

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

18

ORDER SHEET

ORDERS OF THE TRIBUNAL

22.02.2012

OA No. 497/2009

Mr. P.N. Jatti, Proxy counsel for
Mr. Rajendra Vaish, Counsel for applicant.
Mr. D.C. Sharma, Counsel for respondents.

On the request of the proxy counsel appearing on
behalf of the applicant, list it on 28.03.2012.

Anil Kumar

(Anil Kumar)
Member (A)

K. S. Rathore

(Justice K.S. Rathore)
Member (J)

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28/03/2012 [OA No. 497/2009]

Mr. Rajendra Vaish, Counsel for applicant.
Mr. D. C. Sharma, Counsel for respondent Nos. 1 & 2.
None present for respondent Nos. 3 & 4.

Heard.

O.A. is disposed of by a separate
order on the separate sheets for the
reasons recorded therein.

Anil Kumar

[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 28th day of March, 2012

ORIGINAL APPLICATION No. 497/2009

CORAM.:

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

N.K. Janjani son of Shri T.R. Janjani, aged 44 years, resident of 5-Da-17, Rajasthan Housing Board, Shastri Nagar, Jaipur. Working as Assistant Store Keeper (Tech.) at Office of GSI, Western Region, Jaipur.

... Applicant

(By Advocate: Mr. Rajendra Vaish)

Versus

1. Union of India through Secretary Mines, Shastri Bhawan, New Delhi.
2. Deputy Director General, Geological Survey of India, Western Region, Jhalana Doongri, Jaipur.
3. Shri Manohar Lal, Assistant, Asstt.Store Keeper (T).
4. Shri Kalyan Mal Meena, Asstt. Store Keeper (Tech.)
Both working at O/o DDG GSI, Western Region, Jaipur through Dy. Director General, Geological Survey of India, Western Region, Jhalana Doongri, Jaipur.

... Respondents

(By Advocates: Mr. D.C. Sharma – Respondent nos. 1 & 2
None for respondent nos. 3 & 4.)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

- "(i) That the impugned orders Annexure A/1 to A/4 may kindly be declared null and void and be declared as illegal and further may be quashed and set aside.
- (ii) That by an appropriate order or direction the respondents may be directed to promote the private respondents only from their date of actual promotion and not retrospectively and accordingly treat the private respondents junior to the applicant even on the promoted post of Assistant Store Keeper. The respondents may be directed to further provide seniority to the applicant in the cadre of Assistant Store Keeper qua their juniors, same as

Anil Kumar

was maintained in the feeder cadre as per Annexure A/5.

- (iii) By an appropriate order and direction, the respondents may be directed to step up the pay of the applicant same as given to the junior private respondent no. 3 & 4 in accordance with the promotion order and pay if applicant be made at par with Shri B.K. Saini.
- (iv) If any seniority list of promotion order etc. is released during the pendency of the OA which effect the seniority or promotional rights of the applicant qua the private respondents, the same may kindly be taken note may kindly be quashed and set aside.
- (v) That any other beneficial order or directions which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicant.
- (vi) Cost be quantified in favour of the applicant.

2. Heard the learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that private respondent nos. 3 & 4 have been given promotion retrospectively w.e.f. 06.12.2000 vide order dated 27.03.2003 (Annexure A/3 & A/4). That there was no vacancy available at the relevant time. He further argued that as per seniority list dated 31.12.1998 (Annexure A/5), the applicant is at sr. no. 1 and private respondents nos. 3 & 4 are at sr. no. 4 & 5 respectively. Therefore, the applicant is senior to both the private respondents. The applicant was promoted to the post of Assistant Store Keeper (T) vide order dated 17.08.2001. Thus junior private respondents are drawing higher pay and shall enjoy seniority in the present post qua the applicant while the post of Assistant Store Keeper (T) is 100% promotional post by seniority and therefore, the impugned order dated 27.03.2003 (Annexure A/3 & A/4) granting promotion to private respondents with retrospective effect is against the settled law.

The representation of the applicant has also been rejected by

Anil Kumar

the official respondents vide their letter dated 10.03.2005 (Annexure A/1). He further argued that the applicant has no objection if the private respondents are promoted from the date of their order i.e. 27.03.2003 or alternatively the applicant may be entitled for stepping up of his pay equal to his junior private respondents. He also argued that the applicant also be declared senior in the post of Assistant Store Keeper (T) qua the junior namely S/Shri Manohar Lal and Kalyan Mal Meena.

3. The learned counsel for official respondents raised the preliminary objection that this OA is time barred. He argued that the prayer of the applicant is to quash Annexure A/1 to A/4. Annexure A/1 is dated 10.03.2005, Annexure A/2 is dated 13.02.2004 and Annexures A/3 & A/4 are dated 27.03.2003. Therefore, the present OA is filed beyond the period of limitation as prescribed under Section 21 of the AT Act. He further argued that the two posts of Assistant Store Keeper reserved for SC & ST were lying vacant since 1998 and to fill up these two vacancies, the DPC was held on 05.12.2000. The DPC recommended the names of private respondent nos. 3 & 4, S/Shri Manohar Lal and Kalyan Mal Meena. The minutes of the DPC has been enclosed at Annexure R/4. He argued that the perusal of the minutes would reveal that one post for SC and one post of ST was vacant and private respondent nos. 3 & 4 were considered against these posts. He further argued that, their case was forwarded to the competent authority for necessary approval and on receiving the necessary approval, the order were issued to promote respondent nos. 3 & 4 with

Amil Kumar

retrospective date. Therefore, there is no violation of any rule and the action of the official respondents in this regard is perfectly legal and according to the rules. Therefore, the OA has no merit and it should be dismissed with costs.

4. With regard to the preliminary objection of the respondents that the present OA is bar by limitation, learned counsel for the applicant argued that the applicant had filed an OA No. 138/2005, which was decided by this Tribunal on 07.09.2009 (Annexure A). He argued that this Tribunal allowed the applicant to withdraw that OA with liberty reserved to him to file substantive OA for the same cause of action. Therefore, the question of limitation does not arise. On the other hand, learned counsel for the respondents argued that in the same order, the Tribunal had mentioned that it will be permissible for the respondents to raise all permissible objections in the OA to be filed by the applicant.

5. Having considered the rival submissions of the parties and after careful perusal of the documents on record on the point of limitation, we are of the considered view that the present OA is barred by limitation. The Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others** decided on 07.03.2011 [Petition for Special Leave to Appeal (Civil) 7956/2011] held that:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed

Anil Kumar

under section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

"21. Limitation.-

(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as it mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

The application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything, contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot

Anil Kumar

admit an application unless the same is made within the time specified in clause (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

6. A careful perusal of the order in OA No. 138/2005 dated 07.09.2009 (Annexure A) shows that the respondents were given permission to raise all permissible objection in the OA to be filed by the applicant and now the respondents have raised the objection of limitation. The applicant has not even filed an application for condonation of delay. The applicant had requested to quash Annexure A/1 to A/4 which are dated 10.03.2005, 13.02.2004, 27.03.2003 and 27.03.2003 respectively. Therefore, in our view there is a considerable delay on the part of the applicant and he has not even sought the condonation either. Therefore, in view of the judgment of the Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others**, we are of the view that the OA filed by the applicant is barred by limitation.

7. Consequently, the OA is dismissed on the ground of limitation alone with no order as to costs.

Anil Kumar

(Anil Kumar)
Member (A)

K. S. Rathore

(Justice K.S.Rathore)
Member (J)

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