

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

R.A.No.45/2001

Date of order: 3.12.2002

1. Union of India through Secretary, Mini.of Communication, Deptt. of Posts, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.

...Applicants.

Vs.

1. Babu Lal Mudgal, S/o Sh.Ratan Lal Sharma, R/o Village & Post Kherli, Gadasiya, Distt.Bharatpur, now posted as Sr.Supdt.of Post Offices, New Delhi.

Respondent/Applicant in OA

2. Shri C.M.Gehlot, S/o Sh.Suraj Mal, Asstt.Director (Mails), O/o Chief PMG, Jaipur.

...Respondent

Mr.N.C.Goyal - Counsel for applicants.

Mr.P.K.Sharma - Counsel for respondent No.1

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

Union of India and Chief Postmaster General, Rajasthan Circle, Jaipur, who were respondents in O.A No.58/98 have filed the present Review Application against the order of this Tribunal dated 29.3.2001 whereby this Tribunal has disposed of O.A No.58/98 and other 48 O.As by a common order. Alongwith this Review application, M.A No.292/01 for condonation of delay in filing the RA and M.A No.393/01 for staying the operation of the order dated 29.3.01 have also been filed.

2. In order to appreciate the matter in controversy, few facts may be noticed. The applicant in O.A No.58/98 had filed the O.A before this Tribunal thereby praying for the following

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relief:

- (i) Quash and set aside the impugned order dated 4.4.97 (Annex.A1) and the applicant should be given promotion of HSG-I cadre from retrospective date i.e. from 11.6.91, as there was no post available to Mr.C.M.Gehlot on that day.
- ii) Quash the order dt.4.4.97 and promote the applicant to HSG-I cadre (IPO line) w.e.f. 11.6.91 at least when junior candidate Mr.CM Gehlot (respondent No.3) has been given such benefit;
- iii) In case promotion of Mr.C.M.Gehlot is not quashed then the applicant should be given promotion as HSG-I (IPO line) w.e.f. 11.6.91 itself with consequential benefits arise from service.

3. The main grievance of the applicant in the O.A was that one Sh.C.M.Gehlot, who was one of the respondents in the O.A was given promotion in the cadre of HSG-I (IPO line) on 11.6.91 when there was no post available for him as one Sh.B.L.Bhami who belongs to SC category was already promoted against the SC vacancy in that year, therefore, giving promotion to other SC candidate in the same year is illegal and amounts to 100% promotion which could not be given. It was further mentioned that while making promotion, the recruitment of S/Sh.R.S.Gupta, S.N.Washanwal and G.P.Garg was not taken into account, if the same had been taken into account then there would be no room for promotion of Sh.C.M.Gehlot as no post would be available to Sh.C.M.Gehlot. It was further averred that the applicant was totally ignored while he was senior in comparison to the candidate promoted in the year 1991 to HSG-I cadre. Reply to the application was filed and finally the O.A alongwith other cognate matter were finally disposed of by this Tribunal vide order dated 29.3.01 with the direction to the respondents not

to give effect to any eligibility list and/or panel already prepared for the purpose of promotion to the next higher cadre, without revising the seniority in the lower cadre in the light of the 'catch up' rule enunciated by Hon'ble the Supreme Court in Ajit Singh-II, Jatinder Pal Singh, etc.

4. By way of this RA, the controversy set out by the Union of India is that the controversy involved in O.A No.58/98 was not relating to the catch up principles but it was relating to the promotion on the basis of roster points as such the matter could not have been disposed of by the common order.

5. Notices on the RA as well as M.As were issued to the respondent (applicant in the O.A) to which reply has been filed.

6. At this stage, we do not wish to enter into the merit of this case as the RA filed by the applicants is hopelessly barred by limitation and the applicants have not given any reasonable and satisfactory explanation for seeking condonation of delay in filing the RA. However, suffice it to observe that even if the matter in controversy in O.A No.58/98 was not that of catch up principle and the matter was wrongly decided by this Tribunal treating the same as controversy of catch up principle and disposed of the O.A and other Cognate matter, it was open for the respondents in the O.A/review applicants to agitate the matter before the High Court by invoking the provision contained under Article 226 of the Constitution of India for the purpose of exercising judicial review instead of invoking the power of review which is only available on limited grounds as contemplated in Sec.114 read with Order 47 Rule 1 CPC which has been made applicable by virtue of Sec.22⁽³⁾(f) of the Administrative Tribunals Act, 1985. The contention of the learned counsel for the respondent that in the O.A, the

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applicant has specifically stated that there was no post available to Sh.C.M.Gehlot on 11.6.91 and even then he has given promotion in the cadre of HSG-I (IPO line) and was also junior to him in the entry grade, it was a case of accelerated promotion and the O.A and other cognate matter was rightly disposed of by a common order, need not to be noticed as the matter is being disposed of on the ground of limitation, without going into the merits of the case.

7. We may now notice the ground taken by the applicants for condoning the delay in filing the RA. It has been averred that the judgment of the Tribunal dated 29.3.01 was received by the Additional Central Govt. Standing Counsel (ACGSC) on/after 21.4.01 but it remained with him for forwarding with his considered opinion. In the meanwhile his term of ACGSC was over and under such circumstances copy of the judgment was supplied in early May 01 without his legal opinion. On receiving the judgment without opinion of ACGSC, the matter was examined at the administrative level and it was thought proper that legal opinion may be sought from Sr. Central Govt Standing Counsel (SCGSC) and for which letter dated 28.6.01 was written to SCGSC. As desired by SCGSC a representative was deputed who visited his office 2-3 times but found the SCGSC is over busy. Thereafter opinion was sought from ACGSC who in turn sent his legal opinion on 1.9.2001. Thereafter, vide letter dated 7.9.2001 a draft review application was sought from the ACGSC which was approved on 16.10.01 and after retyping the same was filed on 5.11.01.

8. Now, the question which requires our determination is whether the explanation as given by the review applicants for condonation of delay is sufficient to condone the delay in filing the R.A. At this stage, it will be proper to reproduce

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Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, which provides as under:

"17. Application for review (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed."

The main thrust of the review applicants is that they were seeking legal opinion from Senior/Addl.CGSC which was received on 1.9.01, thereafter the RA was drafted and ultimately filed on 5.11.01. According to us this cannot hardly be said to be a reasonable/satisfactory explanation for seeking condonation of delay. If the legal opinion was not ~~forthcoming~~ from the Sr/Addl.CGSC within a reasonable time, it was expected from the concerned officer(s) to proceed with the matter further instead of sitting over the matter. Moreover, seeking the legal opinion from Sr/Addl.CGSC is not a condition precedent for agitating the matter further and the department could have taken the decision at its own level, when the legal advice/opinion was not forthcoming. If such a plea on behalf of the department for not preferring the review application within time, is accepted as sufficient cause to condone the delay, this ^{will} defeat the very purpose of Rule 17 of CAT(Procedure) Rules which stipulates that 'no application for review shall be entertained unless it is filed within 30 days...' That apart, as per the averment made by the applicant, the legal opinion was received on 1.9.01 whereas the review application was filed on 5.11.01, admittedly after a period of 60 days after rendering the opinion by ACGSC. From this, it is quite evident that even after receiving the legal opinion, the department failed to take any steps to file the review application within 30 days but was pursuing the matter leisurely. Thus, according to us, the explanation given

by the applicants for condonation of delay in filing the RA does not constitute sufficient ground.

9. We are conscious of the fact that certain latitude has to be given to the Government in the matter of condonation of delay and the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of application/appeal since he is a person legally injured while the State is impersonal machinery working through its officers/servants. But then it is also equally establish that the law of limitation may harshly effect a particular party but it has to be applied with all its rigour when statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. In order to decide the vital issue for condoning the delay or not, the Court has to record reasons with explanation as the delay was either reasonable or satisfactory which is essentially prerequisite to condone the delay. In this behalf, reference may be made to the decision of the Apex Court in the case of P.K.Ramachandran Vs. State of Kerala & Anr, JT 1997(8) SC 189. In the instant case, there is a delay of 198 days in filing the RA, as per own showing of the review applicants, whereas Rule 17 of the CAT(Procedure) Rules, 1987, prescribes that no Review Application shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed. The delay in filing the RA has not been satisfactorily explained as noticed in the earlier para. In the instant case, the applicants/its officers were expected to work in accordance with the settled canons of administration of justice like a reasonable and prudent person and were expected to pursue the matter with due diligence which they failed to do so and the

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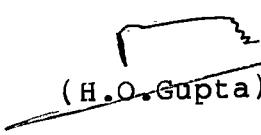
reasons given by them for condoning delay, according to us do not constitute sufficient cause to condone the delay, in the facts and circumstances of the case.

10. For the reasons stated above, we are of the view that the review applicants have not set out sufficient cause to condone the delay for filing the review application and as such M.A No.392/01 for condoning the delay for filing the review application shall stand rejected, therefore, the review application stands dismissed as time barred. Similarly, M.A No.393/01 for staying operation of order dated 29.3.01 shall also stand rejected.



(M.L.Chauhan)

Member (J)



(H.O.Gupta)

Member (A).