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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 959/38

Date of Decision: 24.09.1993

Shri Narendra Mohan Jha & Ors.

Applicant

vs

Union of India & Ors

Respondents

Coram: Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri S.R. Adige, Member (A)

For the Petitioner: Shri Umesh Misra, Counsel

For the Respondent: Shri P.P. Khurana, Counsel

Judgement (Oral)

(Hon'ble Mr. J.P. Sharma, Member (J))

The applicant was earlier employed as Lower Division Clerk in Border Security Force. He came on transfer to Central Translation Bureau as Upper Division Clerk by the Order dated 17.12.1971 (Annexure C) and was directed to join till further orders with effect from 21.11.1971. At the relevant time, the Department of Official Language which was part of the Central Translation Bureau under the Ministry of Home Affairs was a temporary department. The claim of the applicant is that though he joined on 23.11.1971 and was confirmed on 15.6.1974 has been shown junior to some of the persons who joined much after him. During the course of the arguments, the learned counsel gave up the claim of seniority of the applicant vis-a-vis Respondent Nos. 5 & 6 and only presses this application for advancement of seniority of the applicant above Respondent No. 4 Shri Sunder Lal. It is therefore prayed that a direction be issued to the Respondent to give the applicant benefit of seniority with effect from November 23, 1971 and further benefit of promotion as a consequence thereof.

The applicant was contested by the official respondent taking the primary objection that the application is barred by delay and laches and also hit with limitation as provided under Section 21 of the Administrative Tribunal Act 1985. It is stated that the applicant had made three representations regarding his seniority vis-a-vis the respondent Nos. 3 to 6 in 1973. Again he made a representation in 1977 and he was each time informed that it is not possible to accede to his request. He also sought permission to claim relief from the court by intimating to the Bureau by his letter dated 22.6.1979. The applicant was also again informed as per the advice of the Department of Personnel through the Department of Official Language by the Memo dated 22.6.1991 that the seniority assigned to him is correct and it is not possible to make any change thereto. Thus, it is averred that the present application is not maintainable and the matter which has been once settled should not be unsettled after a decade. The respondents have also assailed the matter on merits stating that the applicant came on transfer from Border Security Force he joined in the Bureau on 23.11.1971 and his posting was till further orders. The matter of his seniority was considered according to the advice of the Department of Personnel & Training and in view of the rules, which came into force from 10.4.1972, the promotion to the cadre of UDC is 100% by promotion, 75% by seniority and 25% by Limited Departmental Examination and the applicant did not come in any of the above categories.

The private respondents Shri Sunder Lal, Respondent No. 4, as well as Shri Shri Thakur Singh Bhakuni, Respondent No. 6 have filed separate reply. Respondent No. 4 has also

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annexed a copy of the Judgement of Delhi High Court in Civil Writ Petition No. 905 of 1974 decided on 18.2.1983 by which the reversion of said Shri Radhey Sham Bansal was set aside from the post of UDC to LDC and he was directed to retain his seniority at Serial No. 5 in the provisional list dated 24.4.1972.

We have heard the learned counsel at length and perused the record. The learned counsel Shri Misra reffered to the Impugned Order dated 15.1.1983 (Annexure A) and argued that since the matter of the seniority of the applicant was reconsidered and decided by this Order a cause of action has arisen in his favour which gives him limitation. We have gone through the rejoinder filed by the applicant in reply to the official respondent and it is not denied that the applicant has time and again with intervals submitted his representation one after the other and also got the reply from the respondent. The repeated representations do not extend the period of limitation as held in the case of SS Rathore Vs. State of Madhya Pradesh reportd in AIR 1990 SC P 10 where similar matter was considered by the Supreme Court and in Paragraphs 20, 21, 22 of the report. It is a matter of seniority. The respondent No. 4 has been promoted as Adhoc Superintendent and Respondent No. 6 has been promoted as Head Clerk. The applicant is still working as Upper Division Clerk by virtue of his seniority last issued in 1979. The present application has been filed on 22.4.1988. The Tribunal has no jurisdiction in the matter in which the cause of action has arisen 3 years earlier to the enforcement of Administrative Tribunal Act 1985. In the present case the applicant has sought permission to seek judicial review of the administrative order from the Central Translation Bureau in

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1979 but instead of getting the matter adjudicated again made a representation which was also rejected in 1981. In view of this fact the present application filed in 1988 is hopelessly debarred in time. The letter dated 15.1.1988 is only a reiteration of the earlier rejection memo conveyed to the application in 1977 and 1979 and last time in 1981. Even if there was a right available to the applicant that right stand defeated by the delay and laches for which he himself is to blame. When the right is defeated the remedy itself is lost. Recently, in the case of State of Punjab Vs. Gurdev Singh reported in 1991 (4) SCC P 1 it has been held by the Hon'ble Supreme Court taking a critical view of the judgement of the Punjab and Maryana High Court that even in the service matter the aggrieved person has to approach the court within limitation. Thus, we find that the present application is not maintainable for want of jurisdiction as well as for want of limitation.

However, we have heard the learned counsel for the applicant on merit also. The point argued by the learned counsel is that in the absence of recruitment rules the length of service should be the only criterion for fixing the seniority. The learned counsel has referred to the seniority list on record in which the date of joining in the Central Translation Bureau of the applicant is 23.11.1971 that of Sunder Lal, Respondent No. 4 is 1.1.1972. It is therefore argued that the applicant has taken earlier birth in the Department, he should be given the benefit of the length of service. It is also argued that the applicant was a direct appointee and at that time the recruitment rules were not into force which was in force in April 1972. In this connection we have gone through the letter of posting of the applicant

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(Annexure C) dated 17.1.1971. The contents of this letter shows that the applicant was posted on transfer basis from his parent department (Border Security Force) where he was working in the lower grade of LDC and his posting was till further orders. In view of this his posting cannot be equated in the recruitment in the Central Translation Bureau which is analogical to the posting on deputation/transfer on deputation. By the passage of time on April 10, 1972 the recruitment rules came into force. The applicant at that time was not the member of the service in the Central Translation Bureau. It was only on the confirmation in June 1974 that he became the Member of the service in the Central Translation Bureau. The Recruitment Rules have come into force which provided 100% filling up of the post of UDC by promotion. The applicant would have been persona non grata had he not been confirmed because he was not eligible under the recruitment rules of April 10, 1972 and would have faces the repatriation to B.S.F. in the cadre of L.D.C. Thus the applicant on merits has also no case.

Further, the judgement of the Constitution Bench in the case of Direct Recrt. Class II- Engineering Officers' Assos. vs. State of Maharashtra reported in JT 1990 (4) SC 264. In paragraph 47, in sub para J, it is observed that it is not in the interest of service to unsettle a settled position after a long period. The learned counsel for the petitioner, however, referred to that sub para J alone has to be read in harmony with sub para K of the same paragraph 47. However, both the conclusions are based on facts.

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In view of the above facts and circumstances of the case OA is devoid of merit and is dismissed. No costs.

Adige
(S.R. Adige)
Member (A)

Sharma
(J.P. Sharma)
24.9.93
Member (J)

Mittal.