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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA NO.2645/2003
MA NO. 2297/2003**

New Delhi, this the 24th day of July, 2006

**HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)**

1. Shri R.K. Bansal
2. Shri Dilbagh Singh
3. Shri Shadilal
4. Shri Ram Nath

(All working as Technical Officer (A),
I.I.P. Dehradun).

.... Applicants.

(By Advocate Mrs. Prashanthi Prasad)

Versus

1. The Secretary,
Ministry of Science and Technology,
1, Rafi Marg, New Delhi.
2. The Director General,
C.S.I. R.,
Rafi Marg, New Delhi.
3. The Director,
I.I.P, Dehradun (Uttranchal).
4. Mr. Tulsiram,
I.I.P., Dehradun, Uttranchal.
5. Mr. P.S. Lal,
I.I.P. Dehradun, Uttranchal. Respondents.

(By Advocate Ms. Nidhi Bisaria proxy for Shri V.K. Rao)

(Signature)

O R D E R (ORAL)HON'BLE MRS. MEERA CHHIBBER, M(J)

By this OA, all the four applicants have sought direction to the respondents to consider and grant the applicants promotion to the post of Technician Grade VIII w.e.f. 21.11.1980 and to grant further promotions under the Time Bound Scheme under bye law 71 (b) of the CSIR bye laws, with all consequential benefits, as has been done in the case of Tulsi Ram, P.S. Lal and C.S. Rawat.

2. Grievance of applicants in this case is that they came to know in 1996 that Shri Tulsi Ram, who was much junior to them, had been granted promotion w.e.f. 21.11.1980 after holding DPC, which was contrary to the provisions of NRAS Scheme, which necessitated holding of a post for 7 years prior to being considered for assessment. He was further given promotion to the post of STA under bye law 71 (b) of the bye laws of Respondent No.1.

3. It is submitted by the applicants that after implementation of MANAS Scheme in 1980, benefit of promotion under bye law 71 (b) of the bye laws could not have been granted yet in case of Tulsi Ram, he was allowed to exercise his option in the year 1992 after having accepted the promotion as Grade-VIII w.e.f. 21.11.1980. The same benefit was not given to the applicants, therefore, being aggrieved they gave a detailed representation whereupon the Director referred the matter to the Committee vide order dated 18.6.1997 to sort out the anomalies. Thereafter, no final orders were passed even though applicants kept giving representations. Not having found any final



decision, applicants were forced to file the present O.A., in September, 2003.

4. Applicants' whole grievance is that when Tulsi Ram and P.S. Lal could be given the benefit of 71 (b) bye law after 1980 when new recruitment rules and assessment Scheme was introduced, there is no justification why the same benefit should not be given to the applicants as well. Applicants have also filed an application for condonation of delay wherein they have stated that the recommendations of the Committee were submitted in September, 1997 but respondents failed to implement the said recommendations in spite of several representations given by the applicants and their own letter dated 18.2.1999 wherein it was clearly stated that the matter was under active consideration. Therefore, they were awaiting the final outcome of the said recommendations. In this view of the matter, applicants have prayed that delay may be condoned.

5. Respondents, on the other hand, have opposed this O.A. They have taken preliminary objection to the maintainability of the OA on the ground that it is barred by limitation and no sufficient grounds have been given by the applicants for condoning the delay.

6. On merits, they have submitted that the applicants are seeking implementation of the rules with respect to the Scheme, which is not applicable to the applicants as by law 71 (b) is applicable only to those who were covered under the Scheme and opted for same in the year 1981. In any case, if this O.A. is allowed at this belated stage, it will not only disturb the whole promotions but will also open pandora box of such cases, therefore, it calls for no interference. They have further explained that prior to 1981, promotions were



being done under the Scheme by law 71 (b)/DPC. However, w.e.f. 1.2.1981, NRAS Scheme for promotion was implemented and w.e.f. 1.4.1988 Merit and Normal Assessment Scheme (MANAS) for promotion was also implemented. Even MANAS Scheme for promotion was revised and implemented in the organization w.e.f. 1.4.1992. They have also explained that while implementing the new Scheme of NRAS in 1981, options were invited as to whether they want to continue under the Scheme as per bye law 71 (b) of the CSIR bye laws or they want to opt for NRAS. Those employees who specifically opted for bye law 71 (b) remained under the same Scheme but those who did not give any option like the applicants were taken to be governed by NRAS Scheme. Accordingly, applicants can claim promotion only under the NRAS Scheme as they did not opt to continue under the bye law 71 (b). They are, therefore, not entitled to claim promotion under the previously existing bye law 71 (b) Scheme. Moreover, they have also explained by way of a chart how all the applicants have already taken further promotions under the NRAS and MANAS Scheme as well.

7. As far as Shri Tulsi Ram is concerned, they have explained that the said post was reserved for SC candidate and in any case general candidates could not have been considered for the said post. Shri Tulsi Ram was SC candidate. Moreover, at the relevant time, Shri Tulsi Ram was under suspension. Therefore, initially he was also given the first promotion in Grade-VIII. Then, it came to notice that Shri Tulsi Ram was not given any chance to exercise his option. Therefore, he was allowed to give his option in the year 1992. He gave his option for getting promotions under bye law 71 (b) in the



year 1992. Accordingly, he got his further promotion as per bye law 71 (b). Therefore, applicants cannot compare their cases with Shri Tulsi Ram. As far as Shri P.S. Lal is concerned, they have annexed order dated 17.11.2003 to show that since he was wrongly placed from Grade-II to Grade-III vide O.M. dated 22.6.1968, the said Office Memorandum dated 22.6.1968 was cancelled and withdrawn. In view of this, counsel for respondents submitted that applicants cannot have any grievance in any manner because the mistake in giving promotion to Shri P.S. Lal, who was junior to the applicants, has already been rectified.

8. We have heard both the counsel and perused the pleadings as well. Admittedly, applicants' whole case is based on the promotions given to Shri Tulsi Ram and to Shri P.S. Lal. Both the promotions were given as back as in 1995 or 1996. Therefore, applicants' cause of action, if any, arose in 1996. It is stated by the counsel for applicants that applicants had given the representations, on which the matter was referred to the Committee. Admittedly, the said Committee also gave its recommendations in the year 1997. Therefore, if those recommendations were not being followed by the Department, the applicants should have approached the Court at least either at that time or within 18 months from 18.2.1999 when they were informed that the matter is still under active consideration. They could not have waited indefinitely for the respondents and then approached this Court in the year 2003 at their own sweet will. After all, when a person seeks promotion from a back date, it does unsettle the settled position. It is in these circumstances that Hon'ble Supreme Court has consistently taken a view that belated claims in



respect of seniority or promotions should not be entertained by Courts in a light manner or in a routine manner. Counsel for the applicants could not give us any justifiable grounds as to why applicants kept waiting for all these years, especially when they felt that even the Committee had given recommendations in their favour. If the recommendations were not being followed, at least at that stage they ought to have approached the court. From the MA filed by applicants, we find the only ground taken is, that they were giving repeated representations to the department but law is well settled that repeated representations cannot extend the period of limitation. In this view of the matter, we are of the opinion that no justifiable grounds have been taken by the applicants to condone the delay. Accordingly, application for condonation of delay is rejected. The O.A as such is liable to be dismissed on this ground alone.

9. Even on merits, we find that applicants had already accepted 2 to 3 promotions given to them either under the NRAS or MANAS Scheme without any objection/protest. Therefore, they had, in fact, acquiesced to the situation by accepting the promotions given to them under the new Recruitment Rules and promotion Scheme. Having availed promotions under the new RRs and Schemes, it is not open to the applicants now to say they should be given the benefit of earlier bye law 71 (b) as nobody can be permitted to avail benefit of two different Schemes simultaneously. Even otherwise, applicants have not been able to show us that they had accepted the promotions given to them under the NRAS or MANAS Scheme under any protest. Therefore, we are satisfied that the relief, as claimed by applicants, at this stage cannot be given to them. Applicants have placed reliance



on Shri Tulsi ram as well as Shri P.S. Lal but order dated 17.11.2003 filed by respondents (as Annexure R-2) clearly shows that promotion given to Shri P.S. Lal has already been cancelled and withdrawn. Therefore, the mistake committed by the respondents stands already rectified. As far as Shri Tulsi Ram is concerned, he belonged to SC category and respondents have explained why he was allowed to exercise his option in the year 1992 because earlier in 1981 the said Tulsi Ram was under suspension and he was not given any chance to exercise his option. Since he gave a categorical option for consideration for his further promotions under the bye law 71 (b), he was considered for further promotions as per bye law 71 (b). However, the fact remains that the first promotion given to said Shri Tulsi Ram in 1980 was in Grade-VIII as per the new Scheme but that has also been explained by respondents that since he was a scheduled caste candidate and was promoted against the earmarked vacancy for SC, naturally applicants could not have been considered for said vacancy. Therefore, applicants cannot claim parity with Shri Tulsi Ram because admittedly all applicants are general candidates. Respondents have categorically stated that general candidates could not have been considered for the said post in any case because the post was reserved for SC candidates only. Therefore, simply because said Shri Tulsi Ram was promoted in 1980, applicants cannot claim that they should also be given promotion with effect from the same date.

10. Even otherwise, Articles 14 and 16 cannot be used in a negative form. Admittedly, employees were required to give their options between by law 71 (b) and NRAS Scheme, meaning thereby

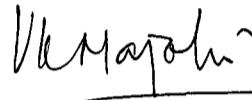


that further promotions could be sought only under one of the above said rules or Schemes. By no stretch of imagination, a person could be allowed to take promotion simultaneously under both the Schemes. In this case, since applicants have all gained further promotions under the new RRs and MANAS Scheme, the relief, as prayed by them, cannot be granted to the applicants.

11. In view of above discussion, O.A. is found to be devoid of any merits. The same is accordingly dismissed. No order as to costs.


24/7/06

(Mrs. Meera Chhibber)
Member (J)


V.K.Majotra

(V.K.Majotra)
Vice Chairman (A)

24.7.06

'SRD'