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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2385/2002

MA No. 2003/2002

New Delhi, this the 27th day of June, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairamn
Hon'ble Shri Govindan S.Tampi, Member(A)

1. Suraj Bir Singh
S/o Shri Ilam Singh,
A-233, Moti Bagh I, New Delhi
 2. Uma Kant Lowe
S/o Shri B.N. Lowe,
C-3/71, Keshavpuram, Delhi-35
 3. Gurmeet Singh Bedi
S/o Shri M.S. Bedi,
1018, Sector XII, R.K.Puram
New Delhi-22
 4. Devinder Kumar
S/o late Shri Kidar Nath
Flat No.124, Pocket B
Phase IV, Ashok Vihar
Delhi-52
 5. G.R.Taneja
S/o late Shri S.D.Taneja,
J-697, Kali Bari
Mandir Marg, New Delhi-1
 6. Mrs. Usha Bansal
103, SFS, DDA Qrs. Vasant Enclave
New Delhi-57
 7. Mrs. S.D.Grover
11/15, Nehru Nagar, New Delhi-14
 8. Surjit Lal Sikka
S/o late Shri Sikka,
81/320, Sector I
Gole Market, New Delhi-1
 9. S.K.Khuller
S/o Shri M.R. Khuller,
Raj Kutir, Near Gita Bhavan
New Cly., Gurgaon
 10. Inder Sain
S/o late Shri Pishori Lal
4/85, Subhash Nagar
New Delhi-18
 11. Mrs. Sudha Rani Beri
W/o Shri S.K.Beri
206, Sector I, Sadiq Nagar
New Delhi-49
 12. Mrs. Neelam Sachdeva
W/o Shri Naresh Sachdeva,
SD/394, SFS Flats
Pitampura, New Delhi-34
 13. Mrs. Madhu Khuller
W/o Shri Mukesh Khuller,
SD-114, SFS Flats
Pitampura, New Delhi-34
 14. Mrs. Pawan Gupta
W/o Shri R.V.Gupta,
E-16, Amar Colony
Lajpat Nagar, New Delhi-24
- .. Applicants

(Ms. Raman Oberoi, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Secretary
Department of Personnel & Training
North Block, New Delhi
3. Smt. Naresh Chopra
4. Gurdial Singh
5. K.S.Pillai
6. Vijay Prakash (R-3 to R-4 to be
served through R-1) .. Respondents

(Shri R.P. Aggarwal, Advocate)

ORDER

Justice V.S. Aggarwal

MA No.2003/2002

MA No.2003/2002 for joining together in OA
No.2385/2002 is allowed.

OA No.2385/2002

Applicants by virtue of the present application seek quashing of the seniority list circulated by the respondent No.1 vide the Office Memorandum of 3.6.1993 and also the rejection letter dated 13.6.1994. As a result, they also pray that order of 20.5.1992 should be amended and a direction should be issued to count the seniority of the applicants with effect from 23.2.1982/1.3.1982.

2. Facts alleged are that the applicants were appointed after their initial appointments on ad hoc



basis as Stenographer Grade-D in the Central Secretariat Stenographer Service cadre of the Ministry of Home Affairs. They were regularly appointed with effect from 23.2.1982. They were appointed on trial for a period of two years from the date of their appointment as Stenographer Grade-D on regular basis. For all purposes, they were treated as regular employees. In terms of statutory rules regarding the approved service and long term service, the appointment on long term basis is said to be defined to be regular service. The applicants claim that they are entitled to the benefit of the said service from the year 1982 for preparation of seniority list and it is on these broad facts that the abovesaid reliefs are being claimed.

3. It has been pleaded that the application is within time because though the applicants concede that their representation had earlier been rejected on 13.6.1994 yet they submitted a second representation on 5.10.2000 and the same was also rejected. The period of limitation, according to the applicants, should be counted from the rejection of the second representation and in any case, the Supreme Court in the case of Rudra Kumar Sain & Ors. v. Union of India & Ors. in Civil Writ Petition No.490/1987 decided on 22.8.2000 categorically held that the benefit of the long term appointment should be given to the applicants and from that date, the application is within time.

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4. Needless to state that the application as such is being contested.

5. The major question that arose during the submissions was as to if the application is within time or not. As already pointed above, the applicants seek quashing of the seniority list circulated on 3.6.1993 and the letter rejecting their representation dated 13.6.1994 and consequently claim benefit of their continuous officiating service from 1982.

6. At the outset, the learned counsel for the applicants relied upon the decision of this Tribunal in the case of **S.B.Kumar v. Union of India and Others**, 1989 (1) (CAT) 97. One of the questions for consideration before this Tribunal was as to from which date the period of limitation would be deemed to be running. This Tribunal concluded that once the representation had been rejected, the limitation would start running from that date, but if the department is entertaining the subsequent representations, it would be inequitable and unfair to dismiss the application on the ground of limitation. The findings of this Tribunal are:-

"In regard to the second part of Shri Gupta's argument regarding limitation while it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is, in any case, open to the Department concerned to consider a matter at any stage and redress the grievance or grant the relief, even though earlier representations have been rejected, it would be

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inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it."

7. Ordinarily, if such a controversy arises, it might become a matter to be considered by a Larger Bench, but since the Supreme Court has already adjudicated on this controversy and the decisions of the Supreme Court are after the decision of this Tribunal, we have no hesitation, but to follow the dicta of the Supreme Court.

8. A Constitution Bench of the Supreme Court in the case of S.S.Rathore v State of Madhya Pradesh, AIR 1990 SC 10 had gone into this controversy and concluded that repeated unsuccessful representations do not extend the period of limitation. The Supreme Court held:-

"We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

This principle had been reiterated in the subsequent judgements of the Supreme Court. We take advantage in referring to two such precedents. In the case of Administrator of Union Territory of Daman and Diu and Others v. R.D.Valand, 1995 Supp (4) SCC 593. Shri R.D.Valand was reverted from the post of Section Officer (Junior Engineer), but again promoted to that post in the year 1979 from 1972. First representation was made in 1985 and further representation was also rejected. The

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question for consideration was from when the period of limitation would start running. The Supreme Court held that repeated representations will not extend the period of limitation and concluded in para 4 as under:-

"4. We are of the view that the Tribunal was not justified in interfering with the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.9.1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8.10.1986. Thereafter for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March 1990. In the facts and circumstances of this case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way."

Same was the view expressed in the case of Jai Dev Gupta v. State of Himachal Pradesh and Another, (1997) 11 SCC 13. Consequently this being the legal position and the representation being earlier rejected in 1994, it must follow that the application on that count merely because the second representation was also rejected would not come within the time.

9. Confronted with that position, the learned counsel has contended that it a continuous cause of action and, therefore, the period of limitation cannot be stated to have expired. Our attention was drawn to a decision of the Supreme Court in the case of M.R.Gupta v.



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Union of India and Others, 1995 SCC (L&S) 1273. In the case of M.R.Gupta (supra), an application was filed for fixation of pay. This Tribunal had rejected the application as barred by time. The Supreme Court held that the grievance is a continuous wrong though the arrears should be paid subject to the law of limitation. The principle in law is well-settled that every judgement is a precedent keeping in view the facts of a particular case. Herein the question was of payment of arrears of pay and fixation thereof. The Supreme Court held that it would be a continuous wrong, therefore, restricted the arrears subject to the law of limitation. In the facts of the present case, the cited decision will have little application because herein the question is of seniority affecting many others. It is thus not a question where arrears can be paid subject to the law of limitation. The decision in the case of M.R.Gupta (supra), therefore, must be held to be distinguishable.

10. Faced with that situation, the learned counsel stated that this involves fundamental rights and, therefore, there cannot be any limitation. She referred to a decision of this Tribunal in the case of **Sanyukta Arjuna v. Union of India and Ors.**, 2003(1) ATJ 558 wherein this Tribunal had indeed stated that if the fundamental rights are concerned, the law of limitation does not apply. The respondents' learned counsel stated that since this Tribunal is a creation of the statute, it does not have same powers as the High Courts under

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Articles 226 and 227 of the Constitution of India. Therefore, the said provisions cannot be made applicable herein.

11. We are not delving into this controversy raised because it is not relevant in the present case. If a particular right has become barred by time, necessarily it ceases to be a right enforceable in the Tribunal or the court concerned. Once it ceases to be a right then to state that it is still a fundamental right for the purpose of a decision before this Tribunal is not correct. Therefore, we are not delving into the controversy as to if the principle stated in the case of Sanyukta Arjuna (supra) is correct or not though we have strong reservations in this regard. In the absence of any right left which could be enforced, this principle cannot be pressed into service.

12. The last submission on this count so as to state that the application is within time was that in the case of Rudra Kumar Sain (supra), the Supreme Court has clearly stated that long term appointments and continuous officiation can be counted for the purpose of seniority. Indeed this the principle laid down in the case of Rudra Kumar Sain (supra). However, the decision in the case of Rudra Kumar Sain (supra) certainly will not upset the settled seniority. Once the seniority has been settled and become final subsequent decision of the Supreme

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Court, if any, will not affect the settled principles. In fact, the case of Rudra Kumar Sain (supra) is based on an earlier decision of the Supreme Court in the case of O.P. Singla & Anr. Etc. v. Union of India & Ors., [1985] 1 S.C.R. 351. At that time, the applicants could have challenged the said order, but they did not do so. Therefore, at this stage, it is too late in the day to raise the abovesaid argument which in any case would not upset as already pointed above, the settled seniority.

13. Keeping in view the aforesaid, it becomes unnecessary to express ourselves on the merits of the merit. The application must be held to be barred by time and accordingly it is dismissed. No costs.

(Govindan S. Tampi)
Member (A)

(V.S. Aggarwal)
Chairman.