

8 CA 2188/97 ✓

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2187 /1997

Date of Decision: 20 - 7 - 1998

Shri PURGESH NANDINI & Cvs.
vs. VIJAY KUMAR RESTHA

.. APPLICANT

(By Advocate Shri S. K. Jain)

versus

Union of India & Ors. ..

RESPONDENTS

(By Advocate Shri Rajeev Bansal/R. P. Aggarwal)

CORAM:

THE HON'BLE SHRI T.N. BHAT, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

(S.P.Biswas)
Member(A)
20.7.1998

Cases referred:

1. CAG V. Mohan Malhotra 1992(1) SLJ 101
2. J.R. Raghupath V. State of AP 1988 4 SCC 364
3. Palary Ramakrishnaiah V. UOI 1989 2 SCC 541
4. T.N. Chakravorty & Ors. V. UOI & Ors. 1994(3) CAT SLJ 361
5. K.C. Sharma & Ors. V. UOI 1998(1) SLJ 54
6. Amrit Lal Berry V. Collector of Central Excise, 1975(4) SC 714
7. Smt. Prema Devi & Anr. V. Dini Adm. & Ors. 1989 SCC Sup. II 330
8. Inder Pal Yadav & Ors. V. UOI, 1985 (2) SC 648
9. S.S. Rathore V. State of MP 1989 4 SCC 582
10. Adm. of Uni. Vs. Territory of Daman & Diu 1996 SC (L&S) 205
11. State of Karnataka V. S.M. Kotrayya 1996 SCC (L&S) 1488
12. K.K. Hosla & Ors. V. State of Haryana 1990 ATC 12 754
13. R.S. Samanta V. UOI AIR 1993 SC 2276
14. P.K. Ramchandran V. State of Karnataka JT 1997(8) SC 189
15. Rly. Board & Ors. V. C.R. Rangadhamiah & Ors. CA No.4174-4182/95
16. Shoop Singh V. UOI & Ors. AIR 1992 SC 1414
17. Jagdish Lal & Ors. V. State of Haryana & Ors. JT 1997(5) SC 387
18. Hamsaveni & Ors. V. State of T.N. 1994(6) SCC 51
19. Malaprabha Coop. Sugar Factory Ltd. V. UOI & Anr. 1994 SCC 648

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2187/1997 and OA No. 2188/97

New Delhi, this 20th day of July, 1998

Hon ble Shri T.N. Bhat, Member (J)
Hon ble Shri S.P. Biswas, Member (A)

OA No. 2187/1997

1. Mrs. Durgesh Nandini
DD(E), Doordarshan, Mumbai
2. Shri S.N. Singh
DD(E), Doordarshan, Mumbai
3. Md. Khamaruddin
DD(E), Doordarshan, Mumbai
4. Shri Venkat Ramana Rao
SE, Doordarshan, Anantpur
5. Shri J.K. Chandira
SE, Doordarshan, Ahmedabad
6. Mrs. Neha Swami
SE, Doordarshan, Ahmedabad
7. Shri S.K. Sinha
SE, Doordarshan, Baroda
8. Shri J.M. Kharcho
SE, Doordarshan, Baroda
9. Shri G.S. Subramanian
SE, Doordarshan, Bangalore
10. Shri Deepak Joshi
SE, AIR, Ahmedabad
11. Shri Jayaprakash Babu
SE, AIR, BHUJ
12. Shri B. Soni
SE, HPT-Doordarshan, Cuttack ... Applicants

OA No. 2188/1997 ✓

1. Shri Vipul Kulshrasta
SE, DD Kendra, Aizwal ... Applicant

(By Shri B.S. Jain, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Information & Broadcasting
Shastri Bhavan, New Delhi
2. Director General
All India Radio
New Delhi ... Respondents

(By Advocates Shri Rajeev Bansal/R.P. Aggarwal)

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ORDER

Hon'ble Shri S.P. Biswas

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The issues raised, reliefs sought for and the questions of law involved in these two OAs are identical and hence they are being disposed of by a common order.

2. The background facts, necessary for disposal of these OAs, are as under:

OA No. 2187/1997

All the twelve applicants, directly recruited as "A" Grade officers in Junior Time Scale (JTS for short) carry different serial numbers from 532 to 820, as assigned in A-3 seniority list dated 15.7.91. All of them are aggrieved by the order dated 8.3.90 and 4.3.92 by which a total of 228 officers of the same grade, some of them being juniors to the applicants, have been promoted to Senior Time Scale (STS for short) ignoring their superior claims. All of them have a common cause of action in A-1 order dated 10.7.97 by which some of their juniors apparently have been promoted to STS making them juniors to their erstwhile juniors. They claim to have made representations against the injustice done to them but without any success.

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OA No.2188/1997

3. The applicant herein is at Sl.No.850 in the
 (11)
 aforementioned A-3 list dated 15.7.91. He is
 equally aggrieved by the order dated 4.3.92 issued
 by R-1 by which his juniors have been considered
 for promotion to STS. Applicant's claim is that
 this action of the respondents is in total
 violation of statutory rules and Articles 14 and 16
 of the Constitution. He has also challenged A-1
 order dated 10.7.91 and claims to have given A-9
 representation on 27.1.97 but the respondents ~~have~~
 decided to turn deaf ears to his grievances.

4. All the applicants in both the OAs are
 governed by Indian Broadcasting (Engineers) Service
 {(IB(E)S for short} Rules notified on 5.11.81 under
 provisions of Article 309 of the Constitution,
 relevant extracts of which have been reproduced in
 A-2. All the applicants are before us seeking the
 following relief:

"That the Hon'ble Tribunal be pleased to
 pass an order directing the respondents
 to consider the applicants for promotion
 to the post of Senior Time Scale and if
 found fit, they should be deemed to be
 promoted from date their juniors in the
 seniority list dated 15.7.91 with
 all consequential benefits including
 arrears of pay and allowances and 18%
 interest thereon."

5. As argued by Shri B.S. Jain, learned counsel
 for the applicants, the main plank of applicants
 attack and the basis for reliefs claimed originate
 from the statutory provisions as indicated in note

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No.3 to Schedule IV if IB(E)S Rules, 1981. The relevant portion that supports the applicants claim, is reproduced hereunder: (2)

"If an officer appointed to any post in the service is considered for the purpose of promotion to a higher post, all persons senior to him in the grade shall also be considered notwithstanding that they may not have rendered the requisite number of years of service".

6. The reasons for not considering the applicants for promotion, as indicated by the learned counsel for applicants, is that respondents have taken the plea of applicants not having completed the probationary period. This is based on DoPT's OM No.22011/7/86-Estt(D) dated 19.7.89 which provides that when juniors who have completed the eligibility period are considered for promotion their seniors should also be considered irrespective of the fact whether they have completed the requisite years or not provided they have completed the probationary period.

7. Drawing support from the decisions of the Apex court in the cases CAG Vs. Mohan Malhotra 1992(1) S&J 101, J.R. Raghupathy Vs. State of AP 1988, 4 SCC 364, Palary Ramakrishnaiah V. UOI 1989 2 SCC 541, learned counsel submitted that the aforesaid OM being an administrative order/instruction cannot supercede/amend the statutory rules. That apart, completion of probationary period is relevant only for the purpose of confirmation and not as a pre-condition for promotion,. As per the counsel,

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order of Bombay Bench of the Tribunal in the case of T.N. Chakravorty & Ors. Vs. UOI & Ors. 13

✓ 1994(3) CAT SLJ Vol.53 page 361 supports this view.

8. Yet another basis on which the relief has been pressed for is that the case of the applicants herein is similar to those applicants in OA 337/92 and OA 462/92 decided on 2.10.96 and 7.5.97 respectively, wherein similarly placed juniors were given desired reliefs. Applicants argued that in the light of the law laid down by the Hon'ble Supreme Court in the cases of K.C. Sharma & Ors. Vs. UOI, 1998(1) SLJ 54, Amrit Lal Berry Vs. Collector of Central Excise, 1975(4) SC 714, Smt. Prema Devi & Anr. vs. Delhi Admn.&Ors. 1989 SCC Suppl.II 330 and Inder Pal Yadav & Ors., vs. UOI, 1985(2) SC 648 their claims could not be denied as they are similarly placed employees like those in OAs 337/92 and 462/92. The apex court in Inder Pal Yadav has held as under:

"..... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated they are entitled to similar treatment, if not by any one else, at the hands of this court".

9. Similar view has been reiterated in the case of K.C. Sharma^(supra) wherein it has been held that "applications filed by similarly placed persons should not be rejected for bar of limitation". Counsel submits that the judicial pronouncements of

the Hon ble Supreme Court have been followed while allowing the OAs No. 337/92 and 462/92 by this Tribunal. (A)

10. Respondents have taken the plea of limitation. It has been argued that the applications are hopelessly barred by time and liable to be dismissed on this ground alone. The cause of action, if any, arose on 4.3.92 when 108 officers in JTS of IB(E)S were promoted to officiate in STS by A-4 order. None of the applicants made any representation nor agitated their grievances in time before the Tribunal/Court. It was necessary for the applicants to have approached the Tribunal by 4.3.93 or immediately thereafter whereas the applications have been filed only by the end of August, 1997. Learned counsel argued that it is a settled law that inordinate delays could not be entertained unless explained satisfactorily. Inordinate delay or lapse is ^{by} itself a good ground to decline the relief, irrespective of the merit of the application. Repeated and successive representations do not create fresh cause of action. Learned counsel cited the following cases in support of his contentions:

- 1) S.S. Rathore V. State of MP 1989 4 SCC 582
- 2) Admn. of Un. Vs. Territory of Daman & Diu 1996 SCC (L&S) 205
- 3) State of Karnataka V. S.M. Kotrayya 1996 SCC (L&S) 1488

11. Applications are also not maintainable because of non-joinder of necessary parties. If the relief is granted, it will affect the long settled

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seniority in the higher grade. A large number of reversions will also take place at the time of subsequent promotions. Respondents would also submit that promotions have been given only to some of the direct recruits who were earlier ignored by the DPC and that those promotion were pursuant to the orders of the Tribunal as aforementioned in para 8. Only those number of persons were promoted who were covered against the vacant posts which were available at that point of time. Respondents had considered the cases of the applicants and similarly placed employees but could not accede to their requests on the ground that the Tribunal's decisions/directions are applicable to only those who were parties in those petitions. 15

12. We have heard the rival contentions of learned counsel of both parties and perused the records.

Only two issues fall for determination in the facts and circumstances of these cases. They are: (i) whether statutory orders issued under Article 309 of the Constitution of India can be superseded/amended by administrative orders/instructions? and (ii) whether the judgements/orders in petitions filed earlier shall be made automatically applicable if the employees claiming reliefs later are similarly placed like those in petitions already decided, irrespective of other conditionalities?

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13. Learned counsel for the applicants submitted that there is no requirement in the statutory rules which would entitle only such junior JTS officers to be considered for promotion to STS who have completed the probationary period. In any case, the respondents have promoted Shri D.N. Sahoo, a JTS with S.No.443 of the same seniority list who is yet to complete probationary period. He brought to our attention the following extracts of DoPT's OM dated 19.7.89, which stipulates that:

"In order to ensure that seniors who might have joined later due to various reasons are not overlooked for promotion, necessary action for amendment of requirement rules may be taken urgently wherever this has not been done by now"

It was mentioned that no such amendment has been made by the respondents till date. The counsel had further contended that any instructions of administrative nature, such as the OM dated 19.7.89 of DoPT relied upon by the respondents cannot overrule statutory provisions. In support of this submission, reliance was placed upon the judgement of the Hon'ble Supreme Court in the case of K.K.Khosla & Ors. V. State of Haryana 1990 ATC 12 754. We find some force in the submission of the learned counsel for the applicants. It is not in dispute that the applicants in both the OAs are seniors to many of those who have been promoted by the impugned orders. As regards OA 2187/97, those at Sl.No.532, 564, 586, 600 and 602 have been clearly ignored when promotions have been offered by order dated 4.3.92 to those who stood at Sl.No.671, 675 and 863 of seniority list.

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Similarly, applicant in OA 2188/97 who is at Sl.No.850 of the seniority list has been clearly superseded by an officer who is at Sl.No.863 of the same seniority list. None of the contentions in this para has been controverted by the respondents. Admittedly, the answer to issue No.(i) will be in the negative. 17

14. Respondents also admit that representations of the applicants have been considered by them but could not be acceded to. The only point which could not be ascertained is whether those representations were before or after Annexure A-9 dated 22.1.97. Materials placed before us reveal that applicants in OA No.2187/97 did not make any formal representation whatsoever and the applicant in OA No.2188/97 had sent only one such appeal by A-9. There is no doubt from the facts and circumstances of the cases that the applicants herein are similarly placed like those in OAs 332/92 and 462/92, excepting the fact that the applicants herein did not agitate or rake up their grievances formally in time. We do not find any ground, much less convincing ones, as to why the applicants remained silent for about 5 years from March, 1992 to January, 1997. Delays are staring on the face of these two cases and hence applicability of the law of limitation cannot be ignored. The question of delay/limitation assumes some importance at this stage. This is because if the applicants had made repeated and successive representations, did not get any response between

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March, 1992 to May, 1997 and approached this Tribunal only after 10.7.1997, the law laid down by the Constitution Bench of the Apex Court in S.S.Rathore's case (supra) comes in the way of the applicants' case. On the contrary, if they had not made any representation at all, the law enunciated in the case of R.S. Samanta Vs. UOI AIR 1993 SC 2276 and P.K. Ramachandran V. State of Karnataka, JT 1997(8) SC 189 and even section 21(3) of the AT Act, 1985 will hit the applicants' claim. 18

15. We find that the reliance placed by the learned counsel for applicants on the judicial pronouncements in cases of Amrit Lal Berry and K.C. Sharma (supra) are misconceived. It is true that in the case of Amrit Lal Berry, their Lordships held that equality of opportunity in a manner relating to employments implies equal treatment to persons similarly situated or in the same category as the petitioners. But the apex court also mentioned that "it does not exclude justifiable discrimination". In other words, it is for the petitioners to disclose not only the rule said to have been infringed but also how the two sets of circumstances are identical in all respects. The respondents in the other two OAs did not dispute of having received representations in time. The same situation does not prevail here. The applicants herein did not make any representation whatsoever from 4.3.92 till 21.1.97.

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16. It will be equally wrong to place reliance on the case of K.C. Sharma (supra). That was the case where their Lordships, in a Constitution Bench, were examining issues pertaining to clubbing of running allowance for the purpose of calculation of average emoluments in determining pension for the "running staff" officials of the Railways who retired as Guards during 1980-1988. In that case, the Full Bench of the Tribunal had given certain reliefs to the petitioners in O.A.No. 395-403 of 1993 decided, on 16.12.1993. Similarly placed persons appealed for extension of the same reliefs by filing OA-774/94 which was denied by another Bench of this Tribunal. The Tribunal refused to condone the delay in the filing of the said application i.e. "774/94". The correctness of the decision of the Full Bench of the Tribunal was affirmed by the Apex Court in the case of Chairman, Railway Board & Ors. Vs. C.R. Rangadhamaiah & Ors., Civil Appeals Nos. 4174-4182 of 1995. It was held by the Apex Court in K.C. Sharma's case that the Tribunal should have also decided the issues on merits instead of on the basis of technicalities of limitation alone.

17. As per the law laid down by the Apex Court in Bhoop Singh Vs. U.O.I. & Ors., AIR 1992 SC 1414, it has been held that unexplained delay is by itself a good ground to refuse relief to the petitioner, irrespective of the merit of the claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to

reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled up promptly. A person cannot be permitted to challenge the termination of his/her service after sufficient period of time, without any cogent explanation for inordinate delays, merely because others similarly dismissed had been reinstated as a result of their earlier petitions having been allowed. We find that the same views have been reiterated by the Hon'ble Supreme Court in Jagdish Lal & Ors. Vs. State of Haryana & Ors., JT 1997(5) SC 387; U.O.I. Vs. R.C. Samanta (supra) and Hamsaveni & Ors. Vs. State of Tamil Nadu, 1994(6) SCC 51. It has been laid down in these cases that long inordinate delay extinguishes right as well as the remedy. The observations of Lord Camden that:-

"that the law does not lend its arms to those who have not been vigilant of their rights", has received the approval of highest Court in this Country."

Thus, in Sri Malaprabha Co-Operative Sugar Factory Ltd. Vs. U.O.I. and another, (1994) SCC 648, the Hon'ble Supreme Court has pointed out that no orders should be made without considering the impact of such orders on public administration. We are confronted with a similar situation here.

18. What is crucial in the matter of condonation of delays is the conduct of the petitioners, that is, they were not sleeping over their rights

(21)

particularly in respect of appointments, promotions and seniority. We have given our due consideration to the facts and circumstances of the case and we are not in a position to persuade outself to accept the reasons as why the applicants could not agitate their claims earlier. They have not come out with any application for condonation of delay or mentioned ~~extenuating~~ ^{extenuating} circumstances for which the issues could not be raised earlier. In respect of our views aforesaid, we find support in the judgement of the Hon'ble Supreme Court in the case of P.K.Ramachandran (supra). It has been held therein that the court has to record in writing that the explanation offered for the delay was reasonable and satisfactory. This is the pre-requisite for the condonation of delays. The mere fact that the applicants have filed the belated applications immediately after coming to know that in similar claims relief had been granted by the Tribunal in OAs (337/92 and 462/92) decided earlier, could not be the basis to justify condonation of delay (see State of Karnataka & Ors. v. S.M. Kotrayya & Ors. 1996 SCC (L&S) 1488).

19. In the background of the principles enunciated in the cases of Bhoop Singh, State of Karnataka/Kotrayya and Jagdish Lal (supra), the applicability of a judgement/order arising out of a petition decided earlier towards settling the claims in a petition filed later by employees allegedly placed in similar circumstances is not

automatic. Each case has to be decided on the basis of facts and circumstances of that very case only. 22

20. It is ~~not~~ in dispute that seniority position of those promoted earlier vis-a-vis the applicants herein have not reached any finality. At least, no such final seniority list, following the promotions in 1992, has been placed before us. At the same time, respondents do not deny of having acted against the statutory provisions elaborated in para 5 of this order. Nor have they carried out any amendment in the recruitment rules as stipulated in DoPT's OM dated 19.7.89 referred to in para 13 aforementioned.

21. In the background of detailed discussions aforesaid, we allow these two OAs partly with the following directions:

(i) For reasons in para 5, 13 and 20, Respondents are directed to convene review DPC for considering promotion of the applicants of both the OAs to the post of Senior Time Scale and in case found fit, they shall be entitled to have their seniority refixed from the dates their juniors were promoted:

(ii) For the reasons recorded in paras 15 to 19, applicants will not be entitled to consequential benefits in terms of arrears of pay etc.

(iii) There shall be no order as to costs.

(S.P. Biswas)
Member (A)

/gtv/

Attested
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co/c-III
20/7/98
(T.N. Bhat)
Member (J)