

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. No. 1131 of 1994

7th Sept: 1999.
Date of Decision

Mrs. Kavita Jain & Another (PETITIONER(S))
Shri Vivekanand ADVOCATE FOR THE
PETITIONER(S)

-versus-

Union of India & Ors RESPONDENT(S)

Shri V.K.Rao with Geeranjali ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR N. SAHU, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether the Judgement is to be circulated to the other Benches?

Judgement delivered by Hon'ble Vice-Chairman.



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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH.

Original Application No. 1131 of 1994.

Date of Order : This the 7th. day of September, 1999.

The Hon'ble Mr Justice D.N.Baruah, Vice-Chairman.

The Hon'ble Mr N.Sahu, Administrative Member.

1. Mrs Kavita Jain &

2. Mrs Latha Iddya

Both the applicants are working
as Technician, PME Section,
Central Road Research Institute,
Mathura Road, New Delhi.

... Applicants

By Advocate Shri Vivekanand.

- Versus -

1. Council of Scientific Industrial Research,
through Joint Secretary Administration,
Rafi Marg, New Delhi.

2. Central Road Research Institute,
through its Director, Mathura Road,
New Delhi. ... Respondents.

By Advocate Shri V.K.Rao with Geetanjali.

O R D E R

BARUAH J. (V.C)

In this O.A. the applicants have challenged the Annexure A-28 order dated 23.10.1991 and Annexure A-31 order dated 4.9.1992 and the letter dated 7.9.1992 as contained in para 2 of letter dated 15.10.1992 and Annexure A-41 and 42 orders dated 25.3.1994 of the Central Grievance Committee denying the faster track assessment promotion benefit to the applicants and seek directions to the respondents to give the benefit of faster track assessment promotion to the applicants from the due dates, i.e. the respective dates of appointments with all consequential benefits.

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2. For the purpose of disposal of this case brief facts may be narrated as follows :

In the month of December 1981 the applicants were selected for appointment as SLA Group-II Grade-III post under Recruitment and Assessment Scheme in Group II Grade. A scheme known as "New Recruitment and Assessment Scheme" (NRAS for short) was implemented with effect from 1.2.1981. This scheme provided benefit of faster track assessment for movements from one Group to another for the staff in position as on 1.2.1981 and those were recruited or acquired requisite qualification for entry level position for the next higher grade upto 31.12.1981. The procedure prescribed in the said scheme are as follows :

(i) Staff members without prescribed qualification.
(ii) staff members having prescribed minimum qualification and (iii) staff members having prescribed higher qualification such as M.Sc, B.E., B.Sc/3 years diploma in Engineering. According to the new scheme of assessment, staff members covered under categories (i) and (ii) above will normally be assessed for promotion upto the grade of Rs.425-700/- only. However, as an exception, such of those incumbents who were in service on 1.2.1981 and were in the grade of Rs.425-700/- would be considered for assessment for promotion on the same condition. Category (iii) staff members can aspire for assessment upto the level of Rs.700-1300/- in Group-III grades. Staff members in those grades who had qualifications prescribed for entry levels should be assessed immediately for promotion to the next higher grade in the same group of grades. They should have assessment chances, the first one, immediately, the second one two years thereafter, and the third, two years thereafter at the top

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of the grade. On such internal assessment promotion their pay when fixed would be equal to or higher than the entry level pay of the next group of grades. They should be deemed to have crossed over to the next Group or grades. If their pay on such promotion was less than the entry level pay for the next Group of grades, they would remain in the newly promoted grade till such time their pay reached the entry level pay of the next group of grades or the minimum stipulated period in the newly promoted grade for assessment to the next higher grade or when their basic pay reached the minimum of the next higher grade whichever was earlier. The guidelines issued under NRAS scheme were required to be followed strictly. However under para 7 of Section 0 of the said rules the DGSIR had been given the right to make exceptions to the rules provided if he was convinced that there were unusual or special situations warranting such exceptions.

3. Later on a high powered committee was established by the first respondent to review the functioning of the NRAS and other assessment and merit Schemes of the respondents. A new scheme known as "Merit and Normal Assessment Scheme" (MANAS for short) brought about in 1990 and this scheme had been effective from 1.4.1988. However some changes were also made in MANAS. Qualifications have been shown in Annexure A-4. It was further made clear that except for those who were still eligible for consideration under Faster Track Scheme under NRAS there was no movement by assessment from one Group to the other.

4. In order to give the benefit of Faster Track Scheme to those selected for promotion with higher qualifications before 31.12.1981 but joined service after the said date due to non completion of the formalities CSIR issued Annexure A-8

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circular. As per the said circular, the DGSIR with concurrence of F.A to CSIR approved scientific/technical staff possessing the qualifications prescribed for next higher group of grade who had been actually selected for appointment by Selection Committee upto 31.12.1981, might also be allowed the benefit for faster track promotion subject to the condition laid down in the NRAS issued from time to time. The applicants were called for interview on 23.12.1981. They appeared in the interview and were selected and directed for verification of character and antecedents by letter dated 28.12.1981. Till completion of those verification and antecedents the applicants had been given ad hoc appointment vide letter dated 28.1.1982 with intimation that the regular appointment letters would be issued on receipt of satisfactory medical fitness from Dr. Ram Manohar Lohia Hospital and character verification report from police. After receiving the reports the respondents issued regular appointment letters to the applicants. First applicant Ms Kavita Jain joined on 28.3.1982 and second applicant Mrs Latha Iddya joined on 28.4.1982. After the appointment the CSIR adopted the new scheme of recruitment and promotion known as NRAS and implementing the same retrospectively with effect from 1.2.1981 to those provided among others for faster track promotion to the incumbents with higher qualifications of next Groups. According to the applicants in view of the various circulars issued by the authorities and the applicants having higher qualifications they were entitled to faster track promotion benefit. However, they were denied the same.

5. Feeling aggrieved, the first applicant submitted Annexure A-18 representation dated 26.6.1985 requesting the respondents to consider her case for faster track promotion.

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Annexure A-19 reminder was also issued. The first respondent by Annexure A-20 letter dated 3.4.1986 informed the applicants that their cases would be considered for faster track promotion and they would be intimated as soon as a decision was taken. However, the respondents issued Annexure A-21 circular dated 24.11.1987 informing that the case of Group II technical staff eligible for assessment promotion upto 31.12.1986 were under consideration. The name of the applicants appeared in that circular. Further by Annexure A-18 letter dated 16.3.1988 the second respondent informed that the case of the applicants for faster track promotion was under examination. In spite of these nothing was done. The applicants again reminded the respondent No.2 through their reminders letter dated 12.10.1988. The applicants state that the respondents vide Annexure A-5 letter dated 6.11.1990 made further provisions for faster track promotion of the employees who were in service on 31.12.1981 but acquired qualifications thereafter. On the other hand respondents kept on assuring the applicants that their cases for faster track promotion was under consideration but did not give any reply. In 1991 the respondent No.2 by Annexure A-20 letter dated 23.10.1991 informed the applicants that their cases for faster track promotion had been examined and the respondents found it not possible to agree with the same. The applicants state that the said Annexure A-20 order dated 23.10.1991 was not a speaking order. The applicants again submitted representation to the first respondent by Annexure A-29 and A-30 letters dated 18.8.1992. Those representations had been sent through proper channel. The first respondent recommended the case of the applicants for favourable and positive decision with a specific remarks that the applicants

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possessed the requisite qualifications. But the same was declined by respondents by letter dated 4.9.1992, Annexure A-31. The first respondent by Annexure A-34 letter dated 7.9.1992 communicated to the second respondent that the faster track promotion was not possible to the applicants because it was not possible to equate M.Com. equivalent to M.Sc. for the employees recruited with commerce qualifications in Group-II and Group-III. Against the said decision and the reasons given, the applicants vide Annexure A-32 and A-33 representation dated 29.9.1992 made it clear to the respondent No.1 that their selection being prior to 31.12.1981, they having been appointed against technical post, as technical staff were entitled to benefit of faster track promotion. This review representation of the applicants were forwarded to the respondent No.1. In spite of strong recommendation, the respondent No.1 did not respond to the review representation as well as the recommendation of respondent No.2. As nothing was done they approached the final departmental authority called Central Grievance Committee constituted by the respondent No.1 to aid and advice the respondent No.1 with regard to the entire grievance of the employees. The Central Grievance Committee passed an order rejecting the prayer of the applicants. In this order also there was no reason. Feeling aggrieved the applicants have filed this application.

6. The respondents have entered appearance and filed counter disputing the claim of the applicants. In the counter the respondents have raised preliminary objections. According to the respondents the applicants are not covered by the order dated 19.5.1984. They were not equal to those persons who were granted faster track promotion as they possessed qualifications prescribed for the next grade and

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were selected by the Selection Committee prior to 31.12.1981. The contention of the respondents was that the applicants were not entitled to the benefit in view of the fact that they had been appointed subsequent to 31.12.1981. The respondents further state that as per rule, the faster track promotion was available to those persons who joined prior to 31.12.1981. Regarding review representation the respondents state that the applicants ought to have approached the Tribunal at that stage itself but they did not care to approach this Tribunal. The grounds mentioned in the O.A. according to the respondents do not deserve consideration as they are untenable and misconceived. The applicants failed to show any cause for getting their delay condoned. The circular was issued on 19.5.1984 in respect of faster track promotion and the applicants name were not included in view of the fact that they were not covered by the said circular. The respondents further state that the cause of action if any arose as far back in 1984-85 and the present application was filed in the year 1994. A rejoinder has been filed by the applicants challenging the contentions of the respondents. In the instant case, according to the applicants, as stated in the rejoinder final order was passed only on 25.3.1994 and all the other orders and decisions have been merged with that order.

7. We heard both sides. In the counter the respondents have taken the plea that the O.A. is barred by limitation. We feel it expedient to decide the preliminary objection as to whether the present O.A. is barred by limitation first.

8. The circular was issued as far back in 1984. Against the said circular the first representation dated 26.6.1985 i.e. about a year after was filed. Reminders had been sent on various dates, i.e. on 7.3.1986, 3.4.1986 and only on

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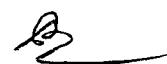
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16.3.1988 an information was given that the matter was under consideration. Again reminders had been issued in the year 1988. Another representation in February 1991 was sent and ultimately it was communicated that the representation was rejected in October 1991. Once again the representations were made in 1992 and in September the matter was closed. Another representation which was filed on 22.9.1992 followed by reminder in 1993 and ultimately in February 1992 the said representation was rejected.

9. On the preliminary objection the respondents have stated that the application was barred by limitation. We heard both sides. Mr Vivekanand, learned counsel appearing on behalf of the applicants submitted that the application was not barred by limitation in view of the fact that the matter was pending for consideration for long time. Mr V.K. Rao, learned counsel appearing on behalf of the respondents on the other hand strenuously argued before us that unnecessarily the applicants went on submitting representations. According to him after filing the first representation if it was not disposed of, it was the duty of the applicants to approach the next authority. But for several years they kept on sending representations and reminders and thereafter successive representations were filed. He submitted that successive representations would not extend the period of limitation. According to him, this is well settled. Ultimately the last representation was filed on 29.9.1992 and later a representation was filed to the Central Grievance Committee after 1½ year of it, which was rejected. Therefore, the O.A. was barred by limitation.

10. As a preliminary objection was raised regarding the point of limitation, we feel that this preliminary objection should be decided first.



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Preliminary objections :

We perused the records. On perusal we find that the first representation was filed as far back in June 1985 and thereafter the matter was kept pending till 1993 when the last representation was filed to the Central Grievance Committee. The learned counsel for the applicants tried to justify the delay by saying that applicants made several representations one after another. After filing of each representation applicants sent reminders and in this way the matter was pending before the authority, because of which the applicants had to approach the Tribunal only in 1994, even though the original cause of action arose as far back in 1985. During this period, the respondents informed the applicants that their cases were under consideration. In *Amrit Lal Berry vs. Collector of Central Excise, New Delhi & Ors.* reported in (1975) 4 SCC 714 the Supreme Court had the occasion to deal with the matter regarding late filing of petition. In para 24 of the said judgment the apex Court observed as follows :

" . . . It is evident that he had waited for a long considerable period before making his representation in 1965 even if we were to assume that he did not make such a representation then. Furthermore, the copy of the alleged representation of 1965 shows that it was directed only against the imposition of a test by examination before confirmation. We do not think that, merely by filing repeated or delayed representations, a petitioner can get over the obstacles which delay in approaching the Court creates because equitable right of others have arisen."

From the decision of the apex Court in *Amrit Lal Berry* (supra) quoted above it is evident that mere by filing of repeated or delayed representations would not give rise fresh period

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of limitation. In S.S.Rathore vs. State of Madhya Pradesh reported in AIR 1990 SC 10, a seven Judge Bench of the apex Court observed as follows :

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six month's period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. 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."

Again in para 22 it is further observed that "submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.

11. From the judgment of the apex Court quoted above it is clear that in order to get the benefit of limitation the appeal must be provided by the law, else repeated unsuccessful representation would not give such benefit. The said judgment overruled the earlier decision of the apex Court in Goel's case (AIR 1958 SC 1036). In Jagadish Narain Maltiar vs. State of Bihar and others the Supreme Court observed as follows :

"The memorials presented by him to the Government were in the nature of mercy petitions and he should have realised that in pursuing a remedy which was not duly appointed under the law he was putting in peril a right of high value and significance. By his conduct he disabled the High Court from exercising its extraordinary powers in his favour."

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Again in Gian Singh Mann vs. High Court of Punjab it was held that "successive representations can hardly justify the inordinate delay; relief must be refused on that ground." These two cases, however, related to the Writ petition filed before the High Court. In Ajay Shankar vs. Union of India, decided by the Chandigarh Bench of this Tribunal, reported in 1989(2) SLJ(CAT) 81 also noticed various decisions regarding the limitation and observed that successive representations would not enlarge the period of limitation nor can they justify condonation of delay. This view was expressed consistently by various Benches. In Dr(Kumari) K.Padmavally vs. Union of India & another, reported in 1988(7) ATC 557 the New Bombay Bench of the Tribunal observed as follows :

" . . . an application under Section 19 of the Act will be governed by the provisions under Section 21 of the Act regarding limitation. The application before us is neither a writ petition under Article 226 of the Constitution of India nor a suit filed in a civil court. The provisions of Section 21 of the Act are complete in themselves and these provisions shall have to be taken into consideration while deciding whether the application is within limitation or not"

Further in B.Kumar vs. Union of India & Ors, the Principal Bench however took slightly a different view. In the said case it was held thus :

"where a subsequent representation made by an aggrieved person has been entertained and considered on merits by the Government, that will afford a fresh cause of action to the aggrieved person, and serve as terminus-a quo for filing application under section 19 of the Act, even though his earlier representations have been rejected."

In the said decision the Tribula also observed among others as follows :

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"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, 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... ."

Again in A.N.Gambhir vs. Secretary, Ministry of Water Resources and another it was observed that :

"Once a representation is entertained and considered on merits, as was done in this case, the order rejecting the representation gives a fresh starting point of limitation. This is not a case where his representation was not entertained at all."

The same view was expressed by Hyderabad Bench in Har Binder Lall vs. Comptroller and Auditor General of India reported in 1988 (7) ATC 567. It was made clear in the said decision that the case of an aggrieved person whose subsequent representation has been entertained and rejected afresh on merits stands on a better footing than the case of person whose subsequent representation has not been entertained at all by the concerned authority.

12. In the present case several representation had been filed and those were rejected. Ultimately a representation was filed before the Central Grievance Committee by Annexure A-40 and this was disposed of by Annexure A-41. From the order it is abundantly clear that the representations

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were admitted and on consideration it was rejected. In the light of the various decisions of this Tribunal we feel that a fresh period of limitation commenced from the date of order i.e. 25.3.1994 and the present application was filed on 27.5.1994. Therefore, in our opinion the application is within time. The preliminary objection is decided against the respondents and in favour of the applicants.

13. We heard learned counsel for the parties on merit. We also perused the pleadings and Annexures. The claim of the applicants related back to 1984. Several representations had been filed by the applicants stating their grievances. The representations were rejected one after another. As there was delay in disposing the representations reminders had also been sent. Almost about a decade had passed. Ultimately the representations filed to the Central Grievance Committee was disposed of by Annexure A-41 order. From the records we find that the first respondent passed Annexure A-28 impugned order and the Central Grievance Committee also entertained the representation and dispose of the same by Annexure A-41 order. On perusal of the Annexure A-28 order we find that the representation was rejected by the first respondent by saying that "it was not possible to agree with the same." This order according to us is absolutely non speaking and cryptic. Similarly the Central Grievance Committee also passed Annexure A-41 order exactly in the same way. From the orders it do not appear to us that the first respondent and the Central Grievance Committee passed the order on proper application of mind. No reason have been assigned for rejections.

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Therefore it is necessary that the matter should be examined afresh. We feel that to decide the matter it is necessary to scrutinise the facts. All those facts are not available before us. We therefore sent back the matter to the respondents to examine the same either by the first respondent or by the Central Grievance Committee and dispose of the representations already filed by the applicants by a reasoned order. While disposing of the representations respondents should consider all points raised by the applicants. This must be done as early as possible, at any rate within a period of 3 months from the date of receipt of this order.

Application is accordingly disposed of. No order as to costs.

Narashimha Sahu
(N. SAHU) 7/9/99
ADMINISTRATIVE MEMBER

D.N. Baruah
(D.N. BARUAH)
VICE CHAIRMAN