

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O. A. NO. 2535/2000

New Delhi this the 18th day of July, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Shri Janardan Dubey S/o Late Sh.C.B.Dubey
R/O 90 (MS) Type-III Timarpur
Delhi-54. Applicant

(In person)

-versus-

1. Secretary,
Ministry of Defence
South Block
New Delhi.
2. JS & CAO,
Ministry of Defence,
C-II Hutmants,
New Delhi.
3. Chairman UPSC
Dholpur House
Shahjehan Road
New Delhi.

... Respondents

(By Shri Madhav Panikar, Advocate)

Q R D E R (ORAL)

Shri V.K. Majotra, Member (A):-

The applicant has assailed the provisional seniority roll of Assistants of AFHQ Civil Service dated 24.9.1999 and the Office Memorandum of 24.10.2000 whereby applicant's representation dated 18.9.2000 on the subject of fixation of his seniority as Assistant had been rejected. The applicant was recruited in LD Grade in AFHQ on the basis of Clerk Grade Examination of UPSC 1967 and he joined his service with effect from 24.6.1968. According to him, he could not pass the typing test within the stipulated period of one year. Hence he could not be granted annual increments till he passed the said

test. He passed the said test on 26.4.1972 when he was granted two additional increments as reward for passing the typing test at the speed of 42 W.P.M. He has stated that at a very late stage he found that one of his fellow examinee and appointee of 1968 who was junior to him, namely Shri S.P.Jhingon was drawing pay of Rs.7775/- whereas he was drawing pay of Rs.6900/-. He made a grievance with the JS & CAO in this behalf which was not redressed. The applicant has contended that since he had qualified the competitive examination in 1967 even though he was appointed to the LD Grade with effect from 24.6.1968, the rules prior to 1968 which are known as AFHQ Clerical Service Rules 1967 should be made applicable to him. The applicant has sought fixation of his seniority prior to Shri S.P.Jhingon who is positioned at S1.No.641 in the seniority list of Assistants. He has further sought fixation of his seniority in the LD and UD Grades accordingly. He has further sought consequential benefits.

2. The respondents in their counter have rebutted the claims of the applicant. They have stated that the Armed Forces Headquarters Clerical Service Rules, 1968, (for short, the Rules) which came into force with effect from 1.3.1968 are applicable to the applicant as he was appointed on 24.6.1968. As per these rules, an L.D.C. is appointed as a probationer who has to complete the probation to the satisfaction of the appointing authority and pass the typewriting test held by the Commission for being eligible for confirmation. On confirmation, his

seniority has to be regulated in the order in which he is confirmed as per the provisions of Rule 15(4)(ii) of the Rules. According to the respondents, an LDC who has not been confirmed due to his failure to clear the probation or to pass the typewriting test continues to have the status of the probationer until he is confirmed in the grade or discharged from service. The applicant joined service on 24.6.1968 on the results of the UPSC Clerks Grade Examination, 1967. He failed to pass the typing test within the period of probation and consequently he continued to remain on probation till 26.4.1972 i.e. the date of his passing the typing test. Thereafter he was confirmed in the grade of LDC with effect from 26.4.1972. Based on said seniority, he was promoted to the grade of UDC with effect from 26.5.1979 and Assistant with effect from 9.1.1990. The respondents have taken exception to applicant's claim contending that the OA is barred by limitation. The applicant has challenged fixation of his seniority in the grade of LDC based on his confirmation on 26.4.1972. Naturally, the cause of action, if any, arose way back in 1972 and the applicant did not choose to challenge the same at the appropriate time. The respondents have pointed out that lapse of about 28 years in challenging the fixation of seniority in the grade of LDC is uncondonable. They have further stated that the applicant's representation dated 5.6.1998 and another representation dated 16.6.1998 were disposed of by a detailed reasoned order dated 31.8.1998 by the respondents, Annexure R-III. Applicant has made

repeated representations thereafter. According to the respondents, applicant failed to approach the Tribunal within a period of one year when his representation was disposed of and instead filed the present OA in December, 2000. According to the respondents, the present OA is also barred by the principle of res judicata. He had earlier approached the Tribunal by way of OA No. 3261/1992 along with others wherein Rule 15 of the Rules was challenged and it was prayed that his seniority in the grade of LDC be determined on the basis of the date of his appointment irrespective of the date of confirmation. The third objection raised by the respondents is that the applicant has not impleaded the personnel against whom he has sought his seniority to be fixed. Thus the OA suffers from the vice of non-joinder of parties.

3. We have heard the applicant in person and Shri Madhav Panikar, learned counsel for the respondents. Both sides have reiterated the points made in their pleadings. The learned counsel for the respondents has drawn our attention to the order dated 11.3.1998 passed in OA No. 3261/1992 in which the applicant was also a party. The OA was disposed of by placing reliance on a judgement of the Hon'ble Supreme Court in the case of Shri D.P.Sharma & ors. v. Union of India & ors. delivered on 21.2.1989 in Civil Appeal No. 4133-4134/1984 wherein it was held that the Rules will have application to those appointed as LDC after 1.3.1968. These Rules were superseded by the AHFQ Clerical Service Rules, 1972 which came into

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force with effect from 29.4.1971. The applicants in the aforesaid OA were also seeking revision of their seniority from 1968 onwards while the OA was filed after 24 years. The applicants in the aforesaid OA had not impleaded their colleagues who would have been affected if the reliefs prayed for were granted. The said infirmities are pointed out in the present OA also and the present OA is hopelessly barred by limitation because it has been filed several years after the cause of action arose. The applicant has been making repeated representations. Such repeated unsuccessful representations not provided in law do not enlarge the limitation (see S.S.Rathore vs. State of Madhya Pradesh, AIR 1990 SC 10). Further it is not expected of the courts to disturb the settled affairs of any service after such a long period. The objections relating to limitation and non-impleadment of his colleagues are sufficient to reject the OA. The learned counsel of the respondents also particularly brought to our consideration paragraph 5 of the judgement and order passed by the Mumbai Bench of the Tribunal on 29.4.1986 in the case of Paramu Gopinathan Achary v. Union of India & ors., 1986 ATC 514 which reads as follows:-

"5. Under Section 19 of the Administrative Tribunals Act, 1985, any person aggrieved by an order pertaining to any matter falling within the jurisdiction of this Tribunal can make an application to the Tribunal. Before doing so, however, he has to exhaust all remedies available to him under the relevant service rules (Section 20(1)). He will be deemed to have done so if a final order has been passed by the Government or other competent authority to whom he has made an appeal or representation as provided in the said service rules (Section 20(2)(a) -we are not here concerned with clause (b) of the same

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sub-section). Under sub-section (1)(a) of Section 21, the application has to be made within one year of the date of the said final order. Now, the earliest date on which an application could have been made to the Tribunal is 1.11.1985 on which date the Tribunal came into existence. Therefore, in terms of Section 21(1)(a), no application can be made to the Tribunal against an order passed more than one year before 1.11.1985 i.e. on or before 31.10.1984. However, the position is modified to some extent by sub-section (2) of Section 21 which starts with the non obstante clause, "Notwithstanding anything contained in sub-section (1)". Under the said sub-section (2), if the order complained against is made during the period of three years immediately preceding the establishment of the Tribunal (i.e. 1.11.1985) and one year had already elapsed from the date of the order before 1.11.1985, an application can still be made to the Tribunal within six months from the date of its establishment. In other words, an application can be made to the Tribunal on or before 1.5.1986 against a final order passed at any time after 1.11.1982 except that- we are not concerned with this contingency in this case- where the period of one year after the date of the impugned order expires after 1.5.1986, the application can be made before such expiry. The combined effect of sub-sections (1) and (2) of Section 21, therefore, is that no application can be filed before the Tribunal in respect of final orders passed prior to 1.11.1982 by the Government or other competent authority under the relevant service rules. Learned counsel for the applicant urged that the Tribunal had full powers to admit applications made after the time limits specified in sub-sections (1) and (2) of Section 21 by virtue of sub-section (3) thereof. In our views this does not help him. When in the first instance no application can be made at all, as in this case, the question of admitting a belated application does not arise. Sub-section (3) of Section 21, by virtue of its initial non obstante clause no doubt displaces sub-sections (1) and (2), but only to the extent that the time limits set in those sub-sections can be extended by the Tribunal in deserving cases. But where, because the Tribunal came into existence only on 1.11.1985, a cause of action that arose long before that date cannot be brought before it at all under sub-sections (1) and (2), it has no jurisdiction over the matter and so cannot admit it as a belated application under sub-section (3)."

4. In the light of the ratio of this judgement, certainly we do not have any jurisdiction as well in a cause of action which had arisen before the Tribunal

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came into existence i.e. 1.11.1985. The combined effect of sub-sections (1) and (2) of Section 21 of the Administrative Tribunals Act, 1985 is that applications in respect of cause of actions arising prior to 1.11.1982 cannot be entertained by the Tribunal.

5. Having regard to the reasons recorded and discussion made above, we do not find any merit in the OA which is dismissed. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Ashok Agarwal

(Ashok Agarwal)
Chairman

/sns/