

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.
(Circuit Bench at Nainital)**

Original Application No. 331/1417/2013

Dated: This the 24th day of MAY 2019.

PRESENT:-

HON'BLE MR S N TERDAL, MEMBER (J)
HON'BLE MR. MOHD JAMSHED, MEMBER (A)

Ajai Bir Sahi, Son of Late Jagjeet Singh, Resident of House No. 10/IE
Bekari Line, Roorkee, District Haridwar, Uttarakhand. (M.E.S. No. 448512
Electrician H.S.)

. . . Applicant

By Adv: Shri N.P. Singh

V E R S U S

1. Union of India through Defence Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi.
2. Engineer-in-Chief, Army Headquarter, Rajaji Marg, Kashmir House, New Delhi.
3. Commander Works Engineers (Hills), Military Engineering Service, Mall Road, Dehradun Cantt.
4. The Chief Engineer, Bareilly Zone, Bareilly.
5. Commander Works Engineer, Dehradun Cantt., Dehradun.
6. Office of Garrison Engineer (MES) Roorkee Cantt., Haridwar.
7. Chief Engineer, Hills Command, (MES) Dehradun Cantt.
8. Suraj Pal, M.C.M. (505118-Sl. No. 2).
9. Lalit Prasad, H.S. (470065-Sl. No. 7).
10. Tej Singh, H.S. (448072 – Sl. No. 9)
Working As office of G.E. (M.E.S.) Roorke Cantt. Haridwar.

. . . Respondents

By Adv: Shri T.C. Agrawal

ORDER

By Hon'ble Mr. S N Terdal, Member (J)

Heard Shri N.P. Singh, learned counsel for the applicant and Shri T.C. Agrawal, learned counsel for the respondents.

2. This O.A. has been filed seeking the following relief(s): -

“(A) To issue a order or direction in the nature of certiorari quashing the impugned order dated 31.12.2012 (Annexure No. A-13 of the O.A.) passed by the Commander Work Engineers Hills, Military Engineering Service Dehradun/respondent No. 3).

(B) To issue an order or direction in the nature of mandamus directing the respondent no. 2 to suspend the order dated 31.12.2012 passed by the respondent No. 3.

(C) To issue an order or direction in the nature of mandamus commanding the respondents to grant the promotion of the applicant in pursuance of the policy dated 06.06.1986 since the date his immediate juniors has been promoted with all consequential benefits.

(D) To issue an order or direction which this Hon'ble Tribunal may deem fit and proper for the facts and circumstances.

(E) To award cost to the applicant.”

3. This is 3rd round of litigation. The relevant facts of the case are that the applicant was not recommended for promotion by the Board of Officers (BOOs) in 1998 due to non-eligibility and hence he could not be promoted. In the first round of litigation, the applicant along with seven others filed O.A. No. 1521/2011 seeking the same relief(s). This Tribunal by order dated 20.03.2012 dismissed the O.A. being barred by limitation. The relevant portion of the order is extracted below: -

“This is a fresh case. On behalf of applicants a request has been made by Shri D.K. Srivastava proxy of Shri M.K. Mishra Advocate for the applicants for adjournment of the case. We have perused the order sheet and from

perusal of the order sheet it is evident that the case has been listed six times for hearing, but on every date a request has been made for adjournment, or illness slips have been sent. It appears that the applicants are not interested in pursuing the matter and today also request has been made for adjournment of the case. No application has been moved for condonation of delay and moreover, on the face of it the O.A. is barred by limitation. Relief No. 2 has been claimed for deciding the representation dated 22.9.2007 and if it may be presumed that the cause of action arose in favour of the applicant by moving representation dated 22.9.2007, then also it is barred by limitation. Otherwise also the O.A. is highly belated. Nothing has been alleged that when the cause of action arose in favour of the applicant for filing the O.A. Prayer No. 1 is for directing the respondents to promote the applicants. No order has been passed against the applicants superseding them. The O.A. is unnecessarily pending, as the applicants are not interested in pursuing the matter. Hence we do not find any sufficient ground to keep the O.A. pending. The O.A. is dismissed as being barred by limitation. Nothing has been mentioned in the O.A. that when the cause of action arose to the applicants."

Subsequently the applicant filed another O.A. bearing No. 1001 of 2012 seeking same relief(s). In the above said O.A., on the date of admission, a submission was made on behalf of the applicant for disposal of the O.A. with a direction to dispose of the statutory appeal, filed on 28.05.2012, pending before the respondents. From perusal of the said order dated 31.07.2012, it is crystal clear that nothing was brought to the notice of this Tribunal regarding filing and dismissal of O.A. No. 1521/2011, referred to above. This Tribunal by the above referred order dated 31.07.2012 directed the respondents to dispose of the above referred statutory appeal within two months from the date of receipt of the certified copy of the order. The relevant portion of the order dated 31.07.2012 is extracted below: -

"At the outset, learned counsel for the applicant has very fairly submitted that against the impugned order dated 31.01.2011, the applicant has preferred a statutory appeal before the respondent No. 2 on 28.05.2012 which has not been decided till date. He has prayed for a direction to respondent No. 2 to decide the appeal of the applicant within a stipulated

period fixed by this Tribunal. In view of this prayer of the applicant's counsel, there is no need to order for issuance of notices.

2. Taking into consideration the above statement of the applicant's counsel, we deem it appropriate to order the respondent No. 2 to decide the pending appeal of the applicant dated 28.05.2012 (annexure A-8) within a period of two months from the date of receipt of a certified copy of this Order. The O.A. stands disposed of at the admission stage itself in terms of the aforesaid observation. No cost.

3. Needless to say that we have expressed any opinion on the merits of the case."

In compliance with the order dated 31.07.2012 the respondents passed a speaking order dated 31.12.2012 (impugned order) dealing with every aspects of the matter and holding that the D.P.C. recommendation of 1998 are just, fair and legal and as the applicant was not eligible, he cannot be promoted. The relevant portion of the above referred impugned order dated 31.12.2012 is extracted below: -

"8. On ever by promotions, seniority list is being scrutinized by this office and accordingly information regarding promotion/seniority asked to be given time to time for noting of individual. Hence your earlier contention on the seniority list was intimated and resolved. In this connection ref this office letter No. 1102/RTI/202/EIC (2) dated 31.05.2010 and 1102/RTI/217/EIC (2) dated 15.09.2010. During JCM IV level meeting, when the points were raised, a BOO was convened by CWE (Hills) vide letter No. 1136/552/EIC (2) dt 08 Apr 2009 and No. 1136/560/EIC (2) dt 23 Jun 2009, however no action on the board was taken when it was noticed/established that no wrong DPC in maintaining in seniority was done in earlier DPC conducted vide CWE (Hills). Convening order No. 1136/ 455/EIC (2) dt 27 Jul 1998. The subject matter was initiated through JCM level meeting and BOO was convened to find out the facts. No action was taken on the subject Board, when no disparity in the DPC was found.

9. The Board of Officers did not recommend your name for promotion held vide CWE (Hills) Dehradun No. 1136/455/EIC 2 dated 27 Jul 1998 due to non eligibility and hence could not promoted. However, it is pertinent to mention that whenever the seniority list was circulated, then you had never objected at any stage about seniority except during 2010.

Now at this belated stage after lapse of appx 13 years, challenging the DPC is not justifiable.

10. Notwithstanding above, it is also intimated that the individuals ie the Rampal and others under OA No. 1521 of 2011 were earlier also filed the case in CAT Allahabad and the same was dismissed vide order dated 20 Mar 2012.

11. In view of the above, you could not be considered in DPC based on the recommendation of screening committee held under convening order No. 1136/455/EIC2 dated 27 Jul 1998 and therefore, you could not be promoted.

12. This order is issued in compliance of Hon'ble CAT Order dated 19 Jul 2012 in O.A. No. 1001 of 2012 filed by you.

Authy: - Dte Gen (Pers)/E1C (Legal) E-in-C's Branch letter No. 90237/2659/E1C (Legal-B) dated 17 Oct 2012."

4. At the time of hearing, it is also brought to our notice by counsel for the respondents that two more applicants namely Suresh Kumar and Kalyan Singh who were applicants No. 4 and 8 respectively in above referred O.A. No. 1521/2011 filed OAs individually. The said Suresh Kumar filed O.A. No. 972/2013 and the said Kalyan Singh filed O.A. No. 694/2013. After perusal of orders, passed in the above referred OAs, it is crystal clear that they had filed their respective OAs seeking the same relief. The Bench of this Tribunal by order dated 31.05.2016 dismissed both the OAs by similar order holding that the OAs are barred by limitation. The relevant portion of identical orders passed in both the case is extracted below: -

"9. In view of the above settled principle of law, the applicant while aggrieved with the promotion of his juniors in the year 1984 should have approached this Tribunal at the earliest and should not have waited for a long time to make his case stale and dead. Undisputedly, the prayer of

applicant relates back to the year 1984 and pertaining to the policy dated 06.06.1986.

10. Accordingly, in our considered opinion, as per law laid down by the Hon'ble Apex Court, it will not be justified to give any direction to the respondents to change the entire scenario on a belated representation or claim of the applicant. Accordingly, the O.A. lacks merits and is dismissed. No order as to cost."

5. In view of the above facts and circumstances, it is imperative to consider whether this case is hit by delay and laches. Counsel for the applicant vehemently and strenuously contended that though the applicant was arrayed as applicant No. 7 in O.A. No. 1521 of 2011 but however before the order dated 20.03.2012 in that O.A. was passed, the application for joining together filed under Rule 4 (5) of CAT Procedure Rules, 1987 was neither considered nor allowed, as such, the order passed in that O.A. on 20.03.2012 is not binding on the applicant. He further submitted that the applicant was not a party in the above referred O.A. No. 972/2013 and O.A. No. 694/2013, as such, the order passed in those OAs on 31.05.2016 is not binding on the applicant. The counsel for the applicant in support of his contention relied upon the Judgment of Hon'ble Supreme Court in the case of "Union of India and another v. Kartick Chandra Mondal and another" passed in Civil Appeal No. 2090 of 2007 on 15.01.2010. From perusal of the above referred Judgment, it is clear that the law laid down by the Hon'ble Supreme Court is not applicable to the case of applicant. Counsel for the applicant further brought our attention to the seniority list dated 22.11.2010 to state that though the applicant was appointed on 06.12.1982 but the respondents No. 8, 9 and 10, who were appointed subsequent to him, were shown senior to him, but however from perusal of relief(s) claimed by the applicant, it

is clear that he has not challenged the said seniority list dated 22.11.2010

6. Counsel for the respondents also very vehemently and strenuously submitted that this O.A. is hit by resjudicata, in that applicant had suffered an order dated 20.03.2012 passed in O.A. No. 1521/2011, relevant portion of which is extracted above but that he has not challenged the said order before the High Court on the ground of it being non binding on him for reason of not allowing the application moved under Rule 4 (5) of CAT Procedure Rules, 1987, as such, the order dated 20.03.2012 has attained finality and binding on the applicant. Counsel for the respondents further submitted that the applicant secured the order dated 31.07.2012 in O.A. No. 1001 of 2012 without disclosing the fact of the order passed in his earlier O.A. No. 1521 of 2011 and, as such, he had approached this Tribunal in O.A. No. 1001 of 2012 suppressing the said material facts and secured favourable order. Counsel for the respondents further submitted that the facts and issues involved in O.A. No. 694/2013 and O.A. No. 972/2013 are identical and this Tribunal had already dismissed these OAs by passing detailed orders and holding that the OAs are barred by limitation and this Tribunal is required to follow the orders passed in these OAs.

7. In view of the above facts and circumstances narrated above, we are of the view that this O.A. is hit by delay, laches and resjudicata. Accordingly, the O.A. is dismissed. No cost.

(Mohd Jamshed)
Member (A)

(S N Terdal)
Member (J)

/M.M/