

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BANCH, JABALPUR

Original Application No. 710 of 1993

Jabalpur, this the 28th day of August, 2003.

Hon'ble Mr. D.C. Verma Vice Chairman (Judicial)  
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Lalit Prasad Gupta  
S/o Shri Chanshyamdas Gupta  
2/2 Central Colony,  
Shahpura, Bhopal

APPLICANT

(By Advocate - Shri M.N. Banerjee)

VERSUS

1. Union of India  
Through the Secretary  
Urban Development,  
Nirman Bhawan  
New-Delhi.
2. Director General of Works  
C.P.W.D.  
Nirman Bhawan  
New-Delhi
3. Supdt. Engineer  
Bhopal Central Circle,  
Bhopal, C.P.W.D.  
E- 4/105, Arera Colony,  
Bhopal

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R (ORAL)

By D.C. Verma, Vice Chairman (Judicial) -

By this Original Application, the applicant has claimed promotion to the post of Lineman with effect from 4.4.1984.

2. The brief facts of the case is that the applicant was initially engaged on muster roll on 10.10.1980 and was appointed as Lineman on regular basis vide order dated 8.6.1993 but took charge at Bank Note Press, Dewas on 3.7.1993. The applicant thereafter made an application for transfer from Dewas to Bhopal at his own expense vide letter dated 29.7.1993. Vide order dated 28.8.1993 the applicant

was transferred to Bhopal Central Electrical Sub-Division No.1 and since then he is posted at Bhopal.

3. The grievance of the applicant is that three persons were promoted to the post of Lineman in the year 1984. Consequently, the applicant should have also been appointed as regular Lineman in 1984.

4. The submission of the learned counsel of the applicant is that as per the statutory rules for recruitment to the post of Lineman as given in the C.P.W.D. Manual Vol.III(1984 Edition) the post of Lineman is to be filled up on 50% by direct recruitment basis and 50% on promotion basis. The submission is that as three persons were promoted as Lineman in the year 1984, the applicant should also have been appointed in the remaining 50% vacancy on direct recruitment basis. The respondents failed to do that. Hence the applicant would be deemed to have been appointed, on regular basis in 1984, as Lineman.

5. The respondents' case is that the applicant was employed on muster roll and he was to be appointed as Lineman under the direct recruit quota only. Whereas the three persons, namely, Asraf Khan, P.L.Pawar and A.C.Das were already regular employees of the department and they were promoted to the post of Lineman under 50% promotion quota. The applicant cannot claim parity with the regular employees who are not similarly situated and a comparison between the applicant and the employees who were appointed to the post of Lineman under promotion quota cannot be drawn. It is also submitted that the above named employees have been working as Khalasi since the year 1966-67 and were promoted to the post of Assistant Lineman vide order dated 13.4.1982 and as adhoc

Lineman since July, 1982. The submission of the learned counsel ~~of the applicant~~ is that the appointment of regular employees under 50% vacancies meant for promotion has no relation with the vacancies or direct recruits.

6. Counsel for the parties have been heard. As per the rules produced before us for the post of Lineman, the 50% promotion quota is to be filled up on the basis of seniority-cum-fitness only. Whereas for direct recruits the rule provides age limit of 25-35 years, qualifications mentioned in the rules and passing of oral test and practical test. Thus, though for promotion, no departmental test is provided for direct recruitment, oral and practical departmental test is provided. There is nothing on record to show that any vacancy under 50% direct recruitment quota was available in the year 1984. It is not necessary that if vacancy for promotion quota is available necessarily vacancy for direct recruit quota should also be available. So, unless it is shown that vacancies for direct recruitment quota were available in 1984, the applicant cannot make out any case. As the same is not shown from the records, the reliefs, as claimed, cannot be granted.

7. Further, if the applicant had any grievance in 1984, due to promotion of regular employees, it was open for the applicant to make a representation thereafter and to approach the judicial forum at that very time. The Administrative Tribunal came into force on 1st November, 1985. Consequently, as per Section 21 of the AT Act, it was open to the applicant to make a representation, to wait for six months for reply, and in case of no reply to file a case within

a period of one year thereafter. It was not at all necessary for the applicant to wait for the reply of the department. There is nothing on record to show that the applicant approached any judicial forum in 1984 or the Tribunal after 1985. The record also does not show that the applicant made any representation due to his non-appointment in 1984 or thereafter.

Annexure-A-8/ 5.12.1997 shows that the applicant made representations on 27.9.1997 and 12.11.1997 which were rejected vide Annexure-A-8 dated 5.12.1997. A representation in 1997 after non-promotion in 1984, would not provide limitation to the applicant. The submission of the learned counsel of the applicant ~~is~~ that earlier also he had made representation but that remained un replied, cannot give any relief to the applicant with regard to limitation in view of the wording of Section 21 of the AT Act.

8. The point of limitation has been considered by the Apex Court in the case of S.S.Rathore Vs. State of M.P., AIR 1990 SC 10. The relevant observation of the Apex Court is as below-

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle".

9. In view of the above decision, and the

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discussion made in the preceding paragraphs the applicant cannot be granted any relief. The U.A. is accordingly dismissed. Costs easy.

*Anand Kumar Bhatt*

(Anand Kumar Bhatt)  
Administrative Member

rkv.

*D.C. Verma*

(D.C. Verma)  
Vice Chairman (Judicial)

पृष्ठांक सं ओ/न्या..... जबलपुर, दि.....  
प्रतिनिधि आवेदित:-

(1) राज्य विधान सभा एवं विधायक विधान, जबलपुर  
(2) राज्य विधान सभा एवं विधायक विधान, जबलपुर  
(3) राज्य विधान सभा एवं विधायक विधान, जबलपुर  
(4) राज्य विधान सभा एवं विधायक विधान, जबलपुर

सुनिश्चित आवेदन कामनाओं के लिए

*M. N. Bawali Adik*

*M. S. B. Dhamodhikar*

Adu.

*M. N. Bawali*  
16/9/03

*Finalized.*

11-5-03