

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.65/2010 & CM No.5937/2010 (delay)**

Date of Decision: April 06, 2010

R.K.SHARMA

..... Appellant
Through: Ms. Isha Khanna, Advocate.

Versus

UOI & ORS.

..... Respondents
Through: Mr.Anuj Aggarwal and
Mr.Gaurav Khanna, Advocates for
Respondent No.1.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (3) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM No. 5937/2010 (for delay)

1. This is an application seeking condonation of delay in filing the appeal. For the reasons stated in the application, though not very convincing, in the interest of justice, it is allowed and delay in filing the

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appeal is hereby condoned.

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2. Appellant joined as Assistant Commandant in Group 'A', BSF with respondent No. 2 in 1984. He got his first promotion to the rank of Deputy Commandant in 1989. Immediately, thereafter he was sent on deputation with National Security Guards, where he remained from 6th November, 1989 to 17th October 1991. Thereafter he came back to his parent organization. Respondent No. 2 communicated adverse remarks recorded in the Part Confidential Report of the appellant for the year 1991 relating to the work performance of the appellant during the period, 1st April 1991 to 17th October, 1991 vide letter No. A/28017/92/C.C/Pers./B.S.F./5462-64 dated 19th October, 1992. Despite communication of the said adverse remarks to the appellant, he was promoted to the rank of Deputy Commandant w.e.f. 4th November, 1982 after considering ACR for the period relating to 1991-1992. Appellant did not make any representation against the adverse remarks. He made a representation on 21st December, 1992 against the impugned adverse remarks but, the same was rejected vide order dated 19th August, 1993. In 1997, appellant was ignored for promotion to the post of Second-in-Commandant and he was informed by the respondent vide letter No.31/29/97-Pers/BSF dated 27th April, 1997 that though he was considered for promotion by the DPC held on 19th March,

1997 but was not found fit for promotion due to inadequate record of service and certain adverse remarks in his PCR for the year 1991-1992 and ACRs of 1992-1993, 1993-1994. Thereafter appellant served a legal notice under Section 80 CPC upon the Department and filed the suit.

3. Trial Court as well as the First Appellate Court were of the view that suit was barred by period of limitation and therefore, was not maintainable. The suit was accordingly dismissed. Hence, this second appeal.

4. It is an admitted case of the appellant that he had filed a suit seeking declaration and consequential relief of mandatory and permanent injunction against the respondent seeking declaration that the adverse remarks in impugned PCR for the period ending 17th October, 1991 were illegal, unlawful and void ab initio and directions be issued to respondent to expunge the adverse remarks contained in the said PCR and not to take into consideration the impugned adverse remarks contained therein. This suit was filed on 27th April, 1998. Thus, it is clear that suit was filed after more than six years of the adverse entry made in the PCR for the period 1st April, 1991 to 17th October, 1991.

5. Period of limitation for seeking relief of declaration is three years from the date of cause of action. Representation of the appellant was

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rejected on 19th August, 1993. Even if the period of limitation is construed to start running against the appellant, from the date of rejection of his representation, suit should have been filed by him within three years beginning from 19th August, 1993 i.e. to 19th August, 1996. However, it was filed in the year 1998. Alleged communication by the Department in 1997 did not extend the period of limitation as it did not give any fresh cause of action to the appellant to file a suit for declaration.

6. While dealing with the question of limitation, Trial Court has observed:-

“ The submission made on behalf of pltff that he was denied promotion to the rank of Second-In-command on 1.5.97 and cause of action to file the present suit arose from the said date, is totally misconceived and untenable in the eyes of law. The reason that pltff is challenging only impugned adverse remarks in PCR for the period 1.4.91 to 17.10.91 against which admittedly he made representation on 21.12.92 which was rejected on 19.8.03. Neither there is any mention regarding deprivation of pltff in promotion to the rank of Second-In-Command in the plaint nor there is any relief claimed by pltff to that effect. It cannot be said that the cause of action to challenge the impugned adverse remarks for the PCR of 1991 arose to the pltff in 1997. In case plaintiff felt aggrieved from the impugned adverse remarks then he was required to approach the Court of Law within the stipulated period prescribed by law. The cause of action to file the same arose from the date of rejection

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of his representation by the Competent Authority i.e. w.e.f.19.8.93. In this way, the present suit filed on 27.4.98 is bitterly barred by limitation. The other submission made on behalf of plaintiff that the remarks of accepting authority with regard to impugned PCR of 1991 were not conveyed by R-2 and therefore, the plttff is still within his right to challenge the same after conveying the said remarks of Accepting Officer, is also without any merit. The plaintiff made representation to Competent Authority against impugned adverse remarks in PCR of 1991 wherein the plaintiff has not raised any such point that he was not conveyed the remarks of accepting officer due to which he was not in a position to make proper representation. Moreover in case said remarks were not conveyed to the plaintiff then the plaintiff was required to approach appropriate forum within reasonable time for the issuance of directions to convey said remarks of accepting officer failing which plttff cannot be allowed to agitate this point at this juncture. Moreover, it is nowhere the case of plttff in the plaint itself that the remarks of accepting officer were not convey to him. The said submission made on behalf of plaintiff is merely an after thought plea which has been raised in order to save limitation. Hence, the same is hereby rejected. Thus, the Court does not find any merit in the submissions made on behalf of plaintiff. The Court find force in the argument raised on behalf of defts that the cause of action to file the present suit arose to the plttff on 19.8.03 when his representation against adverse remarks was rejected by the Competent Authority. Admittedly, the present suit is beyond the prescribed period of limitation of three years from the said date. Hence the same is barred by limitation. It is held accordingly. Accordingly Issue no. 1 is decided against the

plaintiff.”

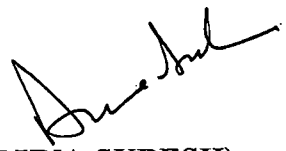
7. The First Appellate Court, while upholding findings of the Trial Court in its impugned order, has held:-

“ I have considered the oral arguments advanced before me, the written synopsis filed by both the parties, the trial court record and the various documents placed on record. **Firstly** it is admitted by both the parties that the PCR under challenge is for the period 1.4.199 to 17.10.1991. **Secondly** it is not denied by the appellant that he had made a representation against the said remarks on 21.12.1991 which had been rejected by the competent authority on 19.8.1983 and the suit was filed on 28.4.1998. **Thirdly** in the entire pleadings the appellant had not mentioned that he had been deprived to the rank of Second in Command nor any relief has been pleaded or sought in this regard. **Lastly** it is evident from the pleadings that in paragraph 21 the appellant has made a vague averment that the cause of action for filing the suit arose on each occasion when after learning of the existence of the respective impugned adverse remarks he had lodged protest against the same and on each occasion when for the reasons best known to the respondents they refused to accept the legal and correct demands of the appellant. That being so, the cause of action started to run on the appellant being conveyed about the PCR for the period 1.4.1991 to 17.10.1991 against which the appellant had given a detailed representation on 21.12.1992 and thereafter again on 19.8.1983 when the appellant was informed about the rejection of his representation. The subsequent legal notice does not have the effect of extending the limitation.”

8. Learned counsel for the appellant has argued that remarks of the Accepting Officer were not conveyed to appellant and therefore, when he came to know of it, he filed a suit. Dismissing this plea of the appellant, it was observed by the courts below that this argument has been raised by the appellant as an afterthought as it was neither pleaded in the plaint nor any document was filed to indicate that he was not communicated about rejection of his representation.

9. It is stated at the Bar by counsel for the appellant that a writ petition has already been filed challenging the ACRs of 1992-1993 and 1993-1994, which is pending adjudication. Appellant was admittedly denied promotion not only on the basis of PCR for the period starting 1st April, 1991 to 17th October, 1991 but also because of adverse remarks appearing in his ACRs for the years 1992-1993 and 1993-1994.

10. Under these circumstances and in view of my discussion as above, no substantial question of law arises in this appeal which needs adjudication by this Court. Hence, appeal is dismissed accordingly.


(ARUNA SURESH)
JUDGE

APRIL 06, 2010
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