

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1772/97

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New Delhi this the 11th day of August, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (ADMNV)

Shri Jamshed Alam Khan,
S/o Shri Akbar Khan,
R/o Type II-15,
President Estate,
Rashtrapati Bhavan,
New Delhi.

...Applicant

(By Advocate Shri S.S. Tiwari)

-Versus-

Union of India - through:

Secretary,
President's Secretariat,
Rashtrapati Bhavan,
New Delhi.

...Respondent

(By Advocates Shri K.C. Dewan and Shri V.S.R. Krishna)

O R D E R

By Justice V. Rajagopala Reddy:

The applicant prays to take into account the service rendered by him from 5.3.83 to 2.3.92 in the grade of LDC and to re-fix his seniority accordingly by quashing the impugned order, whereby his representation was rejected, reiterating that his seniority was correctly fixed with effect from the date of his regular appointment on 2.4.92.

2. The applicant was appointed as LDC on 21.7.92 in the President's Secretariat. He was allowed to cross the EB on 1.3.93. When the applicant made representation relating to his seniority, his request was rejected by order dated 26.8.93. As he was aggrieved by his position at serial No.11 in the seniority list of LDC, he again made a request on 10.3.95 for fixation of correct seniority. The



representation made on 11.12.95 was rejected by the impugned order dated 12.12.96.

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3. A preliminary objection was taken that the OA is not maintainable and is hit by Section 21 of the Administrative Tribunals Act, 1985.

4. The applicant was subsequently appointed as Telephone Attendant in officiating capacity w.e.f. 5.3.83. After a lapse of five years he made a representation in 1992 that as his services were being utilised for clerical work his seniority should be fixed in the cadre of LDC w.e.f. 5.3.83, the date on which he was appointed as Telephone Attendant. He was, however, appointed on a temporary capacity as LDC in the Secretariat Establishment of the President Secretariat w.e.f. 3.4.92. He made a representation on 21.6.93 for grant of seniority from 1983 but it was not acceded to.

5. As prima facie we were satisfied that the OA was not within the period of limitation, we have permitted the learned counsel to argue on the question of limitation. The applicant seeks seniority w.e.f. 1983 whereas his seniority was fixed, taking into consideration his appointment as LDC w.e.f. 2.4.92. The applicant made a representation on 21.6.93 for grant of seniority w.e.f. March, 1983 and the same was turned down. Thereafter he made repeated representations but they were not acceded to. Hence, the adverse order in this case was passed in 1992 and the representations made thereafter were also rejected. Under Section 21 of the Administrative Tribunals Act, 1985

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the OA has to be filed within one year from the date of rejection of the representation. But the OA is filed in 1997. Hence, the OA is hopelessly barred by limitation. (11)

6. The learned counsel relies upon A.N. Gambhir v. Secretary, Ministry of Water Resources, 1988 (8) ATC 249 where a Full Bench of the Tribunal following B. Kumar v. Union of India ATR (1988) 1 CAT 1, held that once a representation was entertained and considered on merits, as was done in that case, the order rejecting the representation gives a fresh starting point of limitation, as that was not a case where his representation was not entertained at all. In that view of the matter the Bench held that the application was not barred by limitation. In the present case, however, the representation made on 11.12.95 was not entertained and it was rejected by the impugned order dated 12.12.96, reiterating the decision taken earlier that his seniority was correctly fixed w.e.f. 3.4.92. Thus the case of the applicant was not considered on merits once again. Hence, the above Full Bench decision has no application.

7. The next decision cited in B.C. Subramanian and Others v. Chief General Manager, Telecommunications, Madras and Others, 1991 (16) ATC 28 has equally no application. In that case the applicants were claiming the benefit of the judgement of the Tribunal in similar matters. Hence it was held, relying upon the judgement of the Supreme Court that the benefit given to a person can also be extended to persons similarly situated. On that ground the OA was found to be within limitation. In the present case, the facts are different. In Chander Bhan v. Union of India & Others, 1991 (2) ATJ 597, though the question was raised that

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once the OA was admitted, the question of limitation would not be raised at the time of final hearing, the same was not decided by the Tribunal. But the Tribunal, proceeded to decide the OA on merits. In our view this objection has no force. No doubt, it is true that in the present case the OA was admitted on 3.4.98 "on the ground that the pleadings are complete in this case." No attempt was made to see whether the OA was within the period of limitation or not. In fact in the counter-affidavit a specific objection has been taken that the OA was barred by limitation in terms of Section 21 of the Administrative Tribunals Act, 1985. Hence, while admitting the OA the Bench ought to have considered whether the said plea of the respondents was tenable or not. In the absence of any such determination of the question of limitation can it be said that it is not open to the Tribunal at a later stage to say that the OA was maintainable on the ground of limitation. The opening words of Section 21 (1) are meaningful and they are "the Tribunal shall not admit an application (emphasis supplied). Thus, it is obligatory on the part of the Tribunal not to admit an application unless the OA was within the period of limitation stipulated in sub sections (1) (a) and (b). Hence, mere admission of the OA without complying with Section 21 could only be read as an order of admission, subject to limitation to be determined later. Even in a case where no plea of limitation was raised in the counter-affidavit, it is the duty of the Tribunal to see whether the OA was filed within the period of limitation. Without such determination the OA cannot be said to have been lawfully admitted in terms of Section 21 of the Administrative Tribunals Act, 1985.



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8. In the circumstances, we are of the view that this OA is hit by Section 21 of the Administrative Tribunals Act, 1985. The OA is accordingly dismissed on the ground of limitation. No costs.

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(Smt. Shanta Shastry)

Member (Admnv)

V. Rajagopala Reddy

(V. Rajagopala Reddy)

Vice-Chairman (J)

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