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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A.

Regn. No. 2004/1989.

DATE OF DECISION: July 13, 1990.

Ms. Anju Aggarwal Applicant.

Shri D.K. Rastogi Advocate for the Applicant.

V/s.

Union of India & Ors. Respondents.

Shri A.K. Behra Advocate for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgement? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their lordships wish to see the fair copy of the judgement? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

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(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was appointed as casual Lower Division Clerk on 25.2.85 till 22.4.1985 and then reappointed on 14 occasions for different periods, each time with break of a few days, and ceased to be in the service of respondents 1 to 4, w.e.f. 15.8.1987, /has prayed for the following reliefs: -

- "(a) declare that the applicant is entitled to be regular Lower Division Clerk in the employment of respondents no.1 to 4 in continuation ever since 25-2-1985 with all subsequent promotions and other vacancies including full pay and arrears as on date till the age of her superannuation;
- (b) direct the respondents no.1 to 4 to take the applicant on duty and grant her full pay and allowances with arrears and interest as on date in continuation of 14-8-1987;
- (c) allow this application with costs;
- (d) grant such other or further relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case. "

2. The applicant's case, in brief, is that she was appointed against a regular vacancy; that she worked for

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more than 240 days in the years 1985 and 1986; that the persons who were appointed subsequent to the appointment of the applicant on the same terms and conditions and to the same type of vacancies were made regular with effect from 14.8.1989, but she has been denied the same; ^{that} and/her non-confirmation in the post of Lower Division Clerk is in violation of Articles 14, 16, 19(1)(g), 21 and 23 of the Constitution of India.

3. The case of the official respondents, as disclosed in their reply, is that the applicant was not given reappointment after 14.3.87 as her services were not required; that she was appointed as a casual Lower Division Clerk against casual vacancies for work of casual nature and she was issued re-appointment after her initial appointment for definite periods as per the existence of work and availability of sanction for the post; that all the Lower Division Clerks who were in service for two years or more in 1989 were considered for regularisation when regular vacancies were available in 1989 and as the applicant was not in service at that time, the question of considering her case for regularisation did not arise; that the application is barred by limitation and is also not maintainable as the applicant did not avail of the departmental remedies before approaching the Tribunal; and that the applicant has deliberately suppressed in her application material facts inasmuch as she served as Clerk Grade II (ad hoc) from 1.3.88 to 18.9.89, each time for a period of 89 days with a break of five to seven days after every such period and on Muster Roll basis from 19.9.89 to 19.1.90 in the office of the Executive Engineer (Electrical), C.C.W., A.I.R., Pushpa Bhavan, New Delhi. From 11.12.89 to 19.1.90, she served in the same office as Stenographer Gr. III on Muster Roll basis.

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4. The applicant also filed a petition for condonation of delay, in which it is stated that even though the applicant had prayed for in this application for the enforcement of her Fundamental Rights as well as protection available in Part III of the Constitution of India where there is no question of limitation, yet without prejudice to the above, she is applying for condonation of delay. It is further stated that the applicant was not given extension from 14.8.1987 by default and the applicant was prevented from taking recourse to law for the enforcement of her rights because of the repeated assurances given by Respondent No.3 and other concerned officials that her next extension letter or sometime regular appointment is awaited and might come at any time. It is also stated that it was only on 26.9.1989 that the applicant came to know that Respondents No.5 and 6 have been given regular appointment, which is not only discriminatory on the part of respondents who conveyed to her that there is no possibility of her being appointed as regular employee without the intervention of the Court and she immediately approached the Tribunal. It is contended that even otherwise, the cause of action for filing the present application arose on 26.9.1989 when it was made clear to the applicant that she cannot be considered and given regular appointment without the intervention of the Court. It is also contended that the respondents have time and again conveyed to her that there is no provision of representation by the casual employees, nor any remedies are available under the service rules for redressal of their grievances.

5. The respondents have also contested the petition for condonation of delay.

6. We have carefully perused the material on record and have also heard the learned counsel for the parties on the question of admission and limitation.

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7. It is not in dispute that the applicant ceased to be in service of respondents 1 to 4 with effect from 15.8.87. One of the reliefs prayed for by the applicant is to take her on duty and grant her full pay and allowances with arrears and interest as on date in continuation of 14.8.1987. In other words, the prayer is that she should be taken back on duty and be deemed to have continued in service from 15.8.1987. Therefore, the cause of action in this regard had accrued to the applicant on 15.8.87 and application for the same should have been filed within one year thereafter, i.e., upto 14.8.1988. However, the application was filed on 20.8.89. Similarly, the other relief prayed for is for a declaration to the effect that the applicant is entitled to be regular Lower Division Clerk in continuation ever since 25.2.1985 with all subsequent promotions and other vacancies including full pay and arrears as on date till the date of her superannuation. In other words, here too, it means that she should be declared to be regular Lower Division Clerk with effect from 25.2.1985. It is not the case of the applicant that that anyone appointed as casual Lower Division Clerk after her appointment as such was made regular Lower Division Clerk on 25.2.85. Respondents No.5 and 6 were regularised with effect from 16.9.1989. On that date, admittedly, the applicant was not in service and thus could not have been considered for regularisation. The prayer on the point of regularisation cannot, in this case, be considered and has to be read in isolation/with the other prayer regarding deemed continuation in service after 14.8.87. The relief for regularisation is consequential to the relief for continuation in service and the limitation, therefore, will start running from 15.8.87 and, as such, the application is time-barred.

8. In her application for condonation of delay, the applicant has not explained the delay from 15.8.87 till 26.9.1989 when it is stated that she came to know of

Respondents No.5 and 6 having been given regular appointments. This explanation, in any case, does not explain the delay in regard to the main relief of deemed continuation in service after 14.8.1987. On the basis of documents placed on record by the official respondents, there is no alternative except to assume that she did not approach the Tribunal within the prescribed period as she was employed elsewhere and her employment in All India Radio continued from 1.3.88 to 19.1.90. This fact was not disclosed by the applicant in her application. It is very material to one of the reliefs prayed for and, as such, we have no hesitation in coming to the conclusion that there has been a deliberate suppression of material facts on the part of the applicant and, therefore, she is not entitled to any sympathetic consideration of her request for condonation of delay.

9. The learned counsel for the applicant could not cite any ruling in support of the contention that there is no bar of limitation when a Government servant seeks enforcement of her Fundamental Rights by moving an application under Section 19(1) of the Administrative Tribunals Act, 1985. He, however, contended that in the case of SHRI S.P. SAMPATH KUMAR Vs. UNION OF INDIA AND OTHERS - A.T.R. 1987(1) S.C. 34 - the Hon'ble Supreme Court held that the Administrative Tribunal is a substitute of the High Court and it has, therefore, all the powers of the High Court to issue writs and directions under Article 226 of the Constitution. He further argued that since provisions of the Limitation Act do not apply to writ petitions, the bar of limitation cannot be taken in this case. He cited the judgement of the Hon'ble Supreme Court in the case of Smt. SUDAMA DEVI Vs. COMMISSIONER AND OTHERS -(1983) 2 SCC 1. It was held in this case

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that "There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. It is in fact doubtful whether any such period of limitation can be prescribed by law. In any event one thing is clear and beyond doubt that no such period of limitation can be laid down either under rules made by the High Court or by practice. In every case it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner." He also cited the judgement by a Single Bench of the Karnataka High Court in the case of PUTTASWAMIAH Vs. STATE OF KARNATAKA - 1987 (1) SLR 54. In this case, it was held that the Tribunal under the Administrative Tribunals Act, 1985 has the jurisdiction to entertain applications in respect of grievances of civil servants in all service matters even in the absence of an order as contemplated in Section 19(1) of the Act *ibid*. It was further held that "an application could be made invoking the jurisdiction of the Tribunal under Section 14 or Section 15 of the Act. To such an application against inaction, Section 21, which prescribes limitation also would not be attracted, for, unless an order is made, the period of limitation would not commence. But in such cases the Tribunal could decline to exercise its jurisdiction applying principles like inordinate delay, laches, acquiescence, etc., which were governing the exercise of jurisdiction by the High Court under Article 226 of the Constitution."

10. It is not in dispute that the Central Administrative Tribunal has full powers which vested in the High Court/^{even} under Extraordinary Original Jurisdiction under

Article 226 of the Constitution (Surinder Nath and Others V. Union of India, ATR 1986 (2) CAT 418), Shri Meharban Khan and Others Vs. Union of India & Others, Full Bench Judgements of Central Administrative Tribunals (1986-1989) p. 4), Shri S.P. Sampath Kumar Vs. Union of India & Others (supra). The question to be considered, however, is whether in an application filed under the Administrative Tribunals Act, 1985 wherein specific period of limitation is prescribed, can the law in regard to limitation for filing writ petitions in the High Courts, would automatically become applicable. The answer obviously has to be in the negative. If it were a case of a writ petition initially filed in the High Court ^{which} stood transferred to the Tribunal under Section 29 of the Act *ibid*, then the law of limitation applicable to writ petitions would have been applicable to such a writ petition. Where an application has been filed under Section 19 of the Act *ibid*, the limitation prescribed therein will have to be applied; otherwise, the provisions about limitation in the Administrative Tribunals Act, 1985 would become meaningless and ^{the} infructuous. It could not be/ intention of Parliament and such an interpretation would also be inconsistent with the other provisions of the Act. Even otherwise, the applicant has not been able to explain the delay as already discussed above, and we do not see any valid ground for condoning the delay for which the Tribunal has the powers, in this case.

11. In view of the above discussion, we are of the view that the application is not maintainable under Section 21 of the Administrative Tribunals Act, 1985 and is rejected at the admission stage itself. Parties will, however, bear their own costs.

J.P. Sharma
(J.P. SHARMA)
Member (J)

P.C. Jain
(P.C. JAIN)
Member (A)

13.7.1990.

Pravara
Pronounced today by the undersigned in open Court.

13/7/1990

Pravara