

Date of Order: 28.09.2000

OA 631/94

S.K. Maheshwari Son of Shri Ram Gopal Maheshwari aged around 42 years, resident of Plot No. 70, Katta Farm, Near Gopal-pura Railway Crossing, Jaipur. Presently Posted as Assistant Audit Officer, Office of the Accountant General (Audit), Rajasthan, Jaipur.

.... Applicant

Versus

1. Comptroller & Auditor General of India,  
10, Bahadur Shah Zafar Marg, New Delhi.
2. The Accountant General (Audit), Rajasthan  
Statue Circle, Bhagwandas Road, C-Scheme,  
Jaipur.

.... Respondents.

Mr. P.P. Mathur, Counsel for the applicant.  
Mr. V.S. Gurjar, Counsel for the respondents.

CORAM

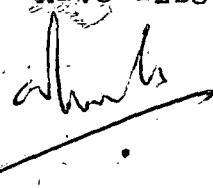
Hon'ble Mr. S.K. Agarwal, Member (Judicial)  
Hon'ble Mr. N.P. Nawani, Member (Administrative)

ORDER

(PER HON'BLE MR. N.P. NAWANI, MEMBER (ADMINISTRATIVE))

In this Original Application under Section 19 of the Administrative Tribunal's Act, the applicant prays that the respondents be directed to give him promotion on the post of Assistant Audit Officer (for short, AAO) w.e.f. 7.11.1985 or any other date prior to the date when promotion was given to him and further that order dated 30.8.90 may be applied to his case and his seniority may be restored accordingly.

2. We have gone through all the material on record and have also heard the learned counsel for the parties.

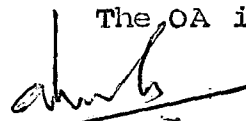


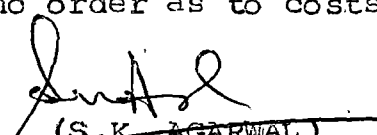
3. We find that this OA is hopelessly barred by limitation. The applicant is seeking promotion from 7.11.1985, whereas he has filed the OA on 5.12.1994. He has filed Miscellaneous Application no. 651/1994 for condonation of delay, contending that the respondent no. 2 had advised him to consult Muthuswamy's Book and after looking the relevant order dated 30.8.90 in July, 1993, he represented. Even if this part of delay is accepted, there is no explanation as to why, he did not file the OA within six months of the representation dated 5.8.93<sup>ie</sup> within February, 1994. The reasons given are, therefore, not convincing at all. Further the applicant cannot be allowed to disturb the seniority position of 1985 in December, 1994 as per the well settled legal principles laid down by the Apex Court in the case of B.S. Bajwa & Another V. State of Punjab & Others, reported in JT 1998 (1) SC 57. The application, therefore, deserves to be dismissed on the ground of delay & laches alone. The case law cited by the learned counsel for the applicant provides no help to the applicant in this regard.

4. The OA does not succeed even on merits. It has been explained by the respondents that the applicant was inflicted with a penalty of withholding of one increment without cumulative effect and the DPC had not recommended his promotion during the pendency of the penalty and as the penalty period expired on 31.5.1987, he was promoted to the post of AAO w.e.f. 1.6.1987. It is found that the applicant has ~~appeal~~<sup>appeal</sup> preferred revision to higher authorities and the applicant had incurred delays here also and these were rejected. As regards the reliance of the applicant on the letter dated 30.8.1990 (Annexure A-8), the applicant has not been able to convince us as to how the said letter dated 30.8.1990 would have retrospective effect and, therefore, this letter cannot be said to be applicable in the case of a DPC, whose recommendation were given effect on 2.6.1986. We have gone through the Government of India's instruction contained in O.M. No. 21/5/70-Estt.(A) dated 15.5.197 (Annexure R-3) and since in the case in hand, the DPC itself had recommended the promotion of the applicant after expiry of the penalty, we do not <sup>find any</sup> justification for interfering in the matter of promotion given to the applicant w.e.f. 1.6.1987.

5. In the result, we came to the conclusion that the OA does not even succeed on merits.

6. The OA is, therefore, dismissed with no order as to costs

  
(N.P. NAWANI)  
MEMBER (A)

  
(S.K. AGARWAL)  
MEMBER (J)