

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Order: 4.1.2001

OA 125/93

Raj Kumar Sharma, Sr.Clerk in the O/o Divisional Security Commissioner, W/Rly, Kota.

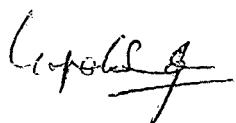
... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Security Commissioner, W/Rly, Churchgate, Mumbai.
3. Shri Bhavnesh Dutt, the then Dvl.Security Commissioner and now Dy.Chief Security Commissioner, Central Railway, Mumbai.
4. Rajaram Sharma, Head Clerk, O/o Dvl.Security Commissioner, W/Rly, Ratlam.
5. Alex M.Malu, Head Clerk, O/o Chief Security Commissioner, W/Rly, Churchgate, Mumbai.
6. Hasmukhbhai, Head Clerk O/o Dvl.Security Commissioner, W/Rly, Bombay Central.
7. Satish Chandra, Head Clerk O/o Dvl.Security Commissioner, W/Rly, Ajmer.
8. Rafique P., Head Clerk, O/o Dvl.Security Commissioner, W/Rly, Kota.
9. Chhagan lal Jaiswal, Head Clerk O/o Dvl.Commissioner, W/Rly, Ajmer.
10. Kum.Sayra Banu, Head Clerk O/o Dvl.Security Commissioner, W/Rly, Mumbai.

... Respondents

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HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.V.P.Mishra
For the Respondents ... Mr.Hemant Gupta, proxy
counsel for Mr.M.Rafiq

O R D E R

PEP HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

Applicant, Raj Kumar Sharma, in this application u/s 19 of the Administrative Tribunals Act, 1985 has prayed for a direction to respondent No.2 to promote him to the post of Senior clerk scale Rs.1200-2040 under Restructuring Scheme effective from 1.3.93 in terms of para 214(a) & (b) of IREM and the applicant be given proforma promotion w.e.f. 1.3.93 and seniority from that date.

c2. Applicant's case is that he was initially appointed to the post of Clerk scale Rs.950-1500 on 26.4.88 with the respondent department. In the year 1993 a scheme of restructuring of cadres in the ministerial category was introduced. The post of Senior clerk was a nonselection post and was to be filled up by senioritycumsuitability on the basis of service records only. The respondent department vide its order dated 24.9.93 issued promotion orders of Clerks to the post of Senior Clerk ignoring the name of the applicant, who was senior to S.No.7 to 14 of that order. Feeling aggrieved, the applicant represented his case to the authorities vide his representations dated 31.12.93, 16.2.94, 10.5.95, 4.9.95, 3.1.96, 3.6.96, 20.11.96 and 14.1.97. The respondent department had vide communication dated 8.11.94

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conveyed to the Divisional Security Commissioner the decision taken by the authorities on the representation of the applicant. The said letter was read over to the applicant, as seen from their letter dated 6.6.95 (Annexure A/3).

3. In the counter, it has been stated by the respondents that as a result of upgradation of various posts in the ministerial cadre, resulted chain vacancies of Senior Clerks became available. The applicant was issued a chargesheet on 1.2.93 for minor penalty under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 and he was awarded punishment of withholding of future increment for one year without cumulative effect. The said penalty was further reduced to three months on an appeal. It is also pointed out by the respondents that as seen from the Confidential Reports for the year 1991-92 and 1992-93 the applicant did not show any interest in his work and as such he was verbally warned several times. The Departmental Promotion Committee considering the case of the applicant for promotion to the post of Senior Clerk under the Restructuring Scheme did not find him suitable for promotion and, therefore, he was ignored. The applicant has, however, been promoted as Senior Clerk w.e.f. 7.10.94. It has, therefore, been averred by the respondents that the application is devoid of any merit and deserves dismissal.

4. We have heard the learned counsel for the parties and perused the records of the case.

5. The learned counsel for the applicant has cited various

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judgements in support of his contention that the application is not time barred and also that the applicant could ~~not~~ have been promoted despite issue of chargesheet against him. These judgements are being discussed in subsequent paragraphs.

6. In **Gopabandhu Biswal v. Krishna Chandra Mohanty and Others**, 1998 SCC (L&S) 1147, it has been held that Administrative Tribunal is bound by its earlier precedent. The earlier precedent cited by the learned counsel for the applicant is an order dated 9.6.88, passed by the Central Administrative Tribunal, Principal Bench, New Delhi, reported at (1988) 8 ATC 249. In the said case, applicant's first representation was rejected in 1969. He again represented on the ground that there were similarly situated persons to whom the benefit had been granted. This second representation was rejected on 30.7.86 and it was held by the Principal Bench of the Central Administrative Tribunal that the application was not time barred. In the instant case, the applicant has been representing to the authorities on the same grounds and no new grounds have been adduced by the applicant in his second or subsequent representations. In that view of the matter, we are firmly of the view that the judgement cited by the learned counsel for the applicant does not come to the rescue of the applicant.

7. In **Har Binder Lall v. Comptroller and Auditor General of India and Another**, (1988) 7 ATC 567, Government of India's instructions extended pro rata retirement benefits on those who went on deputation after 8.11.68. Since applicant had gone on deputation before that date, he was denied this

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benefit. Hyderabad Bench of the Central Administrative Tribunal in this case held that there was no rationality in fixing 8.11.68 as the Cut off date and the application was allowed. In the instant case, the applicant was facing a chargesheet when the scheme of restructuring of cadres was introduced and, therefore, he was not extended the benefit of that scheme. Thus, the facts of the case in hand are distinguishable from the facts of the case cited and hence this judgement also does not help the applicant.

8. In **S.Raghuraman v. Union of India and Others**, (1989) 11 ATC 495, second representation was rejected after consideration at length and not by mere reference to the rejection of earlier representation. In such circumstances, it was held by Madras Bench of the Central Administrative Tribunal that the limitation would run from the rejection of the second representation. In the case in hand, by Annexure A/1 dated 26/27.5.97 it has only been conveyed to the applicant's Supervisor that the decision taken on earlier representation of the applicant stands good. Thus, this judgement also does not help the applicant.

9. In **B.L.Behl v. Union of India and others**, 1995 (1)(CAT) SLJ 583, the grievance of the applicant arose in 1977. His first representation was rejected in 1985. Repeated representation was again entertained, examined on merits and rejected in 1987. In these circumstances, it was held that this gives a new limitation from 1987. In the instant case, as has been mentioned above, communication dated 26/27.5.97 only conveys the decision already taken on the representation

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of the applicant. This communication dated 26/27.5.97 has not been issued on reconsideration of the representation of the applicant on merits. Thus, this judgement also does not come to the rescue of the applicant.

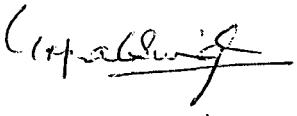
10. It is seen from records that the applicant was ignored vide respondents' letter dated 24.9.93 (Annexure A/2) for promotion to the post of Senior clerk under the Restructuring Scheme. In other words, the grievance of the applicant arose on 24.9.93. The rejection dated 8.11.94 of applicant's representation in this regard was conveyed to him through his superior, as seen from respondents' letter 6.6.95 (Annexure A/3). Thereafter, the applicant made repeated representations in this regard and he was finally conveyed vide letter dated 26/27.5.97 (Annexure A/1) that decision taken earlier in his case would stand. It is thus seen that the grievance arose on 24.9.93 and applicant's representation was rejected on 8.11.94 and the applicant has approached this Tribunal through the present OA on 7.4.98. Thus, the application is hopelessly barred by time. Judgements cited by the learned counsel for the applicant also do not help the applicant, as has been discussed above. In the light of above discussion, the application is hit by limitation and can be dismissed on this count alone.

11. It is a fact that while the restructuring scheme was being introduced w.e.f. 1.3.93, the applicant was facing a major penalty chargesheet and, therefore, he could not have been promoted as Senior Clerk w.e.f. 1.3.93. Moreover, the Departmental Promotion Committee did not find him suitable

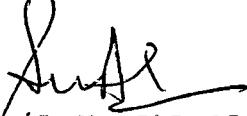
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for promotion to the post of Senior Clerk on the basis of his service records. He was promoted as Senior Clerk subsequently on 7.10.94. In these circumstances, we are of the view that the applicant cannot be extended the benefit of promotion under the Restructuring Scheme w.e.f. 1.3.93 as he was facing major penalty chargesheet on that date and the Departmental Promotion Committee had not found him suitable for promotion to the post of Senior Clerk. Thus, we find that the application is devoid of any merit and deserves dismissal.

12. The OA is accordingly dismissed with no order as to costs.


(GOPAL SINGH)

MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)