IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 341 1989
T.A. No.

DATE OF DECISION 19.9.89.

Shri P.C. Bhatia — Applicant (s)

Shri R.R. Rai — Advocate for the Applicant (s)

Versus

Union of India & Ors — Respondent (s)

Shri P.P. Khurana — Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. D.K. CHAKRAVORTY, MEMBER (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

Applicant herein, who is an inspector in the office of the Central Excise and Customs Collectorate, New Delhi, prays for quashing of the adverse remarks made in his A.C.R. for the year 1980.

2. The applicant was communicated adverse remarks for the year 1980 under the Headquarters Assistant Collector letter dated 2.5.1981. In order to enable him to make effective representation against the adverse remarks he requested the Assistant Collector on 8.6.81 to apprise him of the material on which the impunged remarks were based. He was asked to appear on 19.1.1983 for inspection of the records on the basis of which adverse remarks were conveyed to him. The applicant inspected the files on 1.7.83 but he could not find anything specific therein . He requested the Deputy Collector (Headquarters) on 6.7.83 that the materials considered sufficient to justify the impugned remarks may be pin-pointed. In response he was advised by the Deputy Collector (Headquarters) under letter dated 29.9.83 that the available

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material has already been shown to the applicant and he may make further representation if he deems it necessary. Another request made to supply the exact material on which adverse remarks were based having proved futile, the applicant made a representation to the Deputy Collector (Headquarters) on 24.11.1983. Deputy Collector informed the applicant under his letter dated 3.2.1984 that after careful consideration of the representation the Collector has rejected the same. Thereafter, the applicant represented to the Joint Secretary (Admn) Central Board of Excise & Customs, New Delhi, against the order of the Collector of Central Excise on 15.3.1988. The representation was rejected by a bald order which was conveyed to him under a letter dated 12.10.1988.

3. In the application several grounds on merits and in law have been given in support of his contention that the impugned order of rejection of his representation is absolutely untenable, illegal and bad in law because, inter alia, there was inordinate delay in communication of the adverse remarks, inspite of the repeated requests no specific material on which adverse remarks were based was supplied to him, no verbal or written warning was given to him, the rejection of his representation was made by a non-speaking and bald order and that there are several case laws in his favour.

4. Respondents have opposed the application. In the written statement submitted on behalf of the respondents, it has been stated that the order impugned is only one which is dated 12.10.1988 passed by the Central Board of Excise and Customs, it is submitted that the adverse remarks were recorded for the year 1980 and the same were conveyed vide letter dated 2.5.81. The representation against the same made on 24.11.83 was rejected vide letter dated 3.2.84. The application is thus time barred. The written statement also denies most of the points raised in the application.

5. I have heard the learned counsel for the applicant as well as for the respondents and gone through the relevant records made available by the department.

6. Taking up first question first, it would appear to be

contd....

expedient and appropriate to deal with the plea of limitation raised by the respondents. The learned counsel for the respondents contended that the period of limitation started running as far back as Feb. 1984, when the representation of the applicant was rejected by the Collector of Customs on 3.2.1984. The applicant chose to remain salient for more then 4 years. Repeated representation do not have the effect of extending the period of limitation or furnishing a fresh cause for the purpose of limitation. The learned counsel for the applicant met the aforesaid submission on the reasoning that in case the authorities concerned choose to entertain & consider the representation, it will furnish the aggrieved person with a fresh cause of action and the limitation is to be computed from the date of such rejection. In respect of this submission, the learned counsel pressed into service the decision rendered in B.Kumar Vs. Union of India & Others, ATR-1988-(1)-CAT-1. The following observations made in paragraph 12 in B.Kumar(supra) are pertinent to the submission of the learned counsel for the applicant;

> " In regard to the second part of Shri Gupta's argument regarding limitation, while it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is, in any case, open to the department concerned to consider a matter at any stage and redress the grievance or grant the relief, even though, earlier representations have been rejected, it would be inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it. This is what exactly has happed in the present case."

The submission made by the learned counsel for the applicant is supported by the observations made in paragraph

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12 above. As the decision in 'B. Kumar' (supra) has been rendered by a Bench of coordinate jurisdiction, it would have been appropriate to normally follow this view in conformity with judicial discipline and comity. With profound respect, I am, however, impelled to take a different view for the reasons set out hereinbelow:

i) After setting out the provisions of sub-sections (2) and (3) of Section 20 of the Act in paragraph 19 in the recent judgement of the Supreme Court in S.S. Rathore Vs. State of Madhya Pradesh, 1989-(3)-Judgement Today-SC-530, the Supreme Court has made the following weighty observations in paragraph 20. The same may usefully be reproduced:

> " 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 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's period from thedate 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."

ii) As per the mandate of Article 141 of the Constitution, thellaw declared by the Supreme Court is binding on all the Courts in India. The law declared by the Supreme Court is thus the law of the land. In view thereof, we are bound by the judgement of the Supreme Court. It may be incidentially mentioned that S.S. Rathore (supra) has been decided by a Full Bench of seven Judges.

iii) The next point to see is as to what is the dictum of the Supreme Court laid down in paragraph 20 of the

aforesaid judgement. It would appear to be safe to say on the basis of the dictum of the Supreme Court in S.S. Rathore (supra) that rejection of a representation long after the expiry of the period of limitation would not furnish a fresh cause of action to the person aggrieved by the rejection. This would appear to follow from the observations of the Supreme Court in paragraph 20 of the judgement extracted hereinabove. It may not be in apposite to add that the view I am taking is also in accord with the well settled principle that except in certain recognised situations like extension of the period of limitation by acknowledgement in writing specified in Section 18 and 20 of the Limitation Act, 1963, part payment, referred to in Section 19 of that Act and the contingency visualised by Section 9 of the said Act nothing stops limitation from running once it has, started running and mere making of representations will not have the effect of extending the period of limitation. I am at one with the learned counsel for the respondents that the limitation can ~~a~~ be said to have started running from Feb. 1984. Computing the period of limitation from 1984, the instant Application seems to be clearly barred by limitation. I would, therefore, sustain the plea of limitation raised by the respondents.

7. In view of the findings on the plea of limitation raised by the respondents, it may not be necessary to go into the merits. The application merits rejection on the ground of its being barred by limitation.

8. In fine, the application is hereby rejected as being barred by limitation. In the circumstances, there will be no order as to costs.

(D.K. CHAKRAVORTY)
MEMBER (A)

19-9-1989