

Central Administrative Tribunal
Jabalpur Bench

OA No.626/05

Jabalpur, this the 2nd day of ^{August} July 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

S.G.Jain
S/o Gendalal Jain
14, Rajshree Palace
Vardan Nagar
Indore.

Applicant

(By advocate Shri A.N.Bhatt along with
Shri C.P.Laskhare)

Versus

1. Union of India through
The Director General
All India Radio
Government of India
Akashwani Bhawan
Parliament Street
New Delhi.

2. The Station Director
All India Radio
Shamala Hills
Bhopal.

3. The Station Director

All India Radio
Malwa House
Indore.

Respondents

(By advocate Shri Umesh Gajankush)

ORDER

By A.K.Gaur, Judicial Member

The short question that emerges for our consideration in the present case is whether the seniority list dated 3.5.88 was a subject matter of dispute in OA No.262/2000, decided vide order dated

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6.9.2003, and whether the benefit of that judgment can be extended to the present applicant also. The applicant is claiming promotion as Senior Administrative Officer from the date of promotion of Shri C.L.Thakur as well as Shri Suresh Kumar, with all consequential benefits.

2. According to the applicant, he was senior to one Shri C.L.Thakur in the combined zonal seniority list of Head Clerks/Accountants/Sr.Store Keeper in the Madhya Pradesh zone as on 1.4.88. In the said seniority list, his name appears at S.No.5 whereas the name of his junior C.L.Thakur appears at S.No.6. The Director General issued an Eligibility List on 15.10.1988 in which the junior to the applicant i.e. C.L.Thakur was included but the name of the applicant was left out, without assigning any specific reason. The grievance of the applicant is that on the basis of this eligibility list, a DPC was constituted by the Department and the junior to the applicant C.L.Thakur was promoted as Administrative Officer, vide order dated 6.3.1989. It is further contended by the applicant that similarly one Shri Suresh Kumar who was senior to C.L.Thakur, was also granted promotion as Senior Administrative Officer, after his (Suresh Kumar's) OA No.562/90 was decided in his favour by the Tribunal vide order dated 13.5.99. According to the applicant, he being similarly situated, and coming to know of the above developments, submitted a representation to the respondents projecting his grievance, but it evoked no response. It is contended by the applicant that the action of the respondents is discriminatory and in violation of Articles 14 & 16 of the Constitution of India.

3. A brief reply has been filed on behalf of the respondents and the main ground taken is that the OA is grossly barred by time. It is further stated that the judgement of the Tribunal in OA 269/2000 filed by Suresh Kumar was specific and in personam only, and not a judgement in rem and hence the benefit of the said judgement could not be extended to the applicant. It is contended by the respondents that the applicant had filed OA No.582/2002 before this Tribunal seeking promotion to the post of Administrative Officer and Senior

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Administrative Officer with effect from the date his junior Shri C.L.Thakur had been so promoted. In that OA, it was directed that the applicant would not be entitled to any arrears up to the date of retirement and the retrial dues would be paid on actual basis. As per the orders of the Tribunal, the applicant was given notional promotion from the back date. Since the judgement in Suresh Kumar's case was specific and in personam, the benefit was not extended to the present applicant.

4. The applicant has filed a rejoinder refuting the contentions made in the reply. The applicant has stated that he has filed a delay condonation application along with the OA. It is further reiterated that the applicant has not been extended the same benefits as allowed to Suresh Kumar, although the applicant is senior and situated in similar circumstances. The applicant has also denied that the respondents have supplied Annexure R-1 along with their reply.

5. We have heard the learned counsel for the parties at length and perused the records.

6. The learned counsel for the respondents has raised a preliminary objection that the delay caused in the matter has not been properly explained by the applicant, nor has any affidavit in support of the application been filed. We find that the eligibility list dated 15.10.98 against which the applicant is aggrieved is not under challenge in the present OA. The applicant is claiming the benefit of the judgements of the Tribunal in OA No.562/90 decided on 13.5.99 and OA No.269/2000 decided in 6.8.2003. The applicant has not offered any cogent and proper explanation for the long delay in filing the present OA. The Hon. Supreme Court in an identical ^{case} reported in 1996 SCC (L&S) 1488 - State of Karnataka Vs. S.M.Kotarayya has held as follows:

"In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989, and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under Sub-Section (1) and section (2) of Section 21 of A.T. Act was as to why they could not avail all the remedy for redressal of their grievance before the expiry

of the period prescribed under Sub-Section (1) & (2) and no such explanation was given by the applicant. Therefore the Tribunal was wholly unjustified in condoning the delay."

7. In the present case, the explanation offered by the applicant was that he came to know about the judgement in favour of Shri Suresh Kumar after some months and then he tried to obtain the copy of the judgement which consumed much time. This is not a proper explanation. What was required of the applicant to explain under Sub-Section (i) & (ii) of Section 21 of the A.T. Act was as to why he could not avail all the remedy for redressal of grievance before the expiry of the period prescribed under the Sub Sections. We find that the OA is liable to dismissed on the ground of delay and laches.

8. In view of the above discussion, without going into the merits of the case, the OA is dismissed on the ground of delay and laches.

Anil Gaur
(A.K.Gaur)
Judicial Member

Adviser
(Dr. G.C. Srivastava)
Vice Chairman

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पृथिव्वन सं ओ/न्या..... जबलपुर. दि.....
प्रतिविधि अन्वे विधि:

प्रतिलिपि अच्युतिः—

- (1) सदिव, उच्च ज्यायालय भार एवं देशभाग, अलापुर
- (2) आनेदक श्री/श्रीजली/छु के कांडे
- (3) प्रसारी श्री/श्रीजली/छु के कांडे
- (4) बंधुवाल, देशभाग, जबलपुर न्यायपीठ

संचना एवं आवश्यक कार्डवाणी हेतु

नाना दत्त M. Nagaria
J. अ. रजिस्ट्रार १५.४.०६.

Issues
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