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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

T.A.No.185/98

Date of order: 24/11/2000

N.B.Phandelwal, S/o Sh.C.P.Phandelwal, R/o I/E 162-163, Prem Nagar  
Jhotwara, Jaipur, working in Employees Provident Fund Commissioner  
Office, Jyoti Nagar, Jaipur.

...Applicant.

Vs.

1. Union of India through the Central Provident Fund Commissioner,  
14, Bhikaji Kama Place, New Delhi.
2. Regional Provident Fund Commissioner Rajasthan, Jyoti Nagar,  
Jaipur.

...Respondents.

Mr.Manish Bhandari - Counsel for applicant

Mr.N.K.Jain - Counsel for respondents

CORAM:

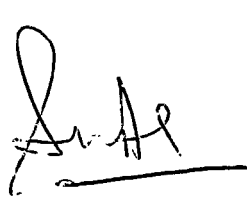
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member.

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

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to consider the applicant for promotion to the post of EQ/AAO w.e.f. 15.10.90, the date on which the juniors to the applicant have been promoted with all consequential benefits.

2. Reply was filed. It is stated in the reply that the applicant had filed O.A No.1007/92 but the relief sought in that O.A and the relief sought in the present O.A are more or less the same, therefore, the present O.A is not maintainable on the principle of resjudicata. It is also stated that this application is barred by limitation. It is further stated that the relief granted vide order dated 3.8.94 by this Tribunal in O.A No.1007/92 has already been given to the applicant and the applicant had again been promoted on the post of Head Clerk w.e.f. 3.2.89. However, being dissatisfied, the applicant filed Contempt Petition No.156/95 and the said Contempt Petition was dismissed vide



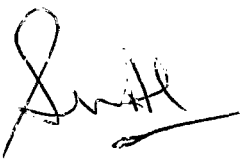
order dated 26.11.97. Therefore, the applicant is not entitled to any further relief as claimed by him in this O.A.

3. Heard the learned counsel for the parties and also perused the whole record and DPC proceedings dated 25.9.90 held for promotion to the cadre of EO/AAO in the pay scale Rs.1640-2900 for the vacancies of the year 1990.

4. The learned counsel for the respondents made an objection that this O.A is barred by limitation. On the other hand the learned counsel for the applicant has submitted that this O.A is within limitation. He submits that this Tribunal in the order passed on 26.11.97 gave a liberty to the applicant that if the applicant is aggrieved with regard to his promotion to the post of AAO, he is free to file a fresh application to agitate his grievance.

5. The applicant filed this O.A in the year 1998 claiming promotion on the post of EO/AAO w.e.f. 15.10.90. In the Contempt Petition, this Tribunal made only an observation to the effect that if the applicant is aggrieved with regard to his promotion to the post of AAO, he is free to file a fresh application to agitate his grievance. This does not mean that the limitation was condoned by this Tribunal. Merely giving some observation, at the time of passing of an order, does not give relaxation to the person concerned on the point of limitation. The applicant while filing such O.A has to prove that his case was within limitation. In our considered view, cause of action arose to the applicant after he was denied promotion by the IFC in the year 1990 and this O.A filed in the year 1998, therefore, we are of the view that in the facts and circumstances of this case, the O.A is grossly barred by limitation.

6. On a perusal of record, it appears that a charge sheet under Rule 10 of the EPF Staff Classification Control and Appeal Rules, 1971, was issued to the applicant on 2.3.84 and after enquiry a punishment of reversion to the lower post for a period of one year was imposed upon the applicant by order dated 25.7.85. On appeal against this order, the

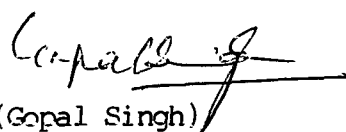


appellate authority set aside the order of the disciplinary authority with the direction for de novo enquiry. Another charge sheet was issued to the applicant on 2.4.84 which after enquiry culminated with the disciplinary authority passing an order imposing penalty of 'Censure' vide order dated 5.4.88. Another charge sheet was also issued under Rule 10 on 26.12.84 and after conclusion of enquiry the disciplinary authority awarded the penalty of reversion to the lower post of UIC for a period of one year vide order dated 2.2.88.

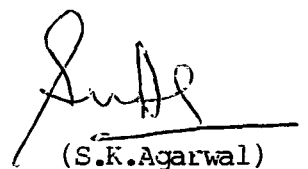
7. Even on merits, on a perusal of DFC proceedings, it appears that the applicant was considered alongwith others in the DFC meeting held on 25.9.90 for promotion to the cadre of EO/AAO in the pay scale 1640-2900 held for the vacancies of the year 1990 and that the DFC assessed the applicant alongwith his whole records and did not find the applicant fit for promotion whereas S/Shri Y.R.Bahadur, R.S.Meena, E.S.Fareek, Shiv Singh and Smt.Mohini Jethwani, were also considered and found fit for promotion.

8. In view of above all, we are of the considered view that the applicant has already been considered for promotion to EO/AAO for the vacancies of the year 1990 and he was not found fit for promotion. Therefore, the claim of the applicant for promotion on the post of EO/AAO w.e.f. 15.10.90 is not sustainable and we have no alternative except to dismiss the O.A.

9. We, therefore, dismiss the O.A with no order as to costs.

  
(Gopal Singh)

Member (A).

  
(S.K. Agarwal)

Member (J).