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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 388/1989

Date of decision: November 14, 1990.

Shri S.M.Sharma

...

Applicant.

Vs.

Union of India

...

Respondent.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. I.K. Rasgotra, Member (A).

For the applicant ...

Shri R.K.Kamal, counsel.

For the respondent ...

Shri P.P.Khurana, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

In this Original Application, two questions arise; firstly, the maintainability of the Application which is stated to be barred by time, secondly, the interpretation of Paragraph 12(2) of O.M.No. 4/2/59-EDV dated 1.9.1959 issued by the Ministry of Home Affairs, New Delhi, and in particular of the sentence "there will be no loss of seniority or bar to promotion to the next higher post on account of failure to pass the typing test."

The relevant facts are as follows:

The applicant joined as L.D.C. Grade II in the office of the Director General of Civil Aviation (DGCA) on 25.9.1954. He became eligible for confirmation after completion of two years service but since he failed to pass the typing test, he was not confirmed. Subsequently, a decision was taken in the meeting of Joint Consultative

Machinery (J.C.M.) that all LDCs who had completed more than 10 years of service but could not pass the typing test shall be confirmed in their grade with effect from 1.1.1972. The applicant was accordingly confirmed as L.D.C. w.e.f. 1.1.1972. The applicant was subsequently promoted as U.D.C. in December, 1979 and as an Assistant w.e.f. 1.3.1985.

On 25.11.1983, he made a representation to the respondent for restoring his original seniority as L.D.C. w.e.f. 25.9.1954, the date he entered service. He also prayed for his future promotions on the basis of length of service as laid down in the O.M. dated 1.9.1959 issued by the Ministry of Home Affairs. His plea was that he ^{was} entitled to seniority on the basis of the above O.M. His plea was that his juniors were promoted as U.D.C. w.e.f. 1972 but the applicant was promoted in 1979. Similarly, his juniors were promoted as Assistants in 1980 but he was promoted as Assistant w.e.f. 1.3.1985. His juniors were promoted as Section Officers in 1987 but he was not given such promotion and he retired as Assistant on 31.12.1988.

He then stated that he made several representations, and one of the representation dated 7.5.1986 (Annexure A-3) was addressed to the Minister of State for Civil Aviation. A reply was given by the Ministry of Transport (Department of Civil Aviation), New Delhi to the D.G.C.A. on 30.6.1986 (Annexure A-4). The interpretation made

by the Ministry was alleged to be biased. A further representation was made to the then Minister of Health and Family Welfare and Civil Aviation through Shri Harish Rawat, Member of Parliament. In pursuance of this letter, the Minister had got the matter re-examined and passed order on 22.3.1988 (Annexure A-1) which is the impugned order in this O.A. He has thereafter approached this Tribunal by filing the present O.A. under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act').

He has prayed for quashing the impugned order dated 22.3.1988 and has also prayed that the respondents be directed to refix the seniority of the applicant as L.D.C. on the basis of continuous length of service and consider him for promotion with back date to the grade of U.D.C., Assistant and Section Officer from the dates his juniors were promoted with all monetary and other consequential benefits. The next prayer was that the respondents be directed to revise all pensionary and other retiral benefits as a consequence of his revised salary and allowances.

Respondent in the reply has taken a preliminary objection that the O.A. is barred by time and suffers from laches. The plea was that the subject matter of the Application pertains to the year 1959. He had been confirmed in the year 1972 and he had raised no grievance. He was finally informed in 1985 itself that his contentions

were misplaced. He was not entitled to the reliefs claimed by him. Thereafter, he made further representations which cannot extend the period of limitation by his own act. It was stated that the Application merits to be dismissed on this short ground alone.

In respect of the merits of the case, the stand taken by the respondent was that there was no substance in any of the pleas raised by the applicant. He could not be confirmed because he failed to pass the typing test. It was only after a decision in the J.C.M. was taken that LDCs with 10 years standing and who had not been able to pass the typing test be confirmed w.e.f. 1.1.1972. That date could not be changed to the date asked for by the applicant. In any event, a confirmation can only come after 2 years satisfactory service in the grade and provided there was availability of permanent vacancy. Consequently, the first representation made by the applicant had been rejected in 1985, the subsequent representation will not enhance the period of limitation for filing of the O.A. under Section 19 of the Act. As regards the interpretation of O.M. dated 1.9.1959, the respondent's stand was that this O.M. did not help the applicant in any case.

We have heard Shri R.K.Kamal, learned counsel for the applicant and Shri P.P.Khurana, learned counsel for the respondent.

1st Point.

The first question is in regard to limitation.

The O.A. was filed in the Principal Bench on 21.2.1989.

The cause of action arose when the applicant was confirmed from 1.1.1972. If he was aggrieved, he should have challenged the order confirming him w.e.f. 1.1.1972.

The confirmation from 1.1.1972 came after a meeting of the J.C.M. ^{that} After he was confirmed and promoted as U.D.C. in December, 1979 and as an Assistant from 1.3.1985, he made a representation saying that juniors to him in the service have been promoted from an earlier date and there was discrimination against him. His first representation was of 25.11.1983 ^{(Annexure A-2).} He had made another representation to the then Minister of State, Ministry of Transport, New Delhi, which was rejected by the Govt. of India, Ministry of Transport (Department of Civil Aviation) vide letter No A-31016/1/83-Admn. dated 30.6.1986 (Annexure A-4). He did not make any representation to the then Minister of Health & Family Welfare and Civil Aviation, Govt. of India but a letter was addressed to him by Shri Harish Rawat, Member of Parliament. This was replied to by the Hon'ble Minister on 22.3.1988 (Annexure A-1). The Hon'ble Minister's letter indicated :

"I have got the case of Shri Sharma examined. On the basis of the available facts, it appears that Shri Sharma was too junior to be covered within the range of vacancies then available. If, however, Shri Sharma has any proof to the contrary, you may revert to me and I shall get the matter re-examined."

The letter written by Shri Harish Rawat, Member of

Parliament to the Hon'ble Minister cannot be termed to be a representation made by the applicant nor the letter dated 22.3.1988 (Annexure A-1) written by the Hon'ble Minister to be treated as an order. The applicant has treated this letter as an order and has asked for quashing of the same. In our opinion, the reply sent by the Hon'ble Minister to the Member of Parliament, cannot be termed as an order. It was a personal letter written by the Hon'ble Minister to Shri Harish Rawat, Member of Parliament. There is no question of quashing of the above letter.

The date of letter of Hon'ble Minister in Annexure A-1 was relied upon as raising a cause of action for filing of the present O.A. on 21.2.1989, i.e., within one year from the date on which such final order has been made.

It is well settled that an employee is entitled to make one representation and the subsequent representations do not extend the period of limitation. In the case of S.S. RATHORE Vs. STATE OF MADHYA PRADESH (AIR 1990 SC 10) the Supreme Court considered the provisions of Section 20 of the Act and had opined that where the appeal has been filed against an order complained of against the applicant, he must wait for a period of six months from the date of preferring the appeal or making of the representation and the period of six months will be the date when the cause of action shall

be taken to have arisen. The Supreme Court also clearly laid down that "accrual of cause of action shall first arise only when the higher authority makes its 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." In the present case, if the applicant was aggrieved, that was the order which confirmed him as LDC from 1.1.1972. It also settled his seniority on that date. If he was aggrieved by the rule which placed him at a lower position than all those who had passed the typing test in 1959, he ought to have challenged the order soon thereafter. He had not challenged the same. He made a belated representation which was rejected ^{by the Ministry of Transport} and conveyed to the D.G.C.A. vide letter dated 27.2.1985 as mentioned in letter dated 30.6.1986 (Annexure A-4). His subsequent representation dated 7.5.1986 was also rejected in the above mentioned letter of Ministry of Transport (Department of Civil Aviation) dated 30.6.1986. Even then, he did not approach the Tribunal but chose to approach the Minister concerned through the Member of Parliament, Shri Harish Rawat. The letter written by Member of Parliament cannot be treated as representation made by the applicant. Further, only one representation is permissible and that was decided on 27.2.1985. Subsequent representations do not extend the period of limitation. In the case of S.S. Rathore (supra), their Lordships considered the

above question and observed:

"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' 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."

In paragraph 22, their Lordships made the position still more clear:

"Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

Learned counsel for the applicant had cited a decision of the Principal Bench of the Tribunal in B.KUMAR Vs. UNION OF INDIA & ORS. (ATR 1988(1) CAT 1). The view taken in the above case was 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.

We are of the view, and, we say so with great respect, that the decision taken in S.S. Rathore's case (supra) makes the position abundantly clear and is

binding on the Tribunal. The decision of the Tribunal in the case of B. Kumar (supra) on the above point need not therefore, be followed. Subsequent or further representations, where made, entertained and disposed of on merits will not, in our opinion, enhance the period of limitation.

In view of the above, the letter sent by the Member of Parliament to the Minister concerned will not constitute a representation nor the reply to the letter extend the period of limitation. Secondly, the cause of action arises on the expiry of six months from the date of filing a representation or appeal or revision to the superior authority and if no order is passed within that time, an employee can approach the Tribunal under Section 19 of the Act. Even that was not done in the present case. We are, therefore, of the view that the preliminary objection taken by the respondent that the present O.A. is barred by time is fully made out. This O.A. can be disposed of on this ground alone.

Since we have heard learned counsel for the parties on the merits also, we would briefly refer to the arguments and give our reasons thereon. The contention of the learned counsel for the applicant was that several other persons were taken into the service on 25.9.1954, although they were junior to him, they had not only been confirmed as LDCs at earlier dates, but had also been promoted as UDCs and Assistants much before the applicant

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and some had even been promoted as Section Officers. He claimed that on his being confirmed in 1972 and in view of the O.M. dated 1.9.1959, he was entitled to be equated with them in all respects and entitled to be promoted at least on the date when his juniors were confirmed and promoted as mentioned above.

2nd point.

The argument proceeds on the last sentence of the paragraph 12(2) of the O.M. dated 1.9.1959, which reads as follows:

"There will be no loss of seniority or bar to promotion to the next higher post on account of failure to pass the typing test."

This sentence cannot be read in isolation. The entire paragraph 12(2) has to be read together to find out its import. The first sentence states that:

"Persons in the Combined List who have passed the typing test by 1.10.1959, or have been exempted therefrom, will first be confirmed in the order of seniority in that list."

It, therefore, makes it clear that those who have passed the typing test by 1.10.1959 will first be confirmed in the order of seniority in that list. Further, those who have been exempted from the typing test, will also be confirmed in the order of seniority in that list.

The applicant did not succeed in the typing test. Consequently, he was not confirmed. Several others of his batch and some of his juniors were confirmed because they had

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passed the typing test. The provision of granting exemption did not come into effect until 1.1.1972.

During this period from 1956 to 1.1.1972, the applicant was not confirmed. His other colleagues, some of them junior to him had not only been confirmed as L.D.Cs but had also been promoted as U.D.Cs. Second sentence of paragraph 12 (2) of the O.M. dated 1.9.1959 reads :

"If any vacancies still remain, those who have not passed the typing test will be confirmed in the same order as above."

It means that if there remain-ed some vacancies, these will be filled up by those who had not passed the typing test in the same order as above, which meant that those who had qualified ⁱⁿ the typing test earlier than those who came now under the second sentence i.e., those who have not passed the typing test. The third sentence of this paragraph safeguards the interest of persons like the applicant that in future whenever there is question of promotion to the next higher post, there will be no loss of seniority or bar to promotion on the ground that they had failed to pass the typing test. In other words, it safeguarded the interest of all those who had not passed the typing test but had been confirmed as LDCs to the effect that they would not suffer in future in any promotion on the ground that they had not passed the typing test. The third sentence nowhere says that they are to be equated with those who have passed the typing test. One significant factor is this that there is nothing

in the order by which the applicant was confirmed in
and
service w.e.f. 1.1.1972/to accord him seniority along
with all those LDCs who have passed the typing test.
According to the rules, prevalent at that time, the
confirmation depended on three conditions; (a) should
have completed 2 years of approved continuous service in
the grade; (b) availability of permanent vacancy; and
(c) must have passed the typewriting test or had been
exempted therefrom. Admittedly, the applicant had
not passed the typing test and there is no order which
exempts him from the test. He could be confirmed provided
he had 2 years continuous service and, consequently, the
prayer that he should be deemed to be in continuous service from
1954 is misconceived. Another requirement was that
there should be availability of permanent vacancy. No
material has been placed before us that there was any
vacancy available at that time.

It is apparent from the above that the applicant
seeks to be equated with all those who have passed the
typing test or who have been exempted from the said test.
on the basis of O.M. dated 1.9.1959. In our opinion,
paragraph 12(2) of the O.M. does not advance his case
at all. We find no merits in the case.

This O.A. fails and is dismissed but there will be
no order as to costs.


(I.K. RASGOTRA)
MEMBER 14/11/90


(AMITAV BANERJI)
CHAIRMAN