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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 13.03.2024.

+ W.P.(C) 13282/2019

SH. KULWANT SINGH

..... Petitioner

Through: Mr. M.K.Bhardwaj, Ms. Priyanka M. Bhardwaj, Mr. Arun Prakash, Advs. alongwith petitioner in person.

versus

EMPLOYEES' STATE INSURANCE CORPORATION AND ORS.

..... Respondent

Through: Mr. Vaibhav Manu Srivastava, Ms. Divya Verma, Advs. for R-1.
Mr. Jivesh Kumar Tiwari, Ms. Samiksha, Advs. for R-2 & 3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)

1. The present writ petition under Article 226 of the Constitution of India seeks to assail the order dated 27.08.2019 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. 2535/2019. Vide the impugned order, the learned Tribunal has rejected the O.A. filed by the petitioner wherein he had sought promotion as an Insurance Inspector, against the vacancy for the year 2006.
2. We may, at the outset, note the brief factual matrix as emerging from the record.
3. On 04.09.1980, the petitioner joined the respondent no.1 as an LDC



and was on 14.06.1988 promoted as an UDC. Based on his performance, he was further promoted as an Assistant on 25.01.1994, whereafter, he was selected for promotion as an Insurance Inspector on 11.02.2005 and was sought to be posted to West Bengal. The petitioner, however, refused this offer of promotion and posting, and was, consequently, promoted to the post of Insurance Inspector only in 2008 w.e.f 15.05.2008. This promotion in 2008 he duly accepted and thereafter superannuated on 31.05.2016.

4. Almost 2 years after his superannuation, the petitioner submitted a representation to the respondent in January 2018 seeking correction in the seniority list of Insurance Inspectors on the premise that he was entitled to promotion as an Insurance Inspector with reference to the vacancy year 2006. Upon his representation being rejected, the petitioner made further representations which also came to be rejected and it is in July 2019 that he preferred an O.A. before the learned Tribunal seeking ante dating of his promotion to the post of Insurance Inspector against the vacancy year 2006. Vide its impugned order, the learned Tribunal has rejected the O.A. primarily on the ground of the 12 years delay in approaching the Tribunal. Being aggrieved, the petitioner has approached the Court by way of the present petition.
5. In support of the petition, Mr. M.K.Bhardwaj, learned counsel for the petitioner, as also the petitioner who appears in person, submits that the impugned order is wholly perverse and is liable to be set aside as learned Tribunal failed to appreciate that the last representation made by the petitioner for ante dating of his promotion was rejected only on 02.01.2019 and therefore, the OA filed in July 2019 could not be said



to be barred by limitation. Furthermore, the learned Tribunal has erroneously recorded in para 4 of its order that the petitioner had refused to join the place of posting pursuant to the promotion order dated 02.04.2007. He submits that the petitioner has never been served with any promotion order prior to 15.05.2008 and so there was no question of his refusing the promotion order issued in 2007.

6. On the other hand, learned counsel for the respondent supports the impugned order and submits that the petitioner having accepted the promotion order dated 15.05.2008, without any demur, cannot now be permitted to urge that he was wrongly ignored for promotion in 2006 or 2007. He, therefore, contends that the learned Tribunal was justified in rejecting the OA, which was grossly barred by delay and laches and prays that the writ petition be dismissed.
7. In order to appreciate the rival submissions of the learned counsel for the parties, we may begin by noting hereinbelow the relevant extracts of the impugned order, as contained in paragraph 4 to 6 thereof.

“4. The applicant was considered and promoted to the post on 02.04.2007 and was posted to Maharashtra. This time again, the applicant refused to join the place to which he was posted. For the second time, the order of transfer on promotion was withdrawn on 12.07.2007. Thereafter, the applicant was promoted, through order dated 15.05.2008.

5. A perusal of the events that are mentioned in the preceding paragraph disclose that the respondents did promote the applicant, as and when he became eligible to be promoted, but the orders of promotions had been withdrawn, on account of disinclination on the part of the applicant. Assuming that there was illegality in withdrawing the promotion, the applicant was supposed to move the



forum at the relevant point of time. It is more than 12 years after the so called denial of promotion, that he filed a representation. The rejection of the representation filed at that stage cannot give rise to the cause of action. It is fairly well settled that if the representation is made long after the cause of action has arisen, the order passed therein would not bring the O.A. within limitation.

6. We do not find any merit in the O.A. and, accordingly, it is dismissed. There shall be no order as to costs. ”

8. From a bare perusal of the aforesaid extracts of the impugned judgement, we find that the learned Tribunal has rejected the OA after holding that even if the respondent had wrongly deprived the petitioner of his promotion to the post of Insurance Inspector in 2006 and 2007, the petitioner ought to have assailed the said action at that stage itself. The learned Tribunal was, therefore, of the view that merely because the petitioner moved a representation in 2018, it would not be a ground to condone the 12 years delay in approaching the Court and has, consequently, dismissed the OA as being barred by limitation.
9. Before us, learned counsel for the petitioner has reiterated the submissions made before the learned Tribunal and has urged that the petitioner approached the Tribunal shortly after circulation of the seniority list as also rejection of his representation. We are, however, unimpressed with this plea as we find that even if it were to be accepted that the petitioner was wrongly deprived of his promotion in 2006/2007, the fact remains that he was promoted as an Insurance Inspector on 15.05.2008, which promotion he accepted without any



reservation. The petitioner thereafter continued to serve the respondent/corporation for further eight years, without raising any grievance regarding the purported delay in his promotion as an Insurance Inspector. It is further evident that the petitioner chose to file the first representation only in January 2018, i.e. almost 2 years after he had superannuated and more than 12 years after the cause of action, if any, had arisen in his favour.

10. In the light of this factual position, we are of the considered view that the learned Tribunal has adopted the correct approach in rejecting such a belated challenge to the claim for ante dating of promotion, which promotion was granted to him in 2008, as against his claim for grant of promotion in the year 2006/2007. We, therefore, find no infirmity with the impugned order.

11. The writ petition being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

MARCH 13, 2024/al