Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1718/2013

New Delhi, this the 21st day of September, 2015

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

Ajmeera Bhadraiah,
MES/189641,
Executive Engineer,
Now Working as
Joint Director (Contracts)
HQ Chief Engineer (AF) Zone
C/o 39 Wing, AF
Pin.936839, C/o 56 APO. ...Applicant

(By Advocate: Mr. N.M. Varghese)

VERSUS

1. Director General (Pers)
   Engineer-in-Chiefs Branch
   Integrated HQ of MOD (Army)
   Kashmir House,
   New Delhi-110011.

2. Chief Engineer
   HQ Northern Command
   With C/o 56 APO.

3. The Chief Engineer (AF) Zone
   C/o 39 Wing, Air Force,
   Pin. 936839,
   C/O 56 APO.

4. The Secretary
   Ministry of Defence
   Govt. of India,
   South Block,
   New Delhi-110011. ...Respondents

(By Advocate: Mr. Subhash Gosain)

O R D E R (ORAL)

By Mr. A.K. Bhardwaj, Member (J):

The prayer made in the OA is for issuance of direction to the respondents to remove anomalies in promotion of the applicant as Surveyor of Works. The correct controversy is not reflected from the prayer clause. We could find out the controversy from the representation dated 04.04.2013 made by the applicant to the Directorate General (Pers)/E1 (DPC) [Annexure A-7].

2. The grievance of the applicant is that when in the year 1995 the DPC met on 04.12.1995 recommended his juniors for promotion, he was ignored. The representation reads thus:-

> *"(a) I am a B Tech Graduate, passed out in Apr 1988 from REC Warangal (NIT Warangal), Direct Recruit ASW through UPSC (1988 Batch) and joined the Military Engineer Services on 01.10.1990. I have also undergone Young Officers (MES-Civilian) Basic Works Course, conducted by CME, Pune from 08 Jul 1991 to 31 Aug 1991.*
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> *(b) My juniors were promoted to SW (EE (QS&C) in Jan 1996 itself through the DPC held on 04.12.1995 and my name was not considered in the said DPC. I could become SW only through the DPC held on 30 May 2001 and that too after passing the Direct Final Exam of Institution of Surveyors in Sep 2000.*
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> *(c) As of now, 14 (Fourteen) of my juniors have been promoted to SSW (SE (QS&C)) including MES/300337 Shri Mahesh Kumar, promoted through R-DPC held on 05.10.1995, as per order dated 15.12.2010 of the Hon'ble High Court of Delhi in WP (C) No.6365 of 2003, though he has passed Direct Final Exam only in 2001 and his name is appearing at Srl. No.40 of the AISL of SE (QS&C), circulated*

vide your HQ letter No.B/42030/AISL/SE (QS&C)/E1 (DPC) dated 25 Feb 2013.

(d) In addition, the names of 06 (six) of my juniors also appearing at Srl No.1 to 6 in the AISL of EE (QS&C), circulated vide your HQ letter No. B/42030/AISL/SE (QS&C)/E1 (DPC) dated 25 Feb 2013. Out of which MES/509000 Shri Madan Lal appearing at Srl No 1 has never passed the Direct Final Exam of Institution of Surveyors. Similar is the case of MES/300347 Shri Dil Bahar appearing at Srl No.5. These could be seen from the entries under Col.8 of the said list. But, they are seniors to me now. Thus, a total of 20 (14+6) have become seniors to me. Sir, this type of anomalies should never be encouraged.

(e) The copies of my both B Tech and Direct Final Exam pass certificates and the AISL of EE (QS&C) and SE (QS&C) are enclosed herewith for your ready reference.

2. In the light of above, I once again respectfully request your honour to look into the matter and take appropriate actions to remove all the anomalies once for all and allow me to keep my morale and confidence at a higher level than I have today and to start with, my case would be the best example for the organization to take up the matter with the Ministry(ies) concerned and get the anomalies removed.

3. Hope, I will be allowed to keep my morale and confidence at high till I get my promotion from SW to SSW (SE(QS&C) and my seniority restored."

3. The present OA was filed on 16.05.2013 i.e. after 18 years of the cause of action. In the case of **Union of India & others** v. **A. Durairaj (dead) by LRs,** JT 2011 (3) SC 254, the Hon'ble Supreme Court has categorically ruled that the Tribunal could not have even issued direction for disposal of representation when the Government servants approached it belatedly. The relevant excerpt of the judgment reads thus:

"13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This Court had occasion to examine such situations in Union of India v.M.K.Sarkar 2010 (2) SCC 58 and held as follows:

> *The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing Appellants to consider his representation has given rise to unnecessary litigation and avoidable complications.* ***When a belated representation in regard to a 'stale' or 'dead' issue/ dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date for such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or***

> ***delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction.*** *Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. It is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect".*

4. The Hon'ble Supreme Court in **D.C.S. Negi** v. **Union of India & others** (Civil Appeal No.7956 of 2011) decided on 7.3.2011, condemned entertaining of the Original Applications by the Tribunal in disregard of the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985. In the said order, following observations were made:

> *"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. .....*
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> *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. Again in the case of ***State of Karnataka & others v. S.M. Kotrayya & others***, (1996) 6 SCC 267, Hon’ble Supreme Court ruled that the judicial pronouncement made in a matter does not give rise to fresh cause of action and the date of knowledge of a previous Order of Tribunal on the basis of which a claim can be founded cannot be an explanation acceptable to condone the delay. Paragraphs 8 and 9 of the said judgment read thus:-

“8. The decision of the Constitution Bench in S.S. Rathore's case (supra) has no application to the facts in this case. Therein, this Court was concerned with the question whether the total period of six months covered under Sub-section (3) had to be excluded in filing the petition in the suit, when it was transferred to the Tribunal under the Administrative Tribunal Order. In that behalf, the Constitution Bench held that a suit under a civil court's jurisdiction is governed by Article 58 of Limitation Act, 1963 and the claims for redressal of the grievances are governed by Article 21 of the Act. The question whether the Tribunal has power to condone the delay after the expiry of the period prescribed in Sub-sections (1) and (2) of Section 21, did not arise for consideration in that case.

9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay with occasioned for the period mentioned in Sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this 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-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under Sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

6. In view of the aforementioned, the OA is found time barred and is accordingly dismissed.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

/AhujA/