

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1666/1988

DATE OF DECISION:14.2.92.

SHRI SRICHAND & OTHERS

...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

HON'BLE MR. T.S. OBEROI, MEMBER (J)

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

FOR THE APPLICANTS

SHRI G.D. GUPTA, COUNSEL

FOR THE RESPONDENTS

SHRI M.L. VERMA, COUNSEL

1. Whether Reporters of the local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)

14.2.92.

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

SHRI I.K. RASGOTRA, MEMBER (A))

S/Shri Srichand, Yogender Pal and Shiv Narain Sharma, the applicants have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the "denial of the consequential benefits" like seniority and promotion to the higher post consequent to their fixation of pay in the grade of Upper Division Clerk (UDC) (Rs.80-220) with payment of arrears w.e.f. 1.1.1977 in accordance with the order No.A-26019/2/Admn.IV dated 23.4.1984 read with corrigendum No.A-28019/2/83-Admn.IV dated 1.10.1984 of the respondents.

2. The facts of the case briefly are that in accordance with the judgement of Bombay High Court delivered on 23.7.1979 a Clerks grade 'B'(Rs.80-120) in the office of respondents were equated with the UDC (Rs.80-220). The operative part of the order of the Bombay High Court reads as under:-

"We may, therefore, further give clear directions that the Respondent will place the petitioners in the Upper Division Clerks scale with effect from

Ist January, 1947 and make immediate adjustments and accounts on that footing within a period of next four months from today. Not only the pay of these petitioners who are today serving with the Government of India, but the question of revised pay and pension of those who had retired on the basis of the new scales of pay be fixed within the same period. We further direct the Respondents to report compliance with these directions at the end of four months from today. If no such report is received within the time specified of four months notice to show cause for contempt of deliberate disobedience should be issued: forthwith to the Respondents. For the last thirty years without any rhyme or reason - a sizeable section of the employees serving at a very low rung of the ladder has been deprived of its legitimate pay by the unsympathetic behaviour of the officers of the Finance Ministry, we were half inclined to grant the petitioners 12 per cent interest on the entire dues. Since, however, no such claim has been made in the petition and no provisions were shown to us by the Counsel for the petitioners on the basis of which we could voluntarily add such a relief, we refrain from granting the same...."

The above order of the Bombay High Court was implemented by the respondents vide order dated 23.4.1984 and 1.10.1984. The applicants contend that consequent to the above, they were entitled to seniority w.e.f. 1.1.1947, as UDCs and consequent promotions. The applicants made a representation vide their letter dated 5.3.1985 requesting that they may be treated at par with the persons appointed as UDC w.e.f. 1.1.1947 and that their seniority in the grade of

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UDC be determined accordingly. The said representation was, however, rejected by the respondents vide their order No.A-23020/1/85-Admn.IV dated 1.12.1987 stating that "the request has been examined in consultation with the Department of Personnel and Training and Ministry of Finance but it is regretted that the same cannot be acceded to." Aggrieved by the rejection of their representation the applicants filed this O.A. on 9.8.1988.

By way of relief the applicants have prayed that the impugned memo dated 1.12.1987, rejecting their representation be quashed and that the applicants be declared to be entitled to all consequential benefits in consequence of their having been declared as UDCs from 1.1.1947, particularly seniority and promotion to the higher post viz. Assistant and Section Officer. In effect the applicants are seeking promotion to the post of Assistant and Section Officer from the date their next juniors were promoted. The names of some of juniors who were promoted earlier as Assistant and Section Officer are given in paragraph-7 of the Original Application. Since, however, all these persons have retired from service they have not been impleaded as respondents. The applicants have also retired from service as Section Officers.

3. The stand of the respondents in their counter-affidavit is that the applicants are not entitled to consequential benefits like seniority and promotion to higher post as a result of the orders of 1984. These orders clearly state that the applicants are entitled to payment of arrears as a result of fixation of pay. The relief provided to the applicants is in consonance with the judgement of the Bombay High Court which gives very specific and clear directions. They maintain that the applicants were not appointed as UDCs w.e.f. 1.1.1947. They were only given the scale of pay of Rs.80-220 in the grade of UDC.

4. Shri M.L. Verma, learned counsel for the respondents at the outset raised the preliminary objection stating that the O.A. was time barred. The learned counsel submitted that the applicants had made a representation, seeking consequential benefits, which have been agitated in the present O.A., on 5.4.1982. They should, therefore, have approached the proper legal forum immediately after the expiry of six months from the date of their representation. In support the learned counsel relied on the law declared by the Hon'ble Supreme Court (7 Judge Bench) in **S.S. Rathore v. State of M.P. AIR 1990 SC 10**. He particularly referred to paragraph 20, which 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 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 provided by this principle."

The learned counsel also cited the following judicial pronouncements which are briefly examined below:-

1) 1987 (1) ATLT 129 K.R. Mudgal v. R.P. Singh

In this case the Hon'ble Supreme Court relying on a judgement of the Constitution Bench in **Maloon Lawrence Cecil D'Souza v. Union of India & Others (1975) Supp. S.C.R.**

409 at page 413-414 particularly the following:

"Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

came to the conclusion that matter like one's position in seniority list after having been settled for once should not be reopened after lapse of many years at the instance of a party who had chosen to keep quiet during the intervening period.

ii) **1989 (3) SLJ CAT 447 Ratanjit Krishna Bhattacharyay v. UOI & Ors.**

The calcutta Bench of the Tribunal in this case held that the limitation does not run from the date of the judgement. It runs from the date the relevant instructions are issued by the respondents. The ignorance of the instructions till the date the judgement was pronounced by the Tribunal cannot extend limitation.

iii) **C.S.J. 1992 (1) Allahabad High Court 23 Ram Naresh Shukla v. U.P. Public Services Tribunal & two others.**

The Allahabad High Court in this case held that the Court is "bound to raise the question of limitation suo moto and decide it notwithstanding the fact that defendant has raised the objection of limitation in the written statement or not?"

5. The learned counsel for the applicant, however, repelled the limitation on the ground that the question of claiming the benefit arose only when the respondents vide orders dated 23.3.1984 and 1.10.1984 equated the former Clerks grade 'B' with UDCs w.e.f. 1.1.47. The applicants had no doubt made a representation in 1982 but at that time the respondents had not issued orders placing the applicants as UDCs w.e.f. 1.1.1947. The said orders treating them as UDCs

2

12

w.e.f. 1.1.1947 were issued only on 1.10.1987. They made a representation on 5.3.1985 which was rejected by the respondents on 1.12.1987. He, therefore, stressed that the cause of action arose only from 1.10.1987 and that the O.A. was filed well within the period of limitation on 10.8.1988.

6. We have heard the learned counsel for both the parties and perused the record very carefully. It is not disputed that the specific directions of the Bombay High Court have been implemented by the respondents fully. Also undisputedly all the applicants have retired from service as Section Officer. What they are now seeking is consequential benefits defined as seniority and promotion from the date their junior were promoted to the higher posts of Assistant and Section Officer with arrears of pay. In the course of the hearing, the learned counsel for the applicant also referred us to paragraph 7 of the O.A. wherein particulars of some persons who stood junior to the applicants and who were treated as UDCs from 1.1.1947 and "who have been given consequent promotions to the higher posts..." are listed. The applicants, however, have given only the following names in this connections:-

Names	Date of entry in service	Date of continuous officiating as Asstt.	Date of continuous officiating as S.O.	Ministry/ Deptt./Office
1.	2.	3.	4.	5.
S/Shri				
O.P. Verma	11.11.47	2.12.52	4.5.59	Chief Engineer, CPWD.
A.P. Jain	25.2.47	30.6.52	1.4.58	Works, Housing & Supply (Now Urban Development) DGS&D
H.C. Sharma	22.8.47	22.9.52	-	DGS&D
C.P. Mahajan	11.11.47	28.1.53	12.8.60	DGS&D

2

13

It will be observed that in all the above four cases the persons were promoted as Assistant in 1952 and Section Officers during the period 1958 to 1960. Even if they were promoted in accordance with Bombay High Court's order in SCA 450/77 with retrospective effect the fact of the promotion of the juniors was known to the applicants when they approached or matter was pending before the Bombay High Court, as the judgement of the Bombay High Court in their case was delivered only on 23rd July, 1979. From the copy of the judgement placed on the file by the applicants it is, however, observed that Bombay High Court had decided SCA No.450 of 1977 on 21.3.1978. In case their juniors were officiating as Assistant/Section Officer there is no reason why they did not agitate 'consequential benefits' as now sought in the SCA filed in the Bombay High Court. The applicants cannot, therefore, be allowed to agitate the said issue at this belated stage and when suit is filed, they are required to agitate all relevant issues in the said plaint and not agitate the same issues at that point keeping reserve the others for a later date. There is another aspect which cannot be ignored that the applicants were duly promoted as Assistant and later as Section Officer and they retired on superannuation from that post. They are now seeking promotion and payment of arrears for the period when they never occupied and discharged the functions of the higher posts ^{in that period.} At best they could have been fixed notionally from the date their juniors were promoted if they had agitated this matter at the proper time. The applicants are not only barred by limitation to agitate the matters of retrospective promotion with reference to date of promotion of next junior but also doctrine of constructive Res Judicata as they did not raise this issue in their SCA before the Bombay High Court.

2

In view of the above, we do not find any merit in the O.A. and the same is dismissed with no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)

T.S. Oberoi 14.2.92
(T.S. OBEROI)

14/2/92 February 14, 1992.

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