

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 523 / 1989

DATE OF DECISION September 27, 1989.

Hari Prakash Saxena Applicant (s)

Shri N. Safaya Advocate for the Applicant (s)

Union of India & Another Respondent (s)

Shri M. M. Sudan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J).

The Hon'ble Mr. P.C. Jain, Member (A).

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

JUDGEMENT

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

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as Librarian in Government Boys Senior Secondary School No.1, Delhi Cantt., has prayed for the following reliefs: -

- "(a) that the respondent be directed to grant the scale of Rs.150-320 to the applicant with effect from 18.7.63.
- (b) Grant all consequent reliefs that may arise out of granting the scale of Rs.150-320 from 18.7.63.
- (c) Any other relief that this Hon'ble Tribunal deems fit in the circumstances of case may also be given."

2. The applicant was appointed as Library Clerk on 15.10.57 in the Directorate of Education, Delhi and was promoted as Librarian with effect from 1.7.61 in the scale of Rs.118-225. The recruitment rules for the post of Librarian in the Directorate of Education, Delhi were published on 18.7.63 in Delhi Gazette,

(Signature)

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Delhi Administration. The Recruitment Rules provided for 197 posts of Librarian (Class II, Non-Gazetted, Non-Ministerial) in the scale of Rs.150 - 320 to be filled by the process of 'Selection'. Librarian in the scale of Rs.118 - 225 having 3 years standing in the grade was eligible for consideration for selection to this post. 91 Librarians working in the grade of Rs.118 - 225 were promoted to the grade of Rs.150-320 vide Office Order No.172 dated 22.4.1964. The applicant was one of them. They were allowed this promotion from 1.4.64. The applicant claims that his promotion should have been from 18.7.1963, the date on which the recruitment rules were published. He made a representation on 29.5.1964 on this grievance (Annexure A-IV to the Application). His representation was rejected by the letter dated 6.7.64 (Annexure V to the Application) on the ground that the applicant was selected for appointment/promotion to the scale of Rs.150-320 with effect from 1.4.64 by the Departmental Promotion Committee in their meeting held on 2.4.64.

3. The applicant's case, in brief, rests on two grounds. Firstly, it is stated that the posts in the higher scale became available from the date the recruitment rules were published, and, secondly, in one case, the promotion had been allowed with effect from a date prior to 1.4.64. He has, therefore, also alleged discrimination and violation of Art. 14 and 16 of the Constitution.

4. The applicant has further alleged that there was no basis for the Departmental Promotion Committee to grant the higher scale from 1.4.64 instead of 18.7.63, and that if the Departmental Promotion Committee was held belatedly, it is no fault of the applicant.

5. In their written statement, the respondents have denied that there were no rules containing the qualifications necessary for appointment to the post of Librarian till 18.7.63 and have stated that before the above said date, the appointments had been made in accordance with the qualifications

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laid down for the posts of Librarian in different scales of pay prevailing at that time, vide Government of India, Ministry of Education letter dated 17.6.1954 addressed to the Secretary (Finance), Delhi State, Delhi. It is further stated that after the enforcement of the recruitment rules, 1963, the Department immediately took steps to convene the D.P.C. for the purpose of promoting the then existing librarians in the scale of Rs.118-225 to the revised scale of Rs.150-320. As a lot of spade work was involved e.g., collection of information from various schools and sections, collecting of confidential rolls etc., it took time and the D.P.C. could not meet before 2.4.1964. The promotion is stated to be always from the date from which the D.P.C. approves the promotion and that the applicant had no right for promotion from any particular date. The plea of limitation has been taken and it has been contended that the Tribunal has no jurisdiction to grant any relief for a period prior to three years from the date of constitution of the Tribunal i.e., 1.11.1985. The holding of the D.P.C. was mandatory as per the recruitment rules and there could be no promotion without the recommendation of the D.P.C.

6. In his rejoinder (which has been described as Replication), the applicant has reiterated that it is no fault of his that the D.P.C. did not meet earlier and there was no reason for the D.P.C. to give the benefit from 1.4.1964 and not from 18.7.1963, and, therefore, the action of the D.P.C. is arbitrary and discriminatory.

7. We have carefully gone through the pleadings of the parties and have also heard their learned counsel. We are of the view that the case can be disposed of at the admission stage itself.

8. Without going into the merits of the rival contentions, the question of limitation is first to be decided. It is not disputed that the cause of action arose on 22.4.64 when Office Order No.172 regarding the promotion of 91 Librarians

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including the applicant was issued. It is also not disputed that the applicant made his representation on 29.5.1964 and that it was rejected vide order dated 6.7.1964. The applicant has filed copies of his representations dated 8.12.83, dated 29.8.84, dated 23.3.1988 and dated 1.8.88 (Annexures A-VII, A-VIII, A-X and A-XI to the Application). He also filed a copy of the Directorate of Education, Delhi (Establishment I Branch) Memo dated 9.9.88 (Annexure A-XII to the Application) in which it is stated that "Reference his petition received in this office on 8.8.1988, regarding grant of scale of Rs.150-320, Shri H.P. Saxena, Librarian is hereby informed that the scale of Rs.150-320 cannot be granted to him with effect from 18.7.1963 instead of 1.4.1964 as the all librarians were granted the scale stated above with effect from 1.4.1964 on the advice of the Government of India". It is based on this Memo that the applicant claims that his application is within time as prescribed in Section 21 of the Administrative Tribunals Act, 1985.

9. The learned counsel for the respondents contended that his representation in respect of his grievance had been rejected on 6.7.64 and that he did not make any representation as per the Annexures to his own Application until 8.12.83. He, therefore, contended that the application is clearly barred by limitation as repeated representations do not extend limitation.

10. We are unable to agree with the contention of the applicant that his application has been filed within the limitation prescribed under the Administrative Tribunals Act. In accordance with the provisions of Section 21(1) of the Administrative Tribunals Act, 1985, an application to the Tribunal has to be filed within one year from the date on which the final order has been made rejecting any appeal preferred or representation made in connection with the grievance; within one year from the date of expiry of the period of six months where no final order has been made

with regard to the appeal preferred or representation made if the period of six months from the date on which such appeal was preferred or representation was made has expired. However, sub-section (2) of Section 21 of the Act reads as under: -

"(2) Notwithstanding anything contained in sub-section (1), where -

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."

In the case before us, Section 21 (2) of the Administrative Tribunals Act applies. As in the present case, the impugned order was not passed during the period of three years preceding 1.11.1985, the date on which the Central Administrative Tribunal came into being and as no proceedings in respect of the impugned order had been commenced before the said date in any High Court, the application is not maintainable.

II. In GIAN SINGH MANN Vs. HIGH COURT OF PUNJAB & HARYANA AND ANOTHER (1980 (4) SCC 266), a Division Bench of the Supreme Court had occasion to observe as follows: -

"3. The writ petition was filed in this Court in 1978, about eleven years after the dates from which the promotions are claimed. There is no valid explanation for the delay. That the petitioner was making successive representations during this period can hardly justify our overlooking the inordinate delay. Relief must be refused on that ground."

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12. In a very recent case of S.S. RATHORE Vs. STATE OF MADHYA PRADESH (Judgements Today 1989 (3) S.C. 530) decided by a Bench of seven Judges of the Hon'ble Supreme Court on 6.9.1989, the provisions of Section 21 of the Administrative Tribunals Act also came up for consideration. The relevant observations are 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 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.

"21. It is appropriate to notice the provision regarding limitation under s.21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

"22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for 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. 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.

13. No reason whatsoever was mentioned to us for sitting quiet from 6.7.64 when the representation of the applicant was rejected till 8.12.83.

14. In view of the clear provisions of Section 21(2) of the Administrative Tribunals Act, 1985 and the judgement

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of the Supreme Court cited above, we hold that the application is not maintainable and it is accordingly rejected. The parties will bear their own costs.

(L.C. 27/9/89)
(P.C. JAIN)
MEMBER(A)

(L.C. 27/9/89)
(P.K. KARTHA)
VICE CHAIRMAN (J)