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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 280/1989. DATE OF DECISION: January 4, 1991.

Sohan Lal Applicant.
V/s.

Union of India through
the Chairman, Central
Board of Excise & Customs,
New Delhi. Respondent.

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

Sri K.N.N. Pillay, Counsel for the Applicant.
None for the Respondent.

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

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

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

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Union of India through
the Chairman, Central
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New Delhi. Respondent.

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

Shri K.N.R. Pillay, Counsel for the applicant.
None for the respondents.

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

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who had been working as Tax Assistant in the Office of Assistant Collector, Central Excise, Muzaffar Nagar, at the time of filing this application, and has since been promoted as Inspector and posted at Range Gajrola (Moradabad Division) vide Central Excise Collectorate, Meerut Estt. Order No.143/90 dated 11.9.90, has prayed that his performance in the interview held in 1977 may be treated as reassessed according to relaxed standards admissible and he be declared as having qualified in the selection and duly empanelled above the SC/ST candidates who had failed in the written test, and that he may be appointed as Inspector from the date the first of the failed SC/ST candidates had been promoted, with all consequential benefits including arrears of pay and allowances.

2. The facts of the case, in brief, are as under: -

The applicant belongs to Scheduled Caste community and was recruited as Lower Division Clerk in the Central Excise Collectorate, Kanpur. A written test was held on 8.5.77 for the posts of Inspector in Kanpur and Allahabad. The applicant was declared qualified in the written test and accordingly he was called for interview, which was held on 19th, 20th and 21st July, 1977. He failed in the interview and was not selected for final appointment as Inspector. After

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applying relaxed standard of pass marks for the SC/ST candidates 10 more candidates belonging to these categories, were called for interview on 8th August, 1977 and after that a panel was drawn up for the posts of Inspector. The applicant was not included in that panel, although some other SC/ST candidates who were interviewed on 8th August, 1977 at Kanpur after applying relaxed standard of marks obtained by them in the written examination, were included in the panel and were appointed as Inspector.

3. The case of the applicant is that he has been discriminated against compared to the SC/ST candidates who had failed in the written test but were included in the panel and appointed as Inspector by relaxed standards. He claims that he had qualified in the written test in open competition with general candidates and was also interviewed along with general candidates without any relaxation of standard and was declared failed. According to him, when relaxation of standards for SC/ST candidates was adopted, he should have been reassessed in the interview in preference to those SC/ST candidates who had failed in the written test. He made a representation to the Secretary, Central Board of Excise & Customs, New Delhi on 24.8.77 (Annexure A-I), followed by various reminders. He also addressed a representation dated 8.11.1985 to the Chairman, Central Board of Excise & Customs, New Delhi (Annexure A-X), which was rejected by the impugned order dated 30.6.87, a copy of which was endorsed to the applicant on 5/8th February, 1988 (Annexure A-XII).

4. None has appeared on behalf of the respondents in spite of service of notice on them, nor any counter has been filed despite several opportunities having been given to them. An ex-parte direction was issued by this Tribunal vide orders dated 27.4.1989 that "in the meanwhile one post of Inspector of Central Excise in the reserved quota may be kept unfilled." Even on the date of final hearing of the case on 13.12.90, none appeared for the respondents.

Ans.

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5. We have gone through the record of the case and have heard the learned counsel for the applicant. As none appeared for the respondents, they are set ex-parte.

6. Before taking up the case of the applicant on merits, we consider it necessary to deal with the question of limitation as well as non-joinder of necessary / proper parties.

7. The applicant, as mentioned above, has prayed that his performance in the interview held in 1977 may be treated as reassessed according to relaxed standards admissible and he be declared as having qualified in the selection and duly empanelled above the SC/ST candidates who had failed in the written test, and that he may be appointed as Inspector from the date the first of the failed SC/ST candidates had been promoted, with all consequential benefits including arrears of pay and allowances. According to the applicant's own version, the interview was held in July, 1977 and that the other SC/ST candidates were also interviewed in August, 1977; the panel was also drawn up thereafter, but the persons from this panel were appointed as Inspector in December, 1977 / January, 1978. Thus, the cause of action can be said to have arisen in 1977. However, in view of the judgment of the Hon'ble Supreme Court in the case of S.S. MATHORE Vs. STATE OF MADHYA PRADESH (AIR 1990 S.C. 10), it will be deemed to have arisen after the expiry of six months from the date the representation about the grievance was made by the applicant. The applicant made his first representation on 24.8.77. As no decision is said to have been taken on this representation, the cause of action will be deemed to have first arisen after expiry of six months from ~~xxxx~~ 24.8.77, i.e., from 24.2.1978. The relevant observation of the Hon'ble Supreme Court in the case cited above is reproduced below:

"20. 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

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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 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 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."

8. Section 20 of the Administrative Tribunals Act, 1985 (for short, the Act) provides that an application shall not be admitted unless the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Section 3(r) provides that "service rules as to redressal of grievances", in relation to any matter, means the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act of any grievances in relation to such matters. This definition does not specifically mention the term 'representation'. However, Section 20 (2) of the Act specifically refers to representation. A representation may also be taken to be covered by the term "arrangements as in force" as mentioned in Section 3(r) (supra). In view of the above discussion, the application is barred by limitation. Repeated representations do not have the effect of extending the limitation, as laid down by the Hon'ble Supreme Court in S.S. RATHORE's case, the relevant portion of which has already been reproduced above.

9. The applicant has specifically prayed that he may be declared as having qualified in the selection and duly empanelled above the SC/ST candidates. Thus, he is praying for his seniority above the aforesaid SC/ST candidates, but

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none of them has been made a party. The learned counsel for the applicant argued that he was not seeking any relief against the aforesaid SC/ST candidates and, as such, it was not necessary to make them party respondents to the O.A. On this point as well as on the point of limitation, he relied on the judgments of the Hon'ble Supreme Court in the following two cases: -

- (1) General Manager, South Central Railway Secunderabad and Anr. etc. Vs. A.V.R. Siddhanti and Ors. etc. (1974) 3 S.C.R. 207)
- (2) Shri A. Janardhana Vs. Union of India and Others. 1983 (2) SLR (SC) 113.

10. In General Manager, South Central Railway's case (supra), two preliminary objections had been taken. Firstly it was contended that the writ petition was filed 8 to 11 years after the issue of the impugned decisions, and as such, was liable to be dismissed on the score of laches alone. The second objection was that the petitioners did not implead about 120 employees who were likely to be affected by the decision in that case, and they were necessary parties and their non-joinder was fatal to the petition. Both these objections were held to be not tenable. On the plea of laches, their lordships observed as below: -

"Though the plea of laches was taken in the counter-affidavit filed on behalf of the Railway before the High Court, yet it appears that the point was not canvassed at the time of arguments either before the learned Single Judge or the Division Bench in the Letters Patent appeal. The appellants therefore cannot be permitted to resurrect in this Court the same objection which they had apparently abandoned in the High Court."

It will be seen that the plea of laches was not held to be tenable on the facts of that case alone and no general principle or law was laid down. In the case before us, the respondents have not made any representation at all. However, in view of the specific provisions in Section 21 of the Act, on the point of limitation, this cannot be ignored. Section

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21(1) of the Act prescribes a period of one year for making an application after the cause of action, as already discussed above, has first arisen. We have already held above that limitation in this case commenced from 24.2.1978. This application was filed on 6.2.1989.

11. On the second objection about non-joinder of necessary parties, the Hon'ble Supreme Court in the aforesaid case held as below: -

"As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain Shop departments. The Respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952 were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

It will be seen from the above that the facts of the case before us are clearly distinguishable from the facts of the cited case. In this application, the applicant has not impugned any rule, order, or general instructions issued by the respondents and has not challenged the vires of any

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such rule/order etc; what he has assailed is being not declared as passed in the interview and consequently not selected for the post of Inspector. He does not challenge any of the instructions issued by the Government on the basis of which he alleged discrimination. In view of this as also in view of the specific prayer for being placed above the other SC/ST candidates selected in 1977 for appointment to the posts of Inspector, those candidates who are directly affected, are necessary parties and the ruling relied upon by the applicant does not help him.

12. In the other cited case of Shri A. Janardhana (supra), the question of limitation did not come up, but the affected persons not having been impleaded as respondents had come up. Their Lordships of the Supreme Court observed that some direct recruits had made the submissions through counsel and on an application made to the Supreme Court by 9 direct recruits, they were also impleaded as parties. Therefore, the case of direct recruits had not gone unrepresented and the contention could be negatived on that short ground. It was further held that the appellant did not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim was made. "The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents." The facts of the case before us are significantly different, inasmuch as, as already stated above, the relief claimed by the applicant is not entirely against the official respondents. Even though the applicant has not challenged the selection

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of the other SC/ST candidates and has also not prayed for quashing of their appointments, yet his prayer that he should be deemed to have been selected and appointed before their selection and appointment and ~~xxx~~ that he be made senior to them, make it necessary that those who were selected and appointed should have been impleaded as respondents in this case.

13. There is another aspect of the matter which also needs to be mentioned. The assessment of the applicant for purposes of selection was made by a Selection Committee. His prayer that his performance in the interview held in 1977 be treated as reassessed according to the relaxed standards admissible and that he be declared as having qualified in the selection, cannot be granted as the Tribunal cannot substitute itself for the Selection Committee.

14. The cause of action in this case having arisen prior to three years immediately preceding before the date on which the jurisdiction, powers and authority of the Tribunal became exercisable under the Act, the Tribunal even otherwise has no jurisdiction in the matter, as the case is not covered by Section 21(2) of the Act (V.K. Mehra Vs. Ministry of Information & Broadcasting - AIR 1986 (1) CAT 203).

15. In view of the foregoing discussion, the application is dismissed on the grounds of limitation, non-joinder of necessary parties and jurisdiction.

J. F. Sharma
(J.F. SHARMA)

Member (J)

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