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CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 759
T.A. No.

199 88.

DATE OF DECISION 13-9-1991.

Parvez Ahmed	Petitioner
Shri Govind Mukhoti	Advocate for the Petitioner(s)
Versus	
Union of India and others.	Respondent
Shri M.L.Verma for R-1*	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair,

.. Vice-Chairman.

The Hon'ble Mr. S.Gurusankaran,

.. Member(A)

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. Whether it needs to be circulated to other Benches of the Tribunal? ☒

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VICE-CHAIRMAN

*Shri I.S.Goel, Counsel for Respondents 3 to 5
Shri P.P.Rao along with Shri M.R.Bhardwaj
counsel for Respondent-6.

Shri S.K.Dholakia, along with Shri B.S.Gupta &
S.K.Gupta, counsel for Respondent-7.

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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI.

O.A.NO. 769 OF 1988.

DATE OF DECISION: 13-9-1991.

Parvez Ahmed.

.. Applicant.

Vs.

Union of India and others.

.. Respondents.

Shri Govind Mukhoti along with Shri R.B.Misra
Counsel for the applicant.

Shri M.L.Verma, Counsel for Respondent-1.

Shri I.S.Goel, Counsel for Respondents 3 to 5

Shri P.P.Rao along with Shri M.R.Bhardwaj,
Counsel for Respondent-6

Shri S.K.Dholakia along with Shri B.S.Gupta
& S.K.Gupta, Counsel for Respondent-7.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman

Hon'ble Mr.S.Gurusankaran, .. Member(A)

J U D G M E N T

Hon'ble Mr.G.Sreedharan Nair, Vice-Chairman.

The applicant, is^a direct recruit to the Indian Forest Service (for short 'IFS') on the basis of the competitive examination held in the year 1976. He was allotted to the Haryana State cadre. He has been assigned 1977 year of allotment. His grievance is that though he had been continuously officiating in a senior post of the IFS cadre schedule from 5-12-1980, he has been allowed the payment of salary in the senior time scale only with effect from 22-4-1982. He has prayed for granting him the pay in the senior time scale during the period from 5-12-1980 to 21-4-1982. A further relief has also been claimed by him on the basis of the aforesaid continuous officiation, to place him above respondents 6 and 7 in the seniority list. It is alleged that respondents 6 and 7, who were officers of the State Forest Service, were appointed to

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the IFS on 28-3-1981 and 20-4-1982 respectively and that their names have been included in the select list only after the applicant started officiation on the senior post.

2. The application is opposed by the first respondent, the Union of India, respondents 3 to 5, the Chief Secretary, Haryana Government, Secretary (Forests) and the Chief Conservator of Forests, Haryana, as well as by respondents 6 and 7. All these respondents have raised a preliminary objection that the application is barred by limitation. It has been pointed out that the cause of action for claiming the higher salary accrued on the issue of the salary slip dated 30-3-1981 (Annexure-III) and on rejection of the representation submitted by the applicant on 22-6-1981 (Annexure-IV) by the order dated 30-9-1982 (Annexure-VIII). In respect of the relief to place the applicant above respondents 6 and 7 in the seniority list, it is contended that from the year 1983 onwards in the gradation list of the officers of the IFS, respondents 6 and 7 are shown above the applicant and since the applicant has not chosen to challenge any of those gradation lists, the prayer cannot be allowed/laches as well as in view of the bar of limitation.

3. On merits as well, the respondents have resisted the reliefs claimed by the applicant.

4. On the request of counsel of respondents, the preliminary objection relating to the laches and the bar of limitation was^{heard} at the outset, though counsel of the applicant attempted to impress upon us that there is no merit in the objection, we are of the view that the objection has to prevail.

5. The salary in the senior time scale is claimed for

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the period from 5-12-1980 to 21-4-1982. Admittedly the applicant was promoted to the senior time scale only on 22-4-1982. For the period during which higher pay is claimed by the applicant, his pay and allowances were governed by the authorisation issued by the Chief Conservator of Forests on 30-3-1981 (Annexure-III). On receipt of the same, the applicant had submitted a representation on 22-6-1981 claiming the senior time scale from 5-12-1980 on the averment that he took charge of the senior scale cadre post on that day. The representation of the applicant was rejected by the order dated 30-9-1982 which was communicated to the applicant on 18-11-1982. As such, it was stressed by counsel of respondents that the cause of action arose in the year 1982 itself, ^{and} Since the application has been filed only in 1988, it is barred under Section 21 of the Administrative Tribunals Act, 1985.

6. Counsel of the applicant made a strenuous attempt to counter the submission of counsel of respondents by placing reliance on the subsequent representations submitted by the applicant in the year 1987 which were 'filed' by the order dated 25-9-1987. That is a one line order stating that "Government has reconsidered ~~wa~~ your representation and has filed it". It appears that the subsequent representations were made by the applicant on the basis of a judgment of the Guwahati Bench of this Tribunal in M.R. Diwan's case. When the claim of the applicant was urged in time, was duly considered by the competent authority and was rejected on merits, even assuming that years later the Tribunal has passed an order in favour of another officer belonging to the IFS, the claim cannot be put forward by the applicant by filing an original application. If the applicant was really aggrieved by the non-payment of the salary in the senior time scale, he should have approached

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a Court of law within a reasonable period of the rejection of his request. In November, 1982 the applicant was admittedly intimated that his representation has been rejected. This Tribunal was established with effect from 1-11-1985. Even after the establishment of this Tribunal, the applicant has not cared to approach the Tribunal for the relief till the year 1988.

7. Considerable reliance was placed by counsel of the applicant on the decision of a Division Bench of this Tribunal in PARUPKAR SINGH SONI v. UNION OF INDIA [1988(8)ATC 569]. That decision cannot be pressed into service as it related to a case where on the subsequent representation made by the applicant, he was required to furnish certain particulars as also the copy of a judgment that was relied upon and despite the submission of those particulars, the respondents failed to dispose of the representation. It was on the ground that the applicant did not move the High Court or the Tribunal in view of the aforesaid correspondence between him and the respondents that it was held that the original application is not barred.

8. Our attention was also invited by counsel of the applicant to another Division Bench decision of this Tribunal in PIARE LAL TIWARI v. UNION OF INDIA [1988(6) ATC 148] where it was held that even if the applicant does not challenge his first supersession in promotion, he is not estopped from challenging the ^{subsequent} ~~xxxxxx~~ supersession. The said decision does not also apply to the facts. It was on the premise that the case of each supersession creates a fresh cause of action for the superseded senior, that the said decision was delivered.

9. Counsel of the applicant submitted that there has actually been a reconsideration of the representation, which

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affords a fresh cause of action. It is to be pointed out that the representation was only 'filed'. Merely because there has been a reconsideration, it cannot be said that a fresh cause of action arose.. If such a view is accepted, it will be open to a Government servant to have a stale claim agitated by merely submitting a representation putting forward a new ground long after the earlier representation was duly considered and rejected. Certainly when a representation is submitted by a Government servant without referring to the earlier representation and its rejection, it cannot simply be 'filed'. That the 'filing' was after looking into the representation, cannot be relied upon by the Government servant for getting a fresh lease of life in respect of a cause of action which is no longer live.

10. It follows that the claim of the applicant for salary in the senior time scale of the IFS during the period from 5-12-1980 to 21-4-1982 is clearly barred by limitation.

11. There is force in the plea of the respondents that the relief claimed by the applicant for alteration of his position in the seniority list so as to place him above respondents 6 and 7 is hit by laches as well as barred by limitation. It is in evidence that from the year 1983 onwards in the gradation list of the IFS Officers, the applicant has been shown below respondents 6 and 7. It is also on record that by the order dated 8-10-1984 the 6th respondent was assigned 1975 year of allotment after approving his continuous officiation in a cadre post from 24-6-1978 to 27-3-1981. It has also been clearly indicated in the gradation list from 1984 onwards that the 6th respondent is assigned 1975 year of allotment, the 7th respondent 1976, and the applicant 1977. The applicant has not challenged the order under which he has been assigned 1977 year of allotment; nor has he questioned the placement of respon-

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dents 6 and 7 above him in the gradation list, issued from the year 1983 onwards.

12. It ^{to be} has also pointed out that the subsequent representations made by the applicant related to the denial of the pay in the senior time scale and not to the assignment of the year of allotment either to himself or to respondents 6 and 7. Hence, the 'filing' of ~~these~~ representations by the order dated 25-9-1987 does not have any effect on the operation of the bar of limitation with respect to the relief claimed by the applicant for placing him above respondents 6 and 7 in the seniority list.

13. We hold that the original application is hit by laches and is barred by limitation.

14. The application is dismissed.

[Signature]
MEMBER (A) 13/9/1991

[Signature]
VICE-CHAIRMAN 13.9.1991