

70

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH,**

**OA NO. 1088/1999  
MA NO. 2247/2005  
WITH  
OA NO. 151/2004  
MA NO. 2228/2005**

New Delhi, this the 30<sup>th</sup> day of July, 2007

**HON'BLE MR. JUSTICE V.K.BALI, CHAIRMAN  
HON'BLE SH. L.K.JOSHI, VICE CHAIRMAN (A)**

**OA NO.1088/1999**

1. Karan Singh S/o Sh. Sri Chand  
R/o 177/A-II, Ward No.II,  
Mehrauli,  
New Delhi-30.
2. Sh. Dharambir Kaushik S/o Sh. Manohar Lal,  
R/o 16-A, Sector-4,  
Pushp Vihar,  
New Delhi-17.

... Applicants

(By Advocate: Sh. S.K.Gupta)

Versus

1. Union of India through  
Chief Secretary,  
Govt. of NCT OF Delhi,  
5, Sham Nath Marg,  
Delhi-54.
2. Commissioner of Transport  
5/9 Underhill road,  
Govt. of NCT of Delhi.  
Delhi.
3. H.C. Jai Bhagwan  
Roll No.1127
4. HC Samunder Singh  
Roll No.1094.
5. H.C. Virender Kumar  
Roll No.1111
6. H.C. Arvind Kumar  
Roll No.1023

7. H.C Ram Dev Singh  
Roll No. 1025
8. H.C. Sushil Kumar  
Roll No. 1026
9. H.C Sheel Kumar Dahiya  
Roll No.1028

.... Respondents

(By Advocate: Sh. Ajesh Luthra for respondents No.1 & 2  
Sh. K.C.Mittal along with Sh. Harvir Singh and  
Sh. Pradeep Dahiya for private respondents)

**OA NO. 151/2004**

Davinder Kumar  
S/o Sh. Suraj Bhan  
Aged 30 years  
R/o Vill. & P.O. Chhawla,  
New Delhi.

... Applicants

(By Advocate: Sh. S.K.Gupta)

**Versus**

1. Union of India through  
Chief Secretary,  
Govt. of NCT OF Delhi,  
5, Sham Nath Marg,  
Delhi-54.
2. The Secretary (Transport)  
Govt. of NCT OF Delhi,  
5, Sham Nath Marg,  
Delhi-54.
3. Commissioner of Transport  
5, Sham Nath Marg,  
Delhi-54.
4. H.C. Jai Bhagwan  
Roll No.1127
5. HC Samunder Singh  
Roll No.1094.
6. H.C. Virender Kumar  
Roll No.1111
7. H.C. Arvind Kumar  
Roll No.1023

8. H.C Ram Dev Singh  
Roll No. 1025
9. H.C. Sushil Kumar  
Roll No. 1026
10. H.C Sheel Kumar Dahiya  
Roll No.1028

All Head Constables C/o Commissioner of Transport  
5, Sham Nath Marg, Delhi-54.

.... Respondents

(By Advocate: Sh. Ajesh Luthra for respondents No.1 to 3  
Sh. K.C.Mittal along with Sh. Harvir Singh for  
respondents No.4 to 6  
and 8 to 10.  
Sh. Pradeep Dahiya for respondents No.7)

### ORDER (ORAL)

#### Justice V.K.Bali, Chairman;

By this common order, we propose to dispose of two connected OAs bearing No.1088/99 titled Karan Singh & Ors. vs. Govt. of NCT of Delhi & Ors., and OA-151/2004 titled Davinder Kumar vs. Govt. of NCT of Delhi & Ors., as common question of facts are involved in both the applications. Learned counsel for the parties also suggest likewise.

2. The Government of NCT of Delhi started process of recruitment of Head Constables in Transport Department in 1994. Whereas the candidates sponsored by the employment exchange were to be recruited to the extent of 40%, rest of the candidates to compete were internal candidates. In OA No.1088/1999, whereas applicants 1 and 2 are internal candidates, the 3<sup>rd</sup> applicant was sponsored by the employment exchange. The entire process of selection, i.e., advertisement, written examination, physical test and interviews were all over by 11.10.1994. An OA bearing No.1547/1995 came to be filed challenging the selection made

pursuant to the advertisement aforesaid by Kulbir Singh and Sunil Kumar, which was disposed of by this Tribunal on 1.3.1999. The case of Kulbir Singh did not find favour with the Tribunal, but Sunil Kumar, the 2<sup>nd</sup> applicant in the OA aforesaid, was allowed the desired relief.

3. The official respondents had made selection of 14 candidates, whereas the Tribunal in OA-1547/95, on the basis of written marks obtained by the selected candidates, observed that amongst the finally selected candidates, only seven would be eligible for selection on the basis of merit as per the marks obtained in the written test, and the seven others who were included in the select list could not have been selected on the strength of the marks obtained in the written test. Despite the observations and findings as mentioned above, the Tribunal did not quash the selection of seven candidates, who according to it, could not have been selected. While dealing with the said aspect, the Tribunal observed as follows:-

“18. Though in this application, the entire selection process is challenged, the applicants have not impleaded all the candidates who have been selected and appointed, as parties to this application. It may be noted that in OA-1834/94, the Tribunal permitted the announcement of the results of the selection subject to the result of that application and in view of that order, appointments have been made only subject to the result of that application. This application has been filed much later and the appointments are not subject to the result of this OA. As such, without all the appointed candidates being impleaded, the entire selection cannot be quashed even if some irregularity is found in the selection process. As such, though on the material placed before us we find that 7 candidates could not have been selected on the basis of the marks obtained by them, as there were many who had scored higher marks, we cannot quash the appointment of all those

candidates except of those who have been impleaded as parties in this case."

4. Inasmuch as, out of the selected candidates only three were arrayed as party respondents, the Tribunal ordered and directed the respondents to cancel the selection and appointment of the youngest from amongst respondents, i.e., respondents 8, 9 an 11, and appointment of Sunil Kumar, the 2<sup>nd</sup> applicant in that OA. After the decision in the OA referred to above, OA No.1088/1999 was filed on 11.5.1999 whereas OA No.151/2004 was filed on 12.1.2004. We need not dwell into the reason as to why these OAs were disposed of on an earlier occasion and were then revived, as such facts have been mentioned in detail in the order dated 29.8.2005, which was passed on an application for reviving the OAs.

5. At the very outset, the learned counsel representing the respondents have seriously opposed the Applications being not only beyond the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act of 1985), but also suffering from delay and laches. Whereas, there is no argument pertaining to delay beyond filing of the Applications and their revival as ordered on 29.8.2005, the prayer is for dismissal of the Applications because of delay caused in filing the same. Whereas the counsel representing the respondents would seek dismissal of these Applications on the ground of limitation, delay and laches pleading that the cause of action accrued to the applicants when candidates were selected pursuant to their participation in the selection process, the counsel

representing the applicants would contend that limitation in the present case would start from 1.3.1999 when OA No.1547/1995 was decided. The core issue for determination would thus be as to whether the cause of action accrued to the applicants when the selection process was over and result thereof was declared, or when the Tribunal passed order in OA No.1547/1995, i.e., 1.3.1999.

6. There cannot be any dispute that going by the provisions contained in Section 21 of the Act of 1985, the Applications would be barred by time. As mentioned above, the counsel representing the applicants would contend that the cause of action accrued to the applicants when decision in OA 1547/1999 was recorded as that is the time when the applicants came to know that some of the candidates had been wrongly selected and appointed.

7. We have given our thoughtful consideration to the issue before us and are of the opinion that cause of action arises to a litigant from the date when he may suffer or be adversely affected in any of the service matters including his non-inclusion in the select list pursuant to recruitment in service. The cause of action in the present case would thus accrue to the applicants when selections were finalized in October, 1994 and, therefore, the Applications challenging the selection filed in 1999 or 2004 would not be within limitation prescribed under Section 21 of the Act of 1985. The counsel representing the applicants, however, in support of his contention that the cause of action may accrue from the date of judgment, relies upon a judgment of this Tribunal (Calcutta Bench) in OA No.683/1990 in the matter of **Byomkesh**

7  
26

**Ghosh v Union of India & Others** [1993 (2) ATJ 192], and another judgment of the Punjab and Haryana High Court in **Satbir Singh v State of Haryana** [2002 (2) SCT 354]. The Calcutta Bench of the Tribunal in **Byomkesh Ghosh** (supra) was dealing with a case pertaining to arrears of salary. The relief asked for by him was allowed by the Principal Bench of this Tribunal in a case earlier disposed of by it. The relevant part of the judgment reads as follows:

“In view of all these reasons, we would say that the applicant should be given the same benefits which were extended to the applicants in OA-1942/88 of the Principal Bench i.e. the arrears of salary as paid to those applicants should also be paid to the present applicant from 1.10.1975 within a period of four months.”

8. We are of the considered view that facts of **Byomkesh Ghosh** (supra) have no parity with the facts of the case in hand. In the matter of pay fixation and such other matters which may be applicable to all persons equally situate, totally different parameters would follow. It is trite law that if a relief common to many or all is allowed to one person, the Government cannot compel every equally situate person to knock at the door of the court. The judgment of the Punjab and Haryana High Court in **Satbir Singh** (supra) recognized the same principle as in **Byomkesh Ghosh** (supra). *Per contra*, counsel for the respondents relied upon a judgment of the Hon'ble Supreme Court in **State of Karnataka v S. M. Kotrayya & Others** [(1996) 6 SCC 268]. The facts of the said case reveal that respondents while working as teachers in the Department of Education, availed LTC in the year

1981-82, but later it was found that they had never utilized the benefit of LTC though had drawn the amount and used it. Consequently, recovery was made from them in the years 1984-86. Some persons similarly situate had challenged the recovery before the Tribunal and their Applications were allowed in 1989. On knowing the same, S. M. Kotrayya and others filed Applications in August, 1989 before the Tribunal with application to condone the delay. By the order impugned before the Apex Court, the Tribunal had condoned the delay. Dealing with the question of delay, the Apex court held, thus:

“Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay.”

9. We are of the view that the judgment of the Hon'ble Supreme Court in **S. M. Kotrayya** (supra) will be applicable to the facts of the present case. That apart, we have already observed above that cause of action accrues to a litigant when he may be adversely affected and not when the court may give a judgment in another case, even though the issue involved in the case already decided and the one filed later may be the same, except, of course, where it

may pertain to pay scales and such other benefits which may be applicable to all. If the contention of the counsel representing the applicants is accepted, it would result into an anomalous situation. There will be no finality to any selection process or order passed by the Government. To illustrate, if the present Applications are allowed now in 2007, would someone else who might have participated in the selection process be permitted to contend that he has come to know from this judgment that selection of some candidates was not proper and, therefore, such persons who have been selected should be removed and he should be appointed? In our view, the answer to this question can only be in negative. That apart, by now the persons who had been selected on the post of Head Constables have been in service for a period of about 13 years. Their removal at this stage would leave them at such crossroads that they will not be able to find solace anywhere. They may be overage and unable to seek any employment. It is not a case where even the Tribunal in OA No.1547/1995 might have returned a finding that the selected candidates had obtained selection and appointment on some extraneous considerations. It will be too iniquitous at this stage to remove them from service.

10. In view of the discussion made above, we dismiss these Applications being not only barred by limitation but also suffering from delay and laches. There will, however, be no order as to costs.



( L.K. JOSHI )  
Vice Chairman (A)



( V.K. BALI )  
Chairman

'sd'