

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

Original Application No. 397 of 2003

Jabalpur this the 18th day of August, 2004

CORAM

Hon'ble Mr.M.P. Singh, Vice Chairman
Hon'ble Mr.A.K. Bhatnagar, Member(J)

M.S. Memon, Son of Shri A.G. Memon, aged 50 years, R/o
JH-72, Sahyadri Complex, Bhadhhada Road, Bhopal(M.P.)

Applicant

By Advocate Shri Sujoy Paul

Versus

1. Union of India through its Secretary, Ministry of
Board Casting, Parliament Street, New Delhi.
2. Director General, Prasar Bharti(PCI), Parliament
Street, Akashwani Bhawan, New Delhi.
3. Suresh Kumar D. Senior A.O., All India Radio, Bhopal.

Respondents

By Advocates Shri P. Shankaran
Shri Gopi Chaurasia

O R D E R (Oral)

By Hon'ble Mr.A.K. Bhatnagar, Member (J)

By this O.A. filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has
prayed for a direction to respondents to consider the
case of the applicant on the post of ^{A.O. 2} Accounts Officer
w.e.f. the date when his juniors have been promoted and
thereafter promote him as A.O w.e.f. 21.07.1989. He has
further prayed for a direction to provide him all consequent-
ial benefits from the date of his promotion as A.O. which
were granted to his juniors. He has also prayed to direct
the respondents to consider the case of the applicant on
the further promotional post of senior post at par with
...pg.2/-

① Under order
of 4.11.04, A.O.
is substituted in
place of Accounts
Officer.

4.11.04

his juniors including private respondent with all consequential benefits.

2. The brief facts of the case as per the applicant are that he was initially appointed as Clerk Gradee II w.e.f. 07.05.1973. He was promoted to Clerk Grade I w.e.f. 31.07.1976. Thereafter again promoted as Accountant w.e.f. 23.03.1982. In the seniority list dated 01.04.1988, name of the applicant was at serial no.2 as Accountant, while his juniors Suresh Kumar D. (pvt.respondent) was at serial no.4 and V.T. Manjvani at serial no.5, except one Shri C.L. Thakur whose name was at serial no.6, other were including the applicant not promoted to the post of Accounts Officer on the ground that although they were senior but did not complete the stipulated years of service making them eligible for promotion as Accounts Officer. The Govt. of India considering the contingency, issued an O.M. whereby it was directed that the senior employees cannot be left over from consideration for promotion when their juniors are considered. In such circumstances, when juniors are considered for promotion and seniors have not completed the stipulated years of service, for a reason which is not attributable to them, it was decided to either amend the statutory recruitment rules or to ensure that the senior employees are not put to disadvantageous position and they be also considered along with their juniors. Copy of the Office Memorandum is filed as annexure A-2. The private respondent-Shri Suresh Kumar D and other employees whose names are mentioned above, are much junior to the petitioner. However, Shri Suresh Kumar D. filed an O.A.No.562/90 before this Tribunal

which was decided in his favour on 13.05.99(annexure A-3) by which a direction was given to consider the case of Shri Suresh Kumar D. for promotion as A.O. by giving due relaxation and thereafter consider and promote him with notional fixation of pay and other benefits. The private respondent, in compliance of this Tribunal's order, ^{was} promoted by the department as Administrative Officer w.e.f. the date Shri C.L. Thakur was promoted i.e. on 21.07.1989.

3. Another junior-V.T. Manjvani of the applicant filed O.A.No.142/00(V.T. Manjvani Vs. U.O.I. & Others) wherein Shri Manjvani has claimed the same benefits which have been granted by this Tribunal in case of Shri Suresh Kumar D. The O.A.No.142/00 was heard and decided by the order dated 30.04.2000(annexure A-4) and the order passed by this Tribunal has also been complied with by the respondents. By order dated 30.12.2002 Shri Manjvani was given promotion as A.O. w.e.f. 21.07.1989, the date when Shri Suresh Kumar D. was promoted.

4. The grievance of the applicant is that the action of the respondents whereby they have ~~been~~ promoted the employees who were junior to the applicant by conducting a review D.P.C., is illegal and discriminatory. Learned counsel for the applicant submitted that the ^{have been} cases of Suresh Kumar D. and V.T. Manjvani ~~are~~ decided on a policy matter, thus, the ^{Judgments in} Judgment in the cases of Shri Suresh Kumar D. and V.T. Manjvani are ~~rem~~ and not in personam, therefore, in all fairness the respondents suo moto apply the ratio decidendi to all similarly situated persons. Learned counsel further submitted that department ought to have considered the left out seniors once the principle is laid down by

the Tribunal while considering the case of the applicants in O.A.No.562/90 and O.A.No.142/00. A guide line has also been issued by the department to this effect(annexure A-5). The applicant is a partially handicapped person and after settling down at Raipur, he came to know about the benefits granted to his juniors. The applicant immediately preferred a detailed representation to Director General for providing the benefits of aforesaid two Judgments, on 25.04.2003 the (annexure A-7) which was duly forwarded by department by letter dated 01.05.2003(annexure A-8), which has not been decided so far. Hence, he filed this O.A.

5. Learned counsel for the applicant submitted that the orders of the Tribunal in O.A.No.562/90 and O.A.No.142/00 were Judgments in rem and, therefore, the department ought to have extended the benefits of said Judgments in favour of the applicant. He has also submitted that it is settled law that similarly situated employees should not be put to a discrimination qua the persons who have approached the Court in a policy matter. It is further submitted that to avoid unnecessary litigation, the department on its own should have considered the case of the applicant in review D.P.C. along with Shri Suresh Kumar D. and V.T. Manjvani. Thus, the action of the respondents in not considering the case of the applicant is unconstitutional and bad in law. He further submitted that the private respondent and other juniors to the applicant, were further promoted from the post of A.O. to Senior A.O. only because of their ante dated promotion as A.O. w.e.f. 1989 and the applicant is also entitled for the same benefits.

6. Resisting the claim of the applicant, respondents have filed counter-reply and submitted that the cause of action to file this O.A. arose to the applicant on 15.10.1988 when the eligibility list was prepared and circulated and the present O.A. has been filed after a period of about 14 years from the date of cause of action so it is barred by limitation. The applicant has filed his representation on 25.04.2003 relying on the Judgment passed by the Hon'ble Tribunal in the case of Shri Suresh Kumar and Shri V.T. Manjwani in O.A.No.562/90(decided on 13.05.1999) and in O.A.No.142/00(decided on 30.04.2002). The respondent-Shri Suresh Kumar D. filed his O.A. immediately after the promotion of Shri C.L. Thakur, as prescribed under the Act, whereas applicant has filed the instant O.A. after 14 years. Learned counsel for the respondents invited my attention on para-D of the counter-affidavit [✓](annexure R-1) [✓] and submitted that the eligibility list/against which the applicant is seeking relief had become final on 15.10.88 after providing opportunity to all concerned in the grade of Head Clerks/Accountants/Senior Store Keepers by way of inviting objection, if any, and to make representation. As the applicant did not make any representation to the above list, he cannot raise any dispute on it at this stage and claim promotions at par with his alleged juniors made from that list. Two juniors Shri Suresh Kumar D. and Shri V.T. Manjwani were promoted to higher grade in compliance with the orders of this Hon'ble Tribunal, in which applicant was not a party, therefore, those orders were not applicable to the applicant and there ^{was} ~~is~~ no question of considering him when these two officials were considered and promoted in compliance with the order of the Tribunal. He further contended that the Judgments relied on by the applicant were specific in nature and applicable only to the applicants

in that O.A. It is submitted by the respondents that the applicant remained silent not only in 1989 when his junior Shri C.L. Thakur was promoted but also when Shri Buresh Kumar D challenged that promotion and he continuously kept his silence till he made a representation on 25.04.2003. This shows that applicant was not vigilant about his right, therefore, he cannot be allowed to unsettle a settled matter after long period through the instant O.A.

7. We have heard the learned counsel for the parties and perused the pleadings.

8. ^{mentioned} Admittedly, the respondents whose names were in this case were junior to the applicant as per seniority list filed as annexure A- 1 in which private respondent no.3 is shown at serial no.4 whereas Shri V.T. Manjvani and Shri C.L. Thakur are shown at serial no.5 and 6 respectively. This is also not disputed that juniors to the applicant were granted the relief by filing the O.A. No.562/90 and O.A.No.142/00 from the same date on which one Shri C.L. Thakur was promoted i.e. from 23.07.89. We have also gone through the orders passed in O.A.No. 562/90 decided on 13.05.1999 and O.A.No.142/2000 decided on 30.04.2002. The compliance of order dated 30.04.02 was made by order dated 30.10.2002 granting the same benefit to the applicant of that ^{O.A.} w.e.f. 21.07.1989, the date from which his junior Shri C.L. Thakur was promoted to the post of Administrative Officer. It is also admitted fact that the applicant has filed his representation dated 25.04.2003 which was duly forwarded by the letter dated 01.05.2003 by the Director of Prasar Bharti to the Director General , A.I.R., Akeashwani Bhawan, Parliament Street, New Delhi for sympathetic consideration but no decision has been taken so far.pg.7/-

Mr

9. In view of the facts and circumstances of the case and after careful consideration of the submissions made by the counsel for the parties, we are of the view that the applicant should also get the same reliefs, which have been provided to the applicants of O.A.No.562/90 and O.A.No.142/00, who were juniors to the applicant.

10. In view of this, O.A. is allowed. The respondents are directed to consider the case of the applicant for promotions as per rules w.e.f. the date when his juniors have been promoted and thereafter promote him accordingly, if he ^{is} found eligible for promotion, he shall also be entitled for the consequential benefits arising there from. No order as to costs.

(A.K. Bhatnagar)
Member Judicial

(M.P. Singh)
Vice Chairman

/M.M./

पूरांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिनिधि: न्याय धित:-

- (1) सचिव, न्याय धित, जबलपुर
 - (2) आवेदन सं. 562/90के काउंसल S.P. Paul
 - (3) आवेदन सं. 142/00के काउंसल P. Shankaran
 - (4) अध्यक्ष, न्याय धित, जबलपुर न्यायपीठ
- सूचना एवं आवश्यक कार्यवाही हेतु

डेप्टी रजिस्ट्रार

Issued
On 23.8.04
ES