

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 844/2013

New Delhi this the 12th day of October, 2015

Hon'ble Mr. A.K.Bhardwaj, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Harish Chandra Yati,
Inspector/Delhi Police,
S/o Late S.B.Yati,
R/o Saraswati Niwas, C-322 Sector Alpha-1,
Greater Noida, District:
Gautambudhnagar (UP) ... Applicant

(Applicant present in person)

VERSUS

1. Union of India, through
The Secretary, Ministry of Home Affairs,
North Block, New Delhi.
2. The Chief Secretary,
Government of N.C.T.,
Delhi Secretariat, Players Building,
I.P.Estate, New Delhi-110002
3. Commissioner of Police,
Police Headquarters,
I.P.Estate, MSO Building,
New Delhi-110002 ... Respondents

(By Advocate Mrs.Rashmi Chopra and Kiran Sharma for Ms.
Gitanjali Sharma)

ORDER

Hon'ble Mr. A.K.Bhardwaj, Member (J):

The applicant was enlisted in Delhi Police as direct recruit Sub-Inspector (Exe.) w.e.f. 7.07.1980 and was considered for admission his name to promotion list 'F' (Exe.), by regular DPC held on 12.08.1994. The DPC assessed him as unfit for promotion. Subsequently, the adverse remarks in his ACR for

the period from 1.4.1990 to 31.03.1991 was toned down and in view of the order passed by this Tribunal in OA No. 41/95, the applicant was considered for admission to the list by review DPC met on 22.09.1995. Even the review DPC also found him unfit for admission to the list. Being aggrieved on said decision of review DPC, he again approached this Tribunal by way of OA No.1912/1995. The OA was dismissed. Finally, he was found fit for admission of his name to list 'F' (Inspector (Exe.) w.e.f. 09.11.2001 and was given consequential promotion w.e.f. 13.11.2001. Thereafter, he made a representation dated 14.11.2011 seeking his promotion w.e.f. 02.07.1997. According to the applicant when 38 of his juniors were given promotion w.e.f. 02.07.1997, he is not considered for such promotion.

2. Mrs. Rashmi Chopra, learned counsel for respondents explained that 38 persons junior to applicant were considered for their admission to list 'F' (Inspector (Exe.) by the DPC met on 12.08.1994 and were subsequently regularized w.e.f. 02.07.1997 vide order dated 28.02.1998. According to her when the applicant was eligible for being considered for regular promotion to the post of Inspector (Exe) and was so considered, he cannot confuse his claim with those who were admitted in list 'F' (Exe.) on the basis of the recommendation of the same DPC, which had assessed him unfit for admission to the list. In sum and substance the plea put forth by learned counsel for respondents was that there was no separate meeting of DPC for

promotion w.e.f. 2.07.1997. She further contended that the issues regarding promotion of the applicant to the post of Inspector (Exe.) have already been determined by this Tribunal in OAs No.41/1995 and 1912/1995. The further plea put forth by her is that the OA filed in the year 2013 seeking promotion w.e.f. 2.07.1997 is hopelessly time barred. The written synopsis submitted by her read thus:-

- “1. The relief of ante dating of promotion w.e.f. 02.07.1997 is misconceived and untenable as it is not barred by limitation but also the principles of res-judicata.
2. 38 SI Executives who were already in the Promotion List F (Executive) w.e.f. 12.08.1994 on adhoc promotion were regularized w.e.f. 02.07.1997 by order dated 28.02.1998.
3. DPC held on 12.08.1994 assessed the Applicant as ‘unfit’ due to adverse ACR for the period of 01.04.1990 to 31.03.1991 and indifferent service record.
4. Review DPC held on 22.09.1995 pursuant to the directions of the Ld.Tribunal in OA no.41/1995 once again assessed the Applicant as unfit.
5. Challenge to the non-promotion on 22.9.1995 vide OA No.1912/1995 dismissed by the Ld.Tribunal and the same was upheld by the Hon’ble Supreme Court.
6. No DPC was held on 02.07.1997 and no fresh cause of action accrues in favour of the applicant to re-determine the issue finally settled between the parties as the date of 02.07.1997 is relevant only for the purposes of regularization of adhoc promotions granted in 1994 to 38 SI.
7. Applicant declared unfit both in 1994 as well as 1995, non-promotion upheld by the Hon’ble Supreme Court.

II. Res-Judicata:-

1. Entitlement to Promotion with respect to 1994 stands already decided by the ld. Tribunal (OA No.41/1995 & OA No.1912/1995) as upheld by the Hon’ble Supreme Court (Orders as available with the Respondents (Attachment-1 colly).

2. Present O.A is a misuse of the process of law as the Applicant re-agitates the promotion of the year 1994 which already stands settled between the parties.

III. Limitation:

1. Order dated 26.02.1998 cannot be challenged in the year 2013 i.e after 15 years.
2. Applicant was found 'Fit' for promotion to List 'F' (Executive w.e.f. 09.11.2001 and was promoted w.e.f. 13.11.2001 and was aware about his promotion and related benefits and thus cannot feign ignorance to the order dated 26.02.1998.
3. Belated Representation on 14.11.2011 after a gap of cannot revive an old claim:-
 - (a) UOI Vs. SS Kothiyal (1996 (8)SCC 682)
 - (b) Jai Dev Gupta Vs. State of H.P (1997)(11) SCC 133).
4. Promotion is not a continuous cause of action:-
 - (a) UOI Vs. Tarsem Singh (2008 (8) SCC 648)
 - (b) K.R.Mudgal Vs. R.P.Singh (1984 (4) SCC 531).
5. Rejection of belation representation on the ground of limitation does not create a new cause of action.

It is submitted as above.”

3. We heard learned counsel for parties and perused the record. Once the DPC which considered the applicant for his admission to list 'F' (Exe.) as well as the review DPC found the applicant unfit for admission to the list way back on 22.09.1995 and the promotion of 38 Inspectors made w.e.f. 2.07.1997 is based on the recommendation of said DPC alone and the applicant had approached this Tribunal to workout his claim for admission to list 'F' by way of OA No. 41/1995 and OA

no.1912/1995, the present Original Application would be barred by Principle of constructive Res-judicata. Besides, the OA filed after more than 1 ½ decades to seek promotion w.e.f. 2.07.1997 is also hopelessly time barred.

4. In **D.C.S. Negi v. Union of India & others** (Civil Appeal No.7956 of 2011) decided on 7.3.2011, Hon'ble Supreme Court ruled thus:-

“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 under Section 19 of the Act in complete disregard of the mandate of Section 21.

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).”

5. In view of the aforementioned, the Original Application is rejected as not maintainable being barred by limitation and constructive res judicata. No costs.

(Dr.Birendra Kumar Sinha)
Member (A)

(A.K.Bhardwaj)
Member (J)

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