

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 2067/1989 with  
MP No. 2738/1989

Date of decision: 22.05.1992

Shri Pitamber Singh

...Applicant

Vs.

Union of India through the  
Secretary, Ministry of Commerce and  
Others

...Respondents

For the Applicant

Shri J.P. Verghese,  
Counsel

For the Respondents No.1 to 3

Shri P.H. Ramchandan  
Sr. Counsel  
Sh. S.C. Gupta, Sr. Counsel  
with Shri M.K. Gupta & L.R.  
Goel, Counsel

For Respondent No.4.  
CORAM:

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed  
to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha,  
Vice Chairman(J))

The applicant, who belongs to the Scheduled Caste  
community and who is working as Upper Division Clerk in the  
office of the respondents filed this application under  
Section 19 of the Administrative Tribunals Act, 1985, praying  
for the following reliefs:-

- (i) To direct the respondents to promote him to the  
post of Upper Division Clerk (UDC) with effect from the date  
on which his juniors were promoted;
- (ii) to direct them to promote him to the post of

Superintendent with effect from the date on which his juniors were promoted;

(iii) to direct them to promote him to all the posts he was entitled to be promoted being a Scheduled Caste candidate in accordance with the rules of promotion on reserved point for SC/ST candidates; and

(iv) to direct them to allow all consequential benefits and reliefs including arrears of pay etc. along with 18% penal interest.

2. MP No.2738/89 has been filed by the applicant praying for condoning the delay in filing the application.

3. We have gone through the records of the case carefully and have heard the learned counsel of both parties. Respondent Nos. 1 to 3 and respondent No.4 have filed separate counter-affidavits wherein they have raised/preliminary objection that the application is hopelessly barred by limitation. They have also submitted that even on the merits, the applicant is not entitled to the reliefs sought by him.

4. The facts of the case in brief are as follows. The applicant was confirmed in the post of Lower Division Clerk with effect from 14.03.1962. He has stated that one Shri Ram Chand was confirmed from 18.1.1962 while respondent No.4 (Shri D.N. Chibber) and respondent No.5( Shri R.S. Bhatia) were confirmed with effect from 28.04.1962 by order dated 29.06.1964. According to him, respondent Nos. 4 and 5

were junior to him.

5. The office of the Deputy Director of Inspection, Kanpur and the office of the Director of Inspection, Northern Inspection Circle, New Delhi, under the Director General of Supplies and Disposals were amalgamated with effect from October, 1962.

Respondent No.2 (The Director General, Supplies and Disposals) promoted respondent No.5 on ad hoc basis to the post of UDC by order dated 26.03.1969. Shri Ram Chand who had been confirmed on 18.01.1962 was promoted as UDC with effect from 22.08.1969. The applicant was not, however, promoted. The respondents have, however, stated that subsequently L was reverted consequent upon downgradation of his seniority.

6. The applicant has stated that he made several representations for his promotion under the rules of reservation for Scheduled Castes and Scheduled Tribes, according to which, the SC and ST candidates ~~which~~ are to be adjusted separately by preparing roster fixing the point number for departmental promotion. According to the respondents, reservation will not apply to promotions on the basis of seniority-cum-fitness. The promotion to the post of UDC is made on the basis of seniority-cum-fitness. Reservation for SC/ST however, in promotions was, introduced by OM dated 27.11.1972.

7. With reference to the representations dated 18.03.1969 and 07.04.1969 submitted by the applicant, the respondents informed him by OM dated 23.04.1969 that

no separate roster for SC/ST was to be prepared according to the instructions contained in the Ministry of Home Affairs OM dated 11.07.1968.

8. On 28.07.1970, the respondents promoted respondent No.4 to the post of UDC. The applicant claims that he being senior to respondent No.4, he should have been promoted as UDC. He again made several representations.

9. The applicant has stated that by order dated 28.03.1974, he was shown junior to respondent Nos. 4 and 5.

10. The applicant was promoted to the post of UDC in 1979 though, according to him, the said promotion was due to him in 1969 when his junior, respondent No.5, was promoted. The respondents had also promoted respondent Nos. 4 and 5 to the post of Superintendent in 1986 but the applicant was not so promoted.

11. The applicant again sent representations on 22.09.1988 and 4.4.1989 which were, however, rejected by the respondents by their letter memorandum dated 8.8.1989.

12. In the said memorandum, the respondents stated that the applicant had earlier submitted representation on the subject during 1969-72 and that he was apprised of the inadmissibility of his claims. It was after a lapse of 15 years that he again raised the issue of his

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seniority and had made various allegations.

13. The respondent Nos. 1 to 3 have stated in their counter-affidavit that the applicant was promoted as UDC on ad hoc basis on 18.08.1981 and was appointed to that grade on regular basis with effect from 1.1.1985. According to them, respondent Nos. 4 and 5 were appointed as LDGs in 1959 whereas the applicant had been appointed as LDG only in 1962. Prior to 22.12.1959, the seniority in a grade was governed by the instructions contained in the Ministry of Home Affairs OM dated 22.06.1949. In their OM dated 22.12.1959, the Ministry of Home Affairs issued the General Principles of Seniority. These principles inter alia lay down that inter-seniority of permanent employees will follow the order of their confirmation and they shall all rank senior to those who are temporary in the grade. These orders were to take effect from the date of its issue.

14. The respondents have further stated that following the decision of the Supreme Court in Union of India Vs. M. Ravi Verma & Others (OA Nos. 1845/1968), Union of India Vs. S. Ganapathi Kumar & Others (OA No. 1846/1968) and Union of India Vs. S. Kumar & Others (OA No. 50/1969), the Department of Personnel issued instructions under their OM dated 22.7.72 clarifying that the General Principles of Seniority will take effect with effect from 22.12.1959. The Seniority of those

appointed in service on regular basis prior to that date shall be regulated in accordance with OM dated 22.6.1949 and they shall rank senior to those appointed to a grade after that date irrespective of the dates of their confirmation.

15. In view of the above, respondent Nos. 4 and 5 who were pre-22nd December, 1959, enterants/in service were senior to the applicant in the grade of LDC and they were promoted earlier than the applicant to the post of UDC. The applicant who was promoted as UDC on regular basis in 1985 has no right to claim seniority over respondent Nos. 4 and 5.

16. Respondent Nos. 1 to 3 have raised the plea that the application is hopelessly time barred under Section 21 of the Administrative Tribunals Act, 1985, as the applicant cannot agitate his promotion to the UDC grade with effect from 1963, after a period of 26 years.

17. Respondent No. 4 has also adopted the same contention of respondent Nos. 1 to 3 in his counter-affidavit.

18. In our opinion, the present application is clearly barred by limitation. A Constitution Bench of the Supreme Court has held in S.S. Rathore Vs. State of Madhya Pradesh, AIR 1989(2) SC 335 that "the cause of action shall be taken

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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 representations is made and where no such order is made, though the remedy has been availed of, a six months 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 been 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".

19. The Supreme Court further observed in the same case that "in every such case only the appeal or representation provided by law is disposed of, accrual of cause of action shall first arise only when the higher authority makes order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made".

20. In the aforesaid case, the Supreme Court was referring to the position obtaining under Section 21 of the Administrative Tribunals Act, 1985. The position prior to the setting up of this Tribunal may also be mentioned. The doctrine of laches would have applied to the maintainability of a writ petition in the High Court in the event of such a

petition being filed after inordinate delay, vide  
P.S. Sadasivaswamy Vs. State of Tamil Nadu, 1978 SCC  
(L&S) 22, Gian Singh Mann Vs. High Court of Punjab and  
Haryana, 1980 SCC (L&S) 527.

21. In K.R. Mudgal & Others Vs. R.P. Singh & Others, 1986(2) SCALE 561, the Supreme Court has observed that satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petition filed after several years. It was essential that any one who felt aggrieved by the seniority assigned to him, should approach the Court as early as possible, as otherwise in addition to the creation of a sense of insecurity in the minds of the Govt. servants there would also be administrative complications and difficulties. There are observations to the same effect in Yashbir Singh & Others Vs. Union of India & Others, 1987(2) SCALE 371.

22. In the light of the foregoing, we see no merit in the present application. The applicant has filed an MP NO. 2738/1989 praying for condoning the delay, in filing the application, wherein he has stated that he had been representing to the respondents continuously and that the final reply was given to him on 8.8.1989. He had also submitted that promotion being a subsisting right, the right to be promoted under the rules from whatever be the

eligible period be granted after condoning the delay. We are not impressed by these submissions, in view of the authoritative pronouncements of the Supreme Court, mentioned above. The prayer contained in MP 2738/89 is accordingly rejected.

23. The application as well as the MP is disposed of on the above lines accordingly.

There will be no order as to costs.

*I. K. Rasgotra*  
(I. K. RASGOTRA)  
MEMBER (A)  
22.05.1992

*Partha*  
22/5/92  
(P. K. KARTHA)  
VICE CHAIRMAN (J)  
22.05.1992

RKS  
22.05.1992