

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. No. 2003/88

Date of decision 8 - 12 - 88.

Shri Vijay Kumar ThakurPetitioner

Vs.

Union of IndiaRespondents

Shri G.K. AggarwalCounsel for the
Petitioner

Shri P.H. RamchandaniCounsel for the
Respondents

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVERTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporter or not? *No*

(The judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman(J))

The applicant, who is presently working as the Senior Civilian Staff Officer in the Ministry of Defence, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying inter alia for the following reliefs:

(a) To set aside the DPC proceedings dated August 1977, ^{and} August 1979, ^{and} March 1980 for promotion from Assistant Civilian Staff Officer to Civilian Staff Officer, in respect of Applicant;

(b) to direct the respondents to treat as non est, all uncommunicated adverse material in Applicant's ACR-1975 and others, if any, for all purposes;

(c) to direct the respondents to hold review DPCs for the Applicant, from ACSO to CSO as on 1.10.76, 1.10.77, 1.10.78, 1.10.79, by ignoring all uncommunicated adverse material in his ACRs, and consequentially revise his promotion as CSO, SCSO, Director and above in AFHQ Civil Service, with retrospective effect, allowing all consequential and subsequent benefits including promotions, pay and allowances with arrears and interest thereon at 12 percent per annum, with retrospective effect; and

(d) to direct the respondents to pay Rs.2,00,000/- to the Applicant, as exemplary damages.

2. The case was listed for admission ^{on 6.12.88 G} when Shri P.H. Ramchandani, Senior Counsel appeared for the respondents and raised a preliminary objection that the application is barred by limitation. Shri G.K. Aggarwal, learned counsel for the applicant, however, contended that the application was filed within time.

3. We have heard the learned counsel for both the parties at length and have gone through the records carefully. The applicant was initially appointed as Assistant Civilian Staff Officer in 1974. Thereafter, he was promoted to the next higher post of Civilian Staff Officer in 1980 and as Senior Civilian Staff Officer on an

ad hoc basis in February, 1985 and on a regular basis in March 1986. The main grievance of the applicant is that he was not recommended for promotion by the DPCs as Civilian Staff Officer in 1977 or 1979, though some of his juniors were so promoted in those years. His apprehension is that his non-promotion was due to certain adverse material contained in his Annual Confidential Reports which were never communicated to him and which were taken into account by the DPCs. He submitted a representation to the Defence Minister on 27th July, 1987, copy of which is at Annexure-AII of the application. He did not receive a reply to his representation. However, he was informed by the office of the respondents pursuant to the letter dated 22nd August, 1988 (Annexure-AI) that his representation had been examined. He was considered by the DPCs in the year 1976-77, 1977-78, 1978-79 and 1979-80 for promotion to the grade of Civilian Staff Officer, but was not recommended for promotion. The letter dated 22nd August, 1988 reads as follows:-

"

Directorate of Administration
(Admin/Civ)

Representation in respect of Shri V.K. Thakur, SCSO.

Reference your note No. RS/2502/88 dated 25th April, 1988.

2. CAO's office vide Note No. A/05641/CAO(P-1) dated 08 Aug 88 has intimated that the representation of Shri V.K. Thakur, SCSO has been examined. The Officer was considered by the DPC in the year 1976-77, 1977-78, 1978-79 and 1979-80 for the promotion to the grade of CSO but was not recommended for promotion.

3. The officer may please be informed accordingly.

Sd/-
(AK Laroiya)
ADOA(Civ)"

The learned counsel for the applicant is relying on the communication dated 22nd August, 1988 in support of his contention that the application has been filed within time.

4. On the other hand, the learned counsel for the respondents has vehemently argued that the cause of action or the main grievance arose during the period from 1977 to 1980 and that this was admittedly prior to 1.11.1982. The applicant filed his first representation only in 1987, i.e., after a lapse of nearly more than 4 years. According to him, the Tribunal has no jurisdiction to entertain an application in respect of a cause of action which arose prior to 1.11.82, in view of the provisions of Section 21 of the Administrative Tribunals Act. He relied upon the decision of this Tribunal in V.K. Mehera Vs. the Secretary (Delhi), ATR 1986(1) CAT 203 and in R.L. Bakshi Vs. Ministry of Defence, ATR 1988(1) CAT 149.

5. Another contention raised by the learned counsel for the respondents was that the present application is not maintainable on the ground of non joinder of necessary parties. In case the prayer contained in the present application were to be considered, all the officers who are likely to be affected, ought to have been impleaded as necessary parties. The applicant has not done so.

6. The learned counsel for the applicant contended that the period of limitation should be computed only from the date on which the relevant facts came to the knowledge of the applicant and in the instant case, the relevant facts came

to his knowledge only on 22nd of August, 1988, when he was informed by the respondents about the fact that he was not recommended for promotion by the DPCs from 1977 to 1980. He also contended that his representation dated 27th July, ^{only} ~~was~~ 1987 was not entertained by the respondents, but also disposed of by them on merits and hence the present application is not barred by limitation. He has relied upon the decision of this Tribunal in B. Kumar Vs. U.C.I. and Others, ATR 1988(1) CAT 1.

7. It may be pointed out that in B. Kumar's case, the Tribunal had held that the latest representation of the applicant dated 8.2.85 had been examined by the respondents on the merits and the applicant was informed as follows:-

" H RAKSHA MANTRALAYA
(MUKYA PRASHASAN ADHIKARI KA KARYALAY)

Subject: Representation-Shri B. Kumar,
Photo Artise-AFFPD

Representations dated 8.2.85 submitted by Shri B. Kumar, Photo Artise, AFFPD have been examined at the level of Raksha Mantri. It is regretted that it is not possible to antedate Shri Kumar's seniority.

Shri Kumar may please be informed accordingly.

Sd/-
K.S. DAINGRA
SAO, CAO/P-2
4.10.1985
Tele 3018221*

8. The communication sent to the applicant in B. Kumar's case contained the decision of the Competent Authority to reject the representation. On the other hand in the instant case, the communication dated 22nd August, 1988 merely conveyed to the applicant that he had been considered by the DPCs. There was no ^{mention} ~~question~~ of any consideration of the

representation afresh with a view to arriving at a fresh decision. What was done was to merely inform the applicant that he had been considered by the DPC.

9. In our opinion, the decision of this Tribunal in B. Kumar's case is based on the facts and circumstances of that case. The decision cannot be construed as laying down any general proposition in regard to delay and laches, particularly in view of the fact that Section 21 of the Administrative Tribunals Act clearly stipulates that the Tribunal has no jurisdiction to entertain a grievance arising out of an order which was made more than 3 years immediately preceding the constitution of the Tribunal. In such a case there is no question of condonation of delay in filing the application. It would be a case of the Tribunal not having jurisdiction to entertain a petition in respect of a grievance arising prior to 1.11.82. This is clearly borne out from the earlier decision of the Tribunal in V.K. Mehra's case and R.L. Bakshi's case.

10. Reference may also be made to the recent decision of the Supreme Court in Collector, Land Acquisition, Anand Nag, Kataji AIR 1987 SC 1353. In that case, an appeal preferred by the State of Jammu & Kashmir arising out of a decision enhancing compensation in respect of acquisition of lands for a public purpose was dismissed by the High Court as time barred being 4 days beyond time by rejecting an application for condonation of delay. The Supreme Court while condoning the delay observed, inter alia, that "refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and justice being ^{on} has been ^{on} defeated." As mentioned

above, the delay involved was only 4 days in that case while in the instant case, it is more than 4 years.

11. The learned counsel for the applicant also referred to the decision of the Supreme Court in Arun Kumar Chaterjee Vs. South Eastern Railway and Others, 1985(2) SCC 451 in support of his contention that the delay could be condoned in the instant case. In Arun Kumar Chaterjee's case, the petitioner had challenged in a writ petition filed before the Calcutta High Court, the promotion of some of his juniors to a higher post. The Division Bench of the High Court observed that "due to inordinate delay on the part of the applicant in moving the court, there was no justification for interfering with the promotions already made." In the facts and circumstances of the case, the Supreme Court observed that there was no delay, much less inordinate delay on the part of the appellant in filing the petition. The court also referred to the representations made by the applicant on three earlier occasions to the authorities concerned without any redress.

12. The decision in Arun Kumar Chaterjee's case is clearly distinguishable. In the case before us, the question of limitation is governed by the provisions of Section 21 of the Administrative Tribunals Act. The statutory provisions regarding limitation cannot be whittled down by general principles applicable to writ petitions in the matter of laches and delay.

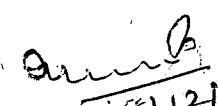
13. In our opinion, the applicants have also not shown sufficient cause for condoning the delay of 4 years in

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filing the present application. The communication dated 22nd August, 1988, cannot be construed as examination of the representation made by the applicant on 27th July, 1987 on the merits by the Competent Authority, it only directed the Directorate of Administration to inform the applicant that he had been duly considered by the DPCs from 1977 to 1980. We are also impressed by the argument of the learned counsel for the respondents that the present application is not maintainable on the further ground of non-joinder of necessary parties as the re-opening of the selections made from 1977 onwards will have great unsettling effect and the persons likely to be adversely affected have not been impleaded in the present proceedings. We are also not impressed by the argument of the learned counsel for the applicant that the review of the DPCs as prayed for, will not upset the seniority of other officers, who had been appointed pursuant to the recommendation of the various DPCs.

14. In the light of the foregoing, we are of the opinion that the present application is not maintainable in view of Section 21 of the Administrative Tribunals Act. The application is, therefore, rejected at the admission stage as not maintainable. The parties will bear their own costs.


(D.K. CHAKRAVORTY)
MEMBER (AM)


8/12/88
(P.K. KARTHA)
VICE CHAIRMAN(J)