

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 194/ 1986
F.A. No.

DATE OF DECISION November 12, 1987.

Shri B. Kumar Petitioner

Shri R.P. Oberoi Advocate for the Petitioner(s)

Versus

Union of India and Others Respondents

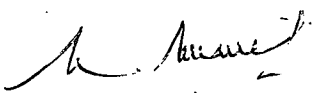
Shri M.L. Verma and Shri G.D. Gupta Advocates for the Respondent(s)

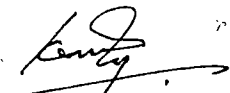
CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, 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. Whether to be circulated to other Benches? Yes.


(Kaushal Kumar)
Member (A)
12.11.1987


(K. Madhava Reddy)
Chairman
12.11.87.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 194/86. DATE OF DECISION: November 12, 1987.

Shri B. Kumar Applicant.
V/s.

Union of India and
Others Respondents.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

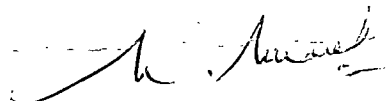
For the applicant Shri R.P. Oberoi, Counsel.

For the respondents Shri M.L. Verma and Shri
G.D. Gupta, Counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

The applicant, who is a Photo Artist in the Directorate of Armed Forces, Film & Photo Division, Ministry of Defence, New Delhi, has in this application under Section 19 of the Administrative Tribunals Act, 1985, called in question the order dated 4th October, 1985 issued by the Ministry of Defence, rejecting his representations regarding ante-dating of his seniority in the grade of Assistant Photographer / Developer / Printer to the date of his initial appointment viz., 24th December, 1971 and further praying for directions that his pay in the post of Developer / Printer in the scale of Rs.130-5-160-8-200-EB-8-256-8-280 be fixed at Rs.155/- with effect from 24th Dec., 1971 after granting him five advance increments. He has further prayed for a declaration that he has been holding the post of Developer/Printer on a regular basis with effect from 24.12.1971 and also as having been confirmed in the said post after expiry of the probationary period of two years with effect from 24.12.1973. The applicant has also claimed additional reliefs for treating him as having been regularly appointed in the grade of Photo Artist with effect from 31.12.1977 in



the scale of Rs.425-15-500-EB-560-20-700 and fixation of his pay accordingly as also giving him seniority in the said grade over respondent No.4, further promotion in the grade of Photo Supervisor with effect from 23.3.1983 and payment of arrears of pay and allowances as a result of refixation of his pay with effect from 24.12.1971.

2. A few facts necessary to appreciate the various contentions raised in this case may be noticed below. The applicant joined service under the Union of India, in the Ministry of Defence, Army Headquarters, Army Statistical Organisation in a civilian capacity as a Junior Computer on 22.1.1963 in the scale of Rs.110-180. He was confirmed in the said scale with effect from 1.4.1968 and granted a special pay of Rs.15/- per month in October / November, 1968. In August, 1971, the Chief Administrative Officer, Ministry of Defence, invited applications for the post of Developer/Printer in the Armed Forces Film and Photo Division in the scale of Rs.130-280. The applicant, along with others, applied for the said post. The applicant was duly selected and offered an appointment as Developer / Printer on a stop-gap basis. It was made clear in the appointment letter that:

- "(a) His appointment is purely on stop-gap basis.
- (b) He will neither have any claim for appointment as Developer/Printer on regular basis nor will his service reckon for seniority in that grade.
- (c) He will be reverted to his original post without any notice, when regular incumbent becomes available or earlier due to administrative reasons.
- (d) His appointment will take effect from the date he assumes charge of the post of Developer / Printer.
- (e) His pay will be fixed in accordance with the rules on the subject."

A. A. A.

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The applicant requested for protection of his pay by grant of five advance increments over the initial stage in the grade of the new post. He was, however, advised by the Ministry of Defence to report for duty immediately and not to wait till the decision about his salary was taken. However, subsequently the pay of the applicant was fixed at Rs.150 (Rs.140/- Basic Pay + Rs.10/- as personal pay to be absorbed in future increments). The post of Developer/Printer was subsequently redesignated as Assistant Photographer and the vacancy against which the applicant was appointed, which had initially occurred due to the deputation of the existing incumbent to the Railway Board, became a regular vacancy. Two more vacancies in the grade of Assistant Photographer occurred subsequently - one in the year 1972 and the other in 1974, against which other direct recruits were appointed. The vacancy which occurred in the year 1972 was filled up by appointment of respondent No.4 on 17.8.1972 as a direct recruit. The applicant had also applied for the vacancy which occurred in 1972, but he was not permitted to take the test. One more regular vacancy in the grade of Assistant Photographer occurred in 1977 and the applicant was appointed against the same with effect from 23.8.1977 and placed on probation for a period of two years, although he had been continuously officiating as Assistant Photographer from 24.12.1971 for nearly six years. As a result of his further representations, an order was issued on 2.1.1979 antedating his date of appointment to 15.2.1975. A vacancy of Photo Artist in the pay scale of Rs.425-700 also occurred in the year 1977 consequent upon the selection of the existing incumbent by the UPSC for another post of Senior Photo Officer in the Directorate of Public Relations, Ministry of Defence. This was a regular vacancy and under the

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recruitment rules, this vacancy was required to be filled up by promotion from amongst the incumbents of the posts of Photographers, which is next above the post of Assistant Photographer in the hierarchy, failing which by direct recruitment. Since no eligible departmental candidate from amongst the Photographers was available, the vacancy of Photo Artist which occurred in 1977 was filled up on an ad-hoc basis by the appointment of the applicant with effect from 31.12.1977. He continued in the said post upto 22.3.1981. On 23.3.1981, the applicant was reverted to his original post of Assistant Photographer and simultaneously again promoted from the same date to the post of Photographer, as the post of Photo Artist was filled up on a regular basis by promotion of another departmental incumbents, who had in the meantime become eligible for the said promotion.

3. The case of the applicant is that he fulfilled the necessary qualifications and experience as prescribed in the recruitment rules for appointment as Developer at the time when the vacancy was filled up in December, 1971, that his appointment was made by "transfer" which was one of the modes of recruitment in the rules, that the appointment was against a vacancy caused by deputation and as such had to be treated as a regular vacancy, that even though the appointment was sought to be made on a stop-gap basis, he continued to officiate continuously without any interruption in the said post, that he was also selected and appointed on a regular basis in 1977 in the redesignated post of Asstt. Photographer and he was entitled to seniority in the post of Developer / Assistant Photographer from the date of his initial appointment on 24.12.1971.

4. The case of the respondents is that the present application is barred by limitation and as such not



maintainable. Further that respondent No.4 had acquired a vested interest which he could not be deprived of after he had put in so many years of service. It is further contended on behalf of the respondents that the applicant did not fulfil the conditions of appointment as Developer/Printer on 'transfer' basis and, therefore, he was appointed on a stop-gap basis. It was made clear in his appointment letter that he will not have any claim for appointment as Developer / Printer on regular basis, nor his service will reckon for seniority. It is further contended that when a regular vacancy of Assistant Photographer became available in 1972, the applicant could not be considered since he was over-age for appointment as a direct recruit as per the recruitment rules. It was only in 1977 that the recruitment rules for the post of Assistant Photographer were revised providing for relaxation of age limit in case of Government servants. Since the applicant was eligible for appointment as Assistant Photographer on a regular basis in accordance with the provisions of the revised recruitment rules, he was appointed as such with effect from 23.8.1977. It is further stated in para 5 of the counter-affidavit filed on behalf of the respondents No.1, 2 and 3 that "In view of the persistent representations from the applicant his case was referred to Department of personnel and Administrative Reforms for advice whether he could be given benefit of his ad-hoc service from 1971-77 for seniority purposes. That Department advised that the question of counting his ad-hoc service for the above purpose did not arise. However, on a further reference, Department of Personnel and Administrative Reforms advised that in view of the fact that he had been continuing on ad-hoc basis for such a long time he can be regularised from the date not earlier than the date on which the last direct recruit joined that post.

A. Kumar

Although the applicant became eligible for regular appointment as Assistant Photographer only on the promulgation of revised Recruitment Rules in 1977, yet keeping in view the above advice of Department of Personnel and Administrative Reforms, he was deemed to have been appointed on regular basis w.e.f. 15 Feb 75 as the last direct recruit had joined on 14 Feb 75."


5. As regards the appointment of the applicant as a Photo Artist and his subsequent reversion to the post of Photographer, para 6 of the counter-affidavit states as follows: -

"According to the Recruitment Rules, the post was to be filled by promotion from amongst Photographers with 2 years service in the grade. However, none of the Photographers was eligible for promotion as Photo Artist. It was, therefore, decided to fill up the post on stop-gap basis. Out of the nine applicants, the applicant was selected and appointed as ad-hoc Photo Artist w.e.f. 11.12.77. On an eligible Photographer becoming available for promotion, the post was filled on regular basis w.e.f. 23-3-81 and the applicant was reverted as Assistant Photographer, the post which he was holding on regular basis. He was, however, promoted as Photographer from the date vice and in the chain of Photo Artist."

6. In regard to grant of five advance increments, para 13 of the counter-affidavit runs as follows: -

"In reply to the averments made in sub-paras 5, 6 and 7 of Para 6 it is stated that the applicant before his appointment as Developer/Printer in AFF & PD, was drawing Basic Pay of Rs.135/- plus Spl. Pay of Rs.15/- PM.

Consequent upon his appointment as Developer/



Printer, his pay was refixed in the scale of Rs.130-5-160-8-200-EB-8-256-EB-8-280 at Rs.140/- p.m. and to avoid immediate financial loss to the applicant, his pay as Junior Computer was protected and he was allowed special pay of Rs.10/- PM (to be absorbed in future increments). The applicant's claim regarding assurances given to him that he would be given five increments is not borne out by records available in this office. In any case there is no provision under the rules under which five additional increments could have been granted to him."

7. Before we proceed to examine the various contentions, it is necessary to dispose of the preliminary objection raised by the learned counsel for Respondent No.4 Shri G.D. Gupta, as also supported by the Additional Standing Counsel for the Government Shri M.L. Verma that the present application suffers from delay and laches and is also barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Shri Gupta pointed out that as stated in para 15 on page 9 of the Application, the applicant had made representations on 14.2.1979 and 22.10.79, but his grievances were not redressed. He also drew attention to the averment made in para 21 of the counter-affidavit filed on behalf of respondents 1 to 3 that the representation dated 14-2-79 submitted by the applicant was examined by the competent authority and a suitable reply was accordingly sent to the applicant. In this connection, the argument of Shri Gupta is two-fold; firstly that there is no provision in the Service Rules for redressal of grievances by making "representations". If at all, the applicant could file only an 'appeal' against an order which denied or varied to his disadvantage his




conditions of service as regulated by rules or by agreement or interpreted to his disadvantage the provisions of any such rule or agreement, as envisaged by Rule 23 (iv) of the C.C.S. (C.C.A) Rules, 1965. The applicant having failed to file any such appeal and approach the Court thereafter within a reasonable time, the present Application suffered from inordinate delay and laches, which had not been explained by the applicant. The second leg of Shri Gupta's argument is that even if such a representation as had been made by the applicant in 1979 and which had been disposed of by the respondents as stated in para 21 of the counter-affidavit were to be treated as covered by the ambit of the rules, the applicant could have at the most approached the Court after the rejection of his representations made in 1979. In any case limitation would run from the date of first rejection and it did not lie with the applicant to make further representations in 1984 and 1985 which were rejected by the order of the Ministry of Defence in October, 1985. According to Shri Gupta, making of further representations in 1984 and 1985 would not extend the period of limitation and as such, the application is hopelessly time-barred.

8. Section 20 of the Administrative Tribunals Act, 1985 reads as follows: -

"20. Applications not to be admitted unless
(1)
other remedies exhausted.- A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.


(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -




- (a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
- (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

Section 3(r) of the Act defines "service rules as to redressal of grievances", in relation to any matter, as meaning "the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act, of any grievances in relation to such matters;" Sub-section (3) of section 20 of the Act also makes it clear that "any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."



9. From the scheme of the Act as spelt out in Section 20 read with definition of "service rules as to redressal of grievances" in section 3(r), it is clear that a person has to exhaust all the remedies available to him under the relevant service rules as to redressal of grievances, before he can approach the Tribunal within the time limit as prescribed under section 21 of the Administrative Tribunals Act and that for the purpose of such remedies, a memorial to the President is not to be taken into account unless a person has opted for such a remedy. Now what has to be seen is whether a representation is a mode prescribed in the service rules for redressal of grievances. The learned counsel for respondent No.4 Shri G.D. Gupta vehemently argued that a representation does not find a place as a mode for redressal of grievances for Government servants and that this mode or method for redressal of grievances might be a mode prescribed in the service rules of Public sector Corporations, Registered Societies etc., to which also the provisions of this Act could be extended by a notification under sub-section (2) of section 14 of the Administrative Tribunals Act, 1985. According to him, the only provision in the service rules to which a Government servant can resort for redressal of his grievance is by way of an appeal as provided in Rule 23 of the C.C.S. (C.C.A.) Rules and that Rule 23(iv) is wide enough to cover cases of the type under consideration in this case since seniority is a matter which is a condition of service regulated by rules. Shri Gupta argued that where an appeal lies, no representation can be made. He further contended that the representation of the applicant having been rejected in 1979, it was not open to him to make further representations on the same points in 1985.



10. We are unable to agree with the contentions of the learned counsel Shri G.D. Gupta. Under the heading "INSTRUCTIONS FOR THE SUBMISSION, RECEIPT AND TRANSMISSION OF PETITIONS ADDRESSED TO THE PRESIDENT IN RESPECT OF MATTERS ARISING OUT OF CIVIL EMPLOYMENT UNDER THE GOVERNMENT OF INDIA OR THE TERMINATION OF SUCH EMPLOYMENT" - Appendix 3 of Volume III of Civil Service Regulations (Appendices), there is a reference to Government of India's decision No. (2) under the authority of Ministry of Home Affairs Memo. No. 118/52-Ests., dated the 30th April, 1952, which is reproduced below: -

"(2) References are frequently received in Home Ministry enquiring whether the submission of advance copies of representations to higher authorities is permissible and as to the treatment that should be accorded to such copies. The matter has been carefully considered and the following instructions are issued for the guidance of all concerned.

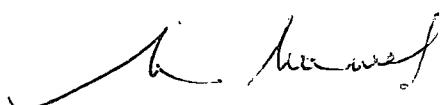
2. Whenever, in any matter connected with his service rights or conditions, a Government servant wishes to press a claim or to seek redress of a grievance, the proper course for him is to address his immediate official superior, or the Head of his office, or such other authority at the lowest level as is competent to deal with the matter. An appeal or representation to a higher authority must not be made unless the appropriate lower authority has already rejected the claim or refusal, relief or ignored or unduly delayed the disposal of the case. Representations to still higher authority (e.g. those addressed to the President, the Government or to Honourable Ministers) must not be made unless all means of securing attention or redress from lower authorities have been exhausted; even in such cases



the representation must be submitted through the proper channel (i.e. the Head of Office, etc. concerned). There will be no objection at that stage, but only at that stage to an advance copy of the representation being sent direct. (Since modified vide decision No. (3) below.)

3. The treatment by the higher authorities of advance copies of representations so received should be governed by the following general principles: -

- (a) If the advance copy does not clearly show that all means of securing attention or redress from lower authorities have been duly tried and exhausted, the representation should be ignored or rejected summarily on that ground, the reasons being communicated briefly to the Government servant. If the Government servant persists in thus prematurely addressing the higher authorities, suitable disciplinary action should be taken against him.
- (b) If the advance copy shows clearly that all appropriate lower authorities have been duly addressed and exhausted, should be examined to ascertain whether on the facts as stated some grounds for interference or for further consideration appear, prima facie to exist. Where no such grounds appear, the representation may be ignored or summarily rejected, the reasons being communicated briefly to the Government servant.
- (c) Even where some grounds for interference or further consideration appear to exist, the appropriate lower authority should be asked



within a reasonable time, to forward the original representation, with its report and comments on the points urged. There is ordinarily no justification for the passing of any orders on any representation without thus ascertaining the comments of the appropriate lower authority.

4. Some Government servants are in the habit of sending copies of their representations also to outside authorities, i.e. authorities who are not directly concerned with the consideration thereof (e.g. other Honourable Minister, Secretary, Members of Parliament etc.). This is a most objectionable practice, contrary to Official propriety and subversive of good discipline and all Government servants are expected scrupulously to eschew it.

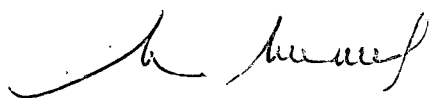
5. Separate instructions exist in respect of officers of the All India Services and these instructions do not apply to those officers."

11. From the above it is clear that there is a specific provision for making representations not only by way of memorial to the President, but also for addressing such representations even at lower levels. In fact, the Government instructions envisage that a representation should be addressed by a person to his immediate official superior or the Head of office or such other authority at the lowest level as is competent to deal with the matter and further that an appeal or representation to a higher authority must not be made unless the appropriate lower authority has already rejected the claim or ignored or unduly delayed the disposal of the case. It will be too technical a view to take that such representations are not covered by service rules for redressal of



grievances. Where a service matter, as in the case of disciplinary cases, imposition of penalty, suspension etc., is governed by statutory rules, those rules will necessarily prevail for interpreting or determining whether an aggrieved person has availed of all the remedies available to him under the relevant service rules. But where there is no such statutory rule, as for example, in case of grievances against transfers / postings, fixation of seniority etc., the administrative instructions in regard to making of representations referred to above must apply. If Shri Gupta's contention were to be accepted, a very large and substantial section of Government employees would be deprived of seeking relief by approaching this Tribunal under the provisions of the Administrative Tribunals Act and we are sure that this could not be the intention of the legislature. Further if this position were to be accepted, there would be no occasion for the Government to have the grievances looked into at higher levels and the aggrieved official would perforce have to seek remedy only by approaching the Central Administrative Tribunal after the first rejection of the representation made. Accordingly, we have no hesitation in holding that in the absence of a specific rule, a representation by a Government servant made to the competent authority for redressal of his grievance is to be treated as covered within the ambit of Section 20 of the Act.

12. In regard to the second part of Shri Gupta's argument regarding limitation, while it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is, in any case, open to the Department concerned to consider a matter at any stage and redress the grievance or grant the relief, even though earlier representations have been rejected, it would be



inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it. This is what exactly has happened in the present case. Annexure XI on page 38 of the application reads as follows: -

NO. 73311/CAO/P-2.

RAKSHA MANTRALAYA

(MUKYA PRASHASAN ADHIKARI KA KARYALAY)

Subject: REPRESENTATION - SHRI B. KUMAR, PHOTO ARTIST - AFFPD

Representations dated 8-2-85 and 10-6-85 submitted by Shri B. Kumar, Photo Artist, AFFPD have been examined at the level of Raksha Mantri. It is regretted that it is not possible to antedate Shri Kumar's seniority.

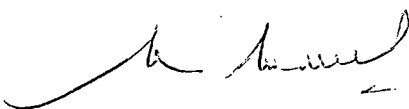
Shri Kumar may please be informed accordingly.

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

AFFPD
MIN OF DEF

13. From the above, it is clear that the representations made by the applicant in February and June, 1985 had again been examined at the level of Raksha Mantri. This is not a case where a decision regarding rejection of the earlier representations disposed of at a lower level had merely been reiterated.

14. As regards the question of delay and laches, this would be relevant in case of petitions under Articles 226 and 227 of the Constitution where no limitation is prescribed; but where the admissibility



of the application under Section 19 of the Administrative Tribunals Act is specifically regulated on the question of limitation by the provisions of Sections 20 and 21 of the Act, the matter has to be considered only with reference to the express provisions and the scheme of the Act.

15. Shri Gupta referred to certain rulings in support of his preliminary objection, which are discussed below.

16. In K.R. Mudgal and others v. R.P. Singh and others (AIR 1986 Supreme Court 2086), the Supreme Court observed as follows: -

"Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches." (para 7)

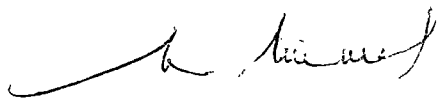
17. In K.P. Banerjee v. Dy. Secretary and others (1987 (1) CAT- All India Services Law Journal - II p. 285), the Calcutta Bench of this Tribunal observed as follows: -

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"From Annexure-III we get that as against that order of sanction the applicant preferred an appeal to the Hon'ble Defence Minister, Govt. of India on 21.7.1980. Ultimately, on 7.11.1981 (vide Annexure-IV), the applicant got his final reply from the Under Secretary to the Govt. of India, Ministry of Defence. The record shows that thereafter the applicant made representations to the Hon'ble Finance Minister and even to the Hon'ble Prime Minister. Once he was given an interview on 8.3.1982 by the Joint Secretary, Ministry of Defence, Govt. of India. In our view such representations are not departmental ones and they are not contemplated in Section 20 of the aforesaid Act."

18. In *Amrit Lal Berry v. Collector of Central Excise, New Delhi* (1975 (1) S.L.R. (S.C.) page 153), the Supreme Court observed as follows: -

".....The inequality in the equitable balance brought into being by a petitioner's own laches and acquiescence cannot be overlooked when considering a claim to enforce the fundamental right to equal treatment. To treat unequals equally would also violate that right. Although, it may not be possible for the State or its agents to plead an estoppel against a claim to the fundamental right to equal treatment, yet, if a petitioner has been so remiss or negligent as to approach the Court for relief after an inordinate and unexplained delay, he certainly jeopardies his claims as it may become inequitable, with circumstances altered by lapse of time and other facts, to enforce a fundamental right to the



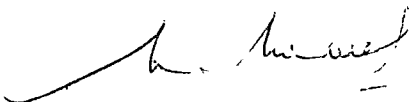
detriment of similar claims of innocent third persons."

19. Shri Gupta also referred to the ruling of the Supreme Court in Roshan Lal and others v. International Airport Authority of India and others (1980 (3) SLR page 587), wherein a writ petition was dismissed on ground of delay and laches and the Supreme Court observed as follows: -

".....The respondents were appointed as Airport Officers in 1975 and the present Writ Petitions were filed in 1978. We do not think we will be justified in reopening the question of the legality of the appointment of respondents as Airport Officers several years after the appointment. ..." (para 4)

20. We are afraid that the above mentioned rulings relied upon by the learned counsel Shri Gupta do not advance his case in regard to sustenance of the preliminary objection. As stated by us in an earlier paragraph, the question of laches and delay has to be seen with reference to the facts of each case and has relevance where there is no statutory limitation prescribed under the Act for entertaining the writ petitions. We are also in agreement with the ruling of the Calcutta Bench of this Tribunal that representations which are not made to the competent authority or are not departmental will not extend the period of limitation. It is only where representations are made to the competent authority and are entertained by the concerned Department and examined and disposed of on merits, that the making of such a further representation will extend the period of limitation.

21. Now coming to the merits of the case, a reference is invited to the relevant recruitment rules for the post



of Developer at the time when the applicant was appointed to the said post. Columns 7, 8, 10 and 11 are extracted below: -

Educational and other qualifications required for direct recruits.	Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotees/transferees	Method of recruitment whether by direct rectt. or by promotion or transfer and percentage of the vacancies to be filled by various methods.	In case of recruitment by promotion transfer, grades from which promotion to be made.
(7)	(8)	(10)	(11)
1. Matriculation or equivalent qualifications.	<u>Promotees</u> No	50% by departmental promotion.	<u>PROMOTION:</u> Photostat Opr. with 3 years' service in the grade.
2. Must have knowledge in photography and working knowledge of various processes of Developing/Printing and enlarging. Must have at least three years' experience in some photo studio.	<u>Transferees</u> Age No Edn. Qualifn. Yes.	50% by direct recruitment through Emp. Ex. failing which by advertisement failing which by transfer.	<u>TRANSFER:</u> Suitable Central Govt. employees of similar or equivalent grades.
3. Must be experienced in handling various types of photographic equipments used for developing, printing enlarging.			
4. Knowledge in retouching negatives and finishing photographs would be considered as an additional qualification.			

22. From the above, it is seen that in case of transferees, restrictions regarding age was not applicable and only educational qualifications prescribed under column 7 were required to be fulfilled. The applicant was admittedly fulfilling these qualifications. Column (10) of the rules also specifically provides that 50% of the posts were to be filled in by direct recruitment, failing which by transfer. Column 11 also makes it clear that the "Transfer" covered suitable Central Government employees of similar or equivalent grades.

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23. The circular issued by the Ministry of Defence, Office of the CAO on 25th August, 1971 inviting applications from persons serving in Armed Forces Headquarters and Inter-Service Organisations for filling the anticipated posts of Developer/Printer on stop-gap basis indicated the same qualifications as indicated in column (7) of the recruitment rules. The applicant in his application dated 9th September, 1971 indicated his particulars regarding educational qualifications, experience in photo studio, knowledge of photography, experience in handling different types of photographic equipment and knowledge of retouching and finishing as indicated below: -

"Educational qualification	Passed Hr Secondary Examination in 1961 in III Division.
Experience in Photo Studio	Worked for 6 years as a free-lancer Out Door and Indoor Photographer, mainly with Sagar Studio Hauz Khas New Delhi and Sakar Studio, RK PURAM, Sagar Studio is now shifted to Chandigarh with the new name as Sukhbir Studio.
Knowledge of Photography	For the last four year I have been doing photography independently at my home and am fully aware of each equipments of Photography. I have contributed photographs to different books and magazines at various Institutions like "BK Tewari" Homeopathic book - Meatri College Annual Magazines etc. As an Free-Lancer Photographer, I have attended the conference and visits of different VIP's e.g. our previous Adjutant General Lt Gen HARPARSAD visited ASO in 1970 and I took the photograph of his visit.
Experience in handling different types of photographic equipment	I have used 5 types of different enlargers, Autofocus Russian 35 MM enlarger. At least 20 different types of developer for printing and enlarging.
Knowledge of Retouching and finishing	I can finish Black and White as well as coloured Photographs and am doing this for the last 10 years. I have a slight knowledge of retouching. "



24. Notings recorded on the file of Ministry of Defence (CAO) No.57243/CAO/P-4 (Vol.III) dealing with the applications referred to above shows that only two applications had been received and only the applicant was found eligible for consideration for the post. Para 3 of the note dealing with the applications is reproduced below: -

"3. In response to the circular, only two applications have been received and are placed at Encls. 5B & 6B. Only one candidate namely Shri B. Kumar (application at Encl.6B) is eligible for consideration for the post. The remaining candidate viz. Shri Kesar Singh (appln at Encl 5B) is not eligible for the post, as he is a non-matriculate."

From the above, it is clear that the applicant fulfilled the educational qualification and experience prescribed under the rules for direct recruitment, even though in the case of appointment by transfer, only educational qualification was required to be fulfilled. Further the age restriction was not applicable in the case of appointment by transfer. He was also considered as eligible by the Department itself as disclosed by the relevant notings.

25. The extracts from Ministry of Defence OM No.0240/6382/D-12 dated the 1st September, 1949 referred to as Annexure P-3 to the rejoinder filed on behalf of the applicant also conveys the decision of the Government to the effect that "service in an equivalent grade" should generally be defined as service on a rate of pay higher than the minimum of the time scale of the grade concerned. Since the applicant was drawing the basic pay of Rs.135/-, which was higher than the minimum of the pay scale of Rs.130 - 280, prescribed for the post of Developer / Printer, the applicant could be considered as being in

[Signature]

equivalent grade as envisaged under column 11 of the recruitment rules for transfer of suitable Government employees.

26. Keeping in view all the above facts, the appointment of the /applicant in December, 1971 to the post of Developer / Printer cannot be considered as de hors the rules. It was strictly in accordance with the recruitment rules against a vacancy caused by deputation of an incumbent who never reverted back to the Department. Merely by calling the appointment as ad-hoc or on stop-gap basis, the appointment cannot be considered as de hors the rules or irregular which would deny the applicant the benefit of seniority from the date of appointment itself. In fact, the Department of Personnel & A.R., in their note recorded in November, 1978 (Annexure R-VI to the counter-affidavit filed on behalf of respondents 1, 2 and 3) expressed a view that there should be no objection to the regularisation of the applicant's appointment provided the vacancy fell in the point reserved for Direct Recruitment and that the method of direct recruitment was tried and failed. Para 3 of the said note is extracted below: -


"3. The period of deputation for which the regular incumbent of the post left has not been made clear. However since the post was to be filled only for a short period, the post was circulated among employees of AFHQ and Inter-services Organisations and on the basis of the selection made Shri Kumar was appointed. The file containing the relevant proceedings of the Selection Board has not been made available. In view of the short duration of the vacancy the question of direct recruitment can be ruled out. Moreover, the circular issued also rules out that



the post was filled by direct recruitment. Direct recruitment was to have been made from amongst the nominees of Emp. Exchange, failing which by advertisement, both of which were not done. Therefore we have to proceed on the assumption that the post was filled by the method of transfer. For transferees, the age mentioned in the Recruitment Rules does not apply. Therefore the question of relaxation of age does not arise in this case. The post in which Shri Kumar was initially appointed on an ad-hoc basis became a clear vacancy w.e.f. 1.3.74 when its incumbent was confirmed in the Railway Board. If Shri Kumar had been selected on the basis of regular selection made by a Selection Board, but he was treated as on ad-hoc basis only because the regular incumbent was holding a lien on that post, then there should be no objection to his regularisation provided the vacancy fell in the point reserved for Direct Recruitment and that the method of direct recruitment was tried and failed."

27. The learned counsel Shri G.D. Gupta referred to several rulings in support of his contention that in cases where a continuous officiation is followed by regularisation, the period of ad-hoc service should not be counted towards seniority and that seniority should reckon only from the date of regular appointment.

28. In *S. Ramaswamy v. Union of India and others* (AIR 1976 Supreme Court 2394), the Supreme Court held that the period of ad-hoc service had to be excluded from consideration for determining eligibility for regularisation. In para 6 of their judgment, they observed




as follows: -

"6. That the appellant is qualified and eligible for appointment as an Industrial Adviser is beyond dispute and has at no stage been questioned. But it has to be stated that for the purpose of computing the completion of 5 years' service as an Officer on Special Duty, the period during which the appellant was working in that post on an ad hoc basis has to be excluded from consideration. The appellant was appointed as an Officer on Special Duty on an ad hoc basis in 1966 but the appointment was regularized on January 23, 1970 after the President made the recruitment Rules dated January 14, 1970 regulating the method of recruitment to that post. The appellant, therefore, must be taken to have completed 5 years' service in the post of Officer on Special Duty on January 23, 1975."

29. In A.P.M. Mayakutty v. The Secretary (1977) 2 Supreme Court Cases 360), the Supreme Court made the following observations: -

"10. The decision in C.P. Damodaran Nayar v. State of Kerala (1974) 2 SCR 867 : (1974) 4 SCC 325 : 1974 SCC (L & S) 280) on which the appellants' counsel has placed reliance for showing that temporary service of the kind rendered initially by the appellants can be counted for the purposes of seniority has no application to the instant case. One of the appellants in that case was selected as a District Munsif by the Madras Public Service Commission and was posted as such on May 26, 1951. He was in continuous service in that post since his appointment but on being



allotted to the State of Kerala on November 1, 1956 his seniority was reckoned from October 6, 1951 on the footing that the said date was assigned to him as the date of commencement of his continuous service. Dealing with the appeal arising out of the dismissal of his writ petition, this Court held that the service rendered by the appellant after his initial appointment was neither emergency service nor was it a purely stop-gap or fortuitous arrangement. The distinguishing feature of that case, which is highlighted in the judgment of the Court, is that the appellant therein was "appointed in a regular manner through the public Service Commission" and therefore his appointment could not "by any stretch of imagination" be described as having been made to fill a purely stop-gap or fortuitous vacuum (p. 876). In our case the initial appointment was not only made without any reference to the Public Service Commission but the various rules and the term of the appellants' appointment to which we have drawn attention show that the appellants were appointed purely as a matter of fortuitous or stop-gap arrangement. The concurrence of the Public Service Commission to the continuance of the appellants in the posts filled by them, first after the expiry of three months and then after the expiry of one year, was obtained not with a view to regularising the appointment since their inception but for the purpose of meeting the requirements of a provision under which such concurrence is necessary to obtain if an appointment made without selection by the Public Service Commission is required for



any reason to be continued beyond three months or a year."

30. In Ashok Gulati and others v. B. S. Jain and others (1987) 2 Administrative Tribunals Cases 608), the Supreme Court observed as follows: -

"13. We are not aware of any principle or rule which lays down that the length of continuous officiation/service is the only relevant criterion in determining seniority in a particular cadre or grade, irrespective of any specific rule of seniority to the contrary. It is necessary to emphasise that the principles laid down in the two leading cases of N.K. Chauhan and S.B. Patwardhan, reiterated in Balashwar Dass case and subsequently followed in several decisions are not an authority for any such proposition. These decisions particularly that in Balashwar Dass case clearly lay down that ordinarily and in the absence of any specific rule of seniority governing the cadre or service, the length of continuous officiation should be counted in reckoning seniority as between direct recruits and promotees. These authorities nowhere lay down that the same principle i.e. the length of continuous officiation must be the sole guiding factor and the only criterion in determining seniority of such ad hoc employees vis-a-vis direct recruits."

XXXX XXXX

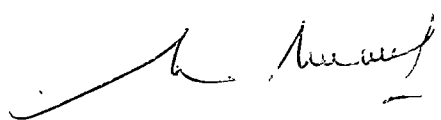
"23.It must therefore be held that the period of service rendered by persons like respondents 1 and 2 who were appointed on ad hoc basis purely as a stop-gap arrangement for six months at a time de hors the rules, cannot be considered for purposes of their seniority in Class II



service or in reckoning their eligibility of 8 years' service in that class of service under Rule 6(b) of Class I Rules.

31. The same view was taken by the Supreme Court in P.D. Aggarwal v. State of U.P. (1987) 4 Administrative Tribunals Cases 272) wherein they observed as under: -

"26. We further hold that so far as the temporary Assistant Engineers who have been appointed substantively to temporary posts and have been working for years together after being duly recruited and selected by the Public Service Commission as required under the service rules have become members of the service but so far as purely ad hoc employees or employees on purely officiating basis or employees purely for a temporary period in the cadre of Assistant Engineer in Public Works Department being not members of the Service in accordance with the service rules, are not entitled to have the benefit of their such adventitious, purely ad hoc and temporary service being not appointment substantively even to a temporary post will not be reckoned for determination of seniority unless and until they become members of the Service in accordance with the provisions of service rules. Only those ad hoc appointees whose services have been regularised by the regularisation rules framed under proviso to Article 309 of the Constitution after being duly selected by the Selection Committee and becoming member of the service, will be entitled to seniority only from the date of order of appointment after selection in accordance with those regulations as provided in Rule 7 of the regulations.



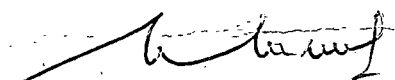
"27. We mention in this connection the observation of this Court in the case of Ashok Gulati v. B.S. Jain (AIR 1987 SC 424 : 1986 Supp SCC 597 : (1987) 2 ATC 608) (to which one of us was a party). It has been observed as follows: (SCC p. 612, ATC p. 623, para 22)

According to the accepted canons of service jurisprudence, seniority of a person appointed must be reckoned from the date he becomes a member of the service.It is well settled that an ad hoc or fortuitous appointment on a temporary or stopgap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis; as such temporary tenure hardly counts for seniority in any system of service jurisprudence."

32. On the other hand, the learned counsel for the applicant Shri R.P. Oberoi referred to certain rulings wherein it has been held that where adhoc officiation is followed by regularisation, the entire ad-hoc and continuous service should be counted for purpose of seniority.

33. A Bench of this Tribunal in S.C. Jain v. Union of India (A.T.R. 1986 (2) C.A.T. 346), following the judgment of the Delhi High Court in Kuldeep Chand Sharma v. Delhi Administration and another 1978 (2) SLR 379, and the of the Supreme Court in Narendra Chadha v. Union of India and others (ATR 1986 Vol. I SC 49), held that the entire period of ad-hoc service followed by regular appointment shall be counted for purposes of seniority.


34. The same view was held by the New Bombay Bench of this Tribunal in Kunjal Laxminarayan Nayak v. Union of India & others (A.T.R. 1987 (1) C.A.T. 458).



35. The learned counsel for the applicant also referred to the judgment dated September 24, 1987 pronounced by the Supreme Court in writ petition Nos.822, 875, 180 & 200 of 1987 of Dr. A.K. Jain & others v. Union of India and others, wherein a direction was given to the following effect: -

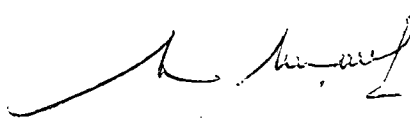
"1. The services of all doctors appointed either as Assistant Medical Officers or as Assistant Divisional Medical Officer on ad hoc basis upto 1.10.1984 shall be regularised in consultation with the Union Public Service Commission on the evaluation of their work and conduct on the basis of their confidential reports in respect of the period subsequent to 1.10.1982. Such evaluation shall be done by the Union Public Service Commission. The doctors so regularised shall be appointed as Assistant Divisional Medical Officers with effect from the date from which they have been continuously working as Assistant Medical Officer / Assistant Divisional Medical Officer."

36. In the light of the view we have taken that the appointment of the applicant as Developer / Printer from 24th December, 1971 cannot be considered as de hors the rules, the said appointment has to be treated as regular from the same date, notwithstanding the stipulation in the appointment letter that the appointment was to be treated as on stop-gap basis. This is a case where the applicant is to be treated as having been regularly appointed from the date of his initial appointment on 24th December, 1971 and not a case where long and continuous ad-hoc offication is followed by regularisation. Even otherwise, the rulings relied upon by the learned counsel for respondent No.4 referred to above do not advance



his case. The facts of the case which gave rise to the rulings cited by the learned counsel were essentially different inasmuch as the concerned persons were not members of the service at the time when they were initially appointed and it was only subsequently that appointments were made in accordance with the rules. In their cases, ad-hoc officiation was not against the posts which belonged to the cadre of the Service to which they were subsequently recruited in accordance with the rules. As such, those rulings are not applicable to the facts of the present case. Although in the present case, we are holding that the appointment by transfer was regular from the date of initial appointment itself, even if the appointment were to be treated as ad-hoc followed by regularisation, the case is covered on all fours by the ruling of the Supreme Court in Narendra Chadha v. Union of India and the latest judgment of the Supreme Court in the case of Dr. A.K. Jain v. Union of India and others. Accordingly, the applicant is entitled to seniority as Asst. Photographer on the basis of his initial appointment i.e., 24th December, 1971 and also confirmation after a period of two years from 24th December, 1973.

37. As regards his appointment as Photo Artist in December, 1977, the said appointment cannot be considered as being in accordance with the rules. As admitted in the application itself, the rules provided for filling up the post by promotion of eligible Photographers, failing which by direct recruitment. Admittedly, the applicant was not eligible for promotion and the appointment of the applicant who was already holding the post of Asst. Photographer cannot be considered by way of direct recruitment. The recruitment rules for the post of Photo Artist also do not provide for appointment by transfer. As such, the appointment was clearly ad-hoc till such time as an incumbent became eligible for promotion.

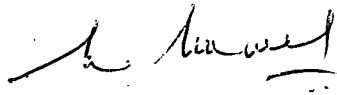


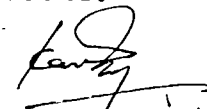
38. In the circumstances, the service of the applicant in the post of Photo Artist cannot be treated as regular from the date of his ad-hoc appointment.

39. The applicant's claim for grant of five advance increments under F.R. 27 has also no legal basis. He was drawing a Basic Pay of Rs.135/- plus special pay of Rs.15/- p.m. On his appointment as Developer/Printer, his pay in the grade of Developer/Printer was fixed at the next higher stage of Rs.140/- in the new scale and his emoluments were protected by grant of a personal/special pay of Rs.10/- to be absorbed in future increments. This was in accordance with the rules and the relief claimed by the applicant on this count cannot be allowed.

40. In view of the above discussion, the application is partly allowed with the direction that the seniority of the applicant shall be fixed in the grade of Assistant Photographer on the basis of his initial appointment as Developer with effect from 24th December, 1971 and Review D.P.C. (s) shall meet for considering his case in accordance with the rules for promotion to the higher posts of Photographer, Photo Artist and Photo Supervisor from the dates his juniors as per the revised seniority were so promoted and he shall also be entitled to arrears of pay and allowances in the respective posts from the deemed dates of his promotions to those posts. This order shall be complied with within a period of two months.

41. There shall be no order as to costs.


(KAUSHAL KUMAR)
MEMBER (A)
12.11.1987


(K. MADHAVA REDDY)
CHAIRMAN
12.11.87.