancy. The applicant has also claimed seniority, back wages and other consequential benefits.

2. We have heard the learned counsel for the parties and have carefully perused the records.

3. The brief facts of the case are that the applicant was selected for the post of Junior Engineer (now JTO) and thereafter directed to file an agreement to serve with the responder

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No.2 for at least 5 years. The agreement was signed and submitted to respondent No.2. After satisfying all the conditions the applicant was waiting for training orders but he was intimated by the respondent No.2 vide impugned communication dated 15.4.87 that there was no likelihood of his being appointed in near future in the Department since the Cabinet of the Central Government had imposed ban on fresh appointments and as such the name of the applicant was cancelled from the select panel of 1983. Thereafter, the applicant submitted representations vide Annexures A-4 and A-5 and since nothing was heard from the respondents, the applicant had to file an OA No.589/88 at Jodhpur which was later on withdrawn on 26.2.1991. It is pleaded by the applicant that the earlier OA was withdrawn on the assurance of the respondent that after the case of Shri Sanjay Sharma is decided by the Tribunal, the Department shall be bound by that judgement as the applicant Sanjay Sharma in that case was similarly situated. The impugned order dated 15.4.87 is assailed on the ground of its being in contravention of rules and in violation of Articles 14 and 16 of the Constitution. It is also pleaded that there is a clearcut direction of the Department that once a person is duly selected he gets a right to be appointed as and when vacancy arises. It is also averred that the applicant came to know that the Tribunal has passed order on 24.11.92 in OA 593/90 quashing the cancellation order of selected candidates as well as in OA 583/88 a similar judgement was rendered in December, 1992 quashing the respondents' order dated 15.4.87. Since the applicant is also a similarly situated person and identical cases have been decided by the Tribunal and the case of the applicant is squarely covered by these judgements, the applicant claims that the same benefit be given to him by quashing the impugned order.

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4. On the contrary, the respondents have alleged that the applicant had filed OA 789/88 against the order dated 15.4.87 in the Jodhpur Bench of this Tribunal and the same was withdrawn by him on 26.2.1991. The said OA had been dismissed as withdrawn vide order dated 26.2.91 at Annexure A-9 passed by the Jodhpur Bench of the Tribunal. The applicant while praying for the withdrawal of the said OA had not prayed for granting liberty to him to file a fresh OA on the same subject. It is contended that the applicant is not entitled to file this OA in respect of the same grievance for which he had earlier filed the OA 789/88. The application is also contested on the ground of limitation. It has been pleaded by the respondents that the orders dated 17.12.92 and 14.12.92 passed by the Tribunal in OA Nos. 583/88 and 593/90 respectively will not give a fresh cause of action to the applicant in respect of the same grievance. It is averred by the respondents that the applicant had not been selected for appointment but he was only brought on the list of approved candidates for appointment as Junior Engineer and as such no right to appointment was conferred on him and in the present case it was decided to reduce the number of vacancies for the year 1983 and to cancel the panel of all untrained candidates and accordingly 59 junior-most untrained candidates, including the applicant, were informed that there was no likelihood of their absorption in the cadre of Junior Engineer and it was therefore not possible to consider the applicant and to send him for training leading to his appointment as a Junior Engineer. It is further stated that no assurance had been given by the respondents to the applicant as has been pleaded by him, and the applicant had voluntarily and of his own free will had withdrawn the said OA (No. 589/88). The respondents Gkñhre have denied the receipt of any representation. It has been

denied by the respondents that the applicant is a similarly situated person as Shri Sanjay Sharma, and as such he is not entitled to the benefits as were given to Shri Sanjay Sharma in OA 583/88, decided in December, 1992.

5. We have heard the learned counsel for the parties and have perused the records. At the very outset, an objection has been raised on behalf of the respondents that the present application is not maintainable and it is barred by limitation. The respondents have relied on 1992 (2) SLJ 103 Bhoop Singh Vs UOI & Ors. (SC), and 1993 (1) SLJ (CAT) K.L. Chawla Vs. UOI. The learned counsel for the applicant has relied on a decision rendered by a Single Member Bench of this Tribunal on 24.3.93 in OA 896/92 Devi Prasad Vs. Union of India & Ors. and he has urged that equal treatment should be given to persons who are similarly situated. He cited before us rulings, mentioned below ;

- i) AIR 1974 SC 532 Arati Ray Chaudhury Vs. UOI.
- ii) AIR 1976 SC 1645 Lonankutty Vs. Thomman & Anr.
- iii) AIR 1977 Rajasthan 131 Radha Krishna & Anr. Vs. State of Rajasthan.
- iv) 1993 (1) SLJ (CAT) 49 M.Y. Bhide Vs. Chief Engine
- v) 1993 (1) SLJ (CAT) 565 Smt. Sneh Prabha Vs. Delhi Administration and another.
- vi) 1993 (2) SLJ (CAT) 142 Devi Prasad Vs. UOI & Ors.

These rulings have been carefully considered. It is pertinent to note that the facts of the present case are different from the facts of the cases relied upon by the applicant's counsel. A note worthy feature of this case is that the applicant has not prayed for the grant of benefits which were accorded to Shri Sanjay Sharma by a Bench of this Tribunal in OA 583/88 at

Annexure A-6 in the relief clause of the present OA. The

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assertion of the applicant that a fresh cause of action had accrued to him after rendering of the decision in the case of Shri Sanjay Sharma has no force because judgements and orders of a court in other cases do not ordinarily give a fresh cause of action and the cause of action has to be reckoned from the date it actually arises. The applicant has assailed the impugned order dated 15.4.87 at Annexure A-1. The cause of action has arisen in the present case on 15.4.87 and he had filed an earlier OA 589/88 in the Jodhpur Bench of this Tribunal and the same was withdrawn by the applicant on 26.2.91 without seeking any leave of the court to file a fresh OA, if necessary. It has been categorically denied on behalf of the respondents that any assurance was given to the applicant at the time of the withdrawal of the earlier OA. The applicant has not mentioned the name of any officer who had reportedly given any assurance as stated by him. The present OA was filed on 16.2.93. The cause of action having arisen on 15.4.87, the present OA is clearly time-barred. However, any subsequent application u/s 19 of the Act, based on the same cause of action in respect of the same grievance, is not permissible. In these circumstances, we find that the present OA is barred by limitation and is not maintainable.

6. In the result, the OA is dismissed, with no order as to costs.

GJ.
(O.P. SHARMA)
MEMBER (A)

GK 26-11-93
(GOPAL KRISHNA)
MEMBER (J).