

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.2274/89

DATE OF DECISION:29.1.92

SHRI NAND KUMAR

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

SHRI V.P. GUPTA,
COUNSEL.

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI,
SENIOR COUNSEL.

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Shri Nand Kumar, the applicant in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 has assailed the order No.F.12(32)/76-MF.CGA/Gr.A/Per/NK/518 dated 27.2.1989, rejecting his representation against his delayed promotion and fixation of seniority.

2. The applicant is a member of the Indian Civil Accounts Service and had come up for consideration for promotion to the Senior Administrative Grade (SAG) Level II (Rs.2250-2500) in February, 1986. He was, however, not promoted to the SAG (Level II) on the basis of the recommendations of the DPC although three of his juniors

were promoted to the SAG Level II. Another DPC was held in December, 1986 and consequently 5 more officers were promoted to the SAG (Level II) Grade. The applicant represented against denial of promotion to him on 23.8.1986 and followed this up by subsequent representations on 19.12.1986 and 10.2.1987. The Controller General of Accounts vide his letter dated 14th July, 1987 with reference to his representations advised the applicant that:

"2. The appointments to the Senior Administrative Grade are made by "Selection on Merits" as prescribed in Rule 20 (V) of the ICAS (GroupA) Recruitment Rules, 1977. You were not found fit promotion to the Senior Administrative Grade by the appropriate authority. Both of your representations referred to above have been considered at the appropriate level and have been rejected."

3. From the above narration of facts it is observed that the cause of action arose in 1986 when the applicant was superseded by his juniors when they were promoted to SAG grade on the basis of the recommendations of the DPC held in February, 1986. The applicant was well aware of this fact, as his representation dated 23.8.1986 mentions that orders promoting his juniors are likely to be issued on "25.8.1986". While his representation against his supersession was rejected by the respondents on 14.7.1987, the present O.A. was filed only in November, 1989.

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4. The question that came up at the outset was whether the O.A. was maintainable at all in terms of Section 21 of the Administrative Tribunals Act, 1985? The learned counsel for the respondents pointed out that the respondents have already taken the preliminary objection in their counter-affidavit in this regard.

5. We also find from the ordersheets of the case that the O.A. was admitted vide order dated 24.11.1989 "leaving the question of limitation open to be argued at a later stage when the main application comes to be heard."

6. Shri V.P. Gupta, learned counsel for the applicant submitted that the applicant is seeking relief in regard to predating his seniority to the S.A.G. according to the select list prepared by DPC held in February, 1986 and since the applicant had already been promoted to SAG Grade w.e.f. 5.1.1988, he is not agitating his supersession. The only relief which he is claiming is that his seniority should be predated and taken into account for all purpose, including future promotion. Since seniority is a continuing factor for the career progression of the applicant, limitation cannot be applied to seniority. To garner support for his case the learned counsel cited the case of **R.M. Ramual v. State of H.P. & Ors. 1989 SCC (L&S) 206.**

7. In **R.M. Ramual** (supra) case the seniority list in question was prepared ignoring the instructions of the Ministry of Home Affairs, Government of India, by the Government of Himachal Pradesh, consequent to Punjab Re-organisation Act of 1966. It is not a case where the

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appellant therein was superseded by a positive act of selection. It was in the context of the framing of the seniority list in contravention of the instructions/rules that their Lordships in the Hon'ble Supreme Court had observed:-

".....It cannot be laid down as a rule of law that even though it (seniority) has been illegally prepared in violation of the directions of the Central Government itself to the prejudice of the officers or officer concerned, it cannot be challenged."

The above case, therefore, is of no help to the applicant.

8. The need for observing the provisions of limitation has been stressed by the Hon'ble Supreme Court in **State of Punjab & Ors. v. Gurdev Singh JT 1991 (3) SC 465**. The view taken by the Additional District Judge and the High Court of Punjab in **Gurdev Singh's** (supra) case was that "no limitation is prescribed for challenging an illegal order....." In the second appeal preferred by the State the Punjab and Haryana High Court agreed with the view following an earlier decision. Their Lordships of the Hon'ble Supreme Court setting aside the order of the High Court observed:-

"3. These are not the only cases in which the Punjab and Haryana High Court has taken the view that there is no limitation for instituting the suit or declaration by a dismissed or discharged employee on the ground that the dismissal or discharge was void

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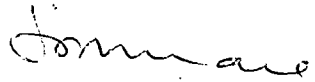
or inoperative. The High Court has repeatedly held that if the dismissal, discharge or termination of services of an employee is illegal, unconstitutional or against the principles of natural justice, the employee can approach the Court at any time seeking declaration that he remains in service. The suit for such reliefs is not governed by any of the provisions of the Limitation Act (See: State of Punjab v. Ajit Singh (1988(1) SLR 96) and (ii) State of Punjab v. Ram Singh (1986(3)SLR 379).


4. First of all, to say that the suit is not governed by the law of Limitation runs afoul of our Limitation Act. The statute of Limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed "period of limitation" must subject to the provisions of Sections 4 to 24 be dismissed although limitation has not been set up as a defence. Section 2 (1) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2 (1) also defines, "prescribed period" to mean the period of limitation computed in accordance with the provisions of the Act. The Court's function on the presentation of plaint is simply to examine whether, on the assumed facts, the plaintiff is within time. The Court has to find out when the "right to sue" accrued to the plaintiff....."

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The Administrative Tribunals Act, 1985 makes a specific provision vide Section 21 in regard to the limitation and this aspect had specifically come up for consideration of the Hon'ble Supreme Court in **S.S. Rathore v. State of M.P. AIR 1990 SC 10** the law on limitation has been set out in unambiguous terms. The provision of limitation, therefore, cannot be ignored unless there are sufficient grounds for the same which we do not find in filing this O.A.

In the facts and circumstances of the case the O.A. is dismissed, as barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. No costs.


(J.P. SHARMA)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

SKK

January 29, 1992.