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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

OA 566/86

Date of decision: - 10th Sep. 92

Sh.A.S.Mehta ... Applicant

versus

Union of India through
Foreign Secretary,
Ministry of External Affairs... Respondents

CORAM: THE HON'BLE SH.T.S.OBEROI, MEMBER(J)
THE HON'BLE SH.P.C.JAIN, MEMBER(A)

For the Applicant ... Dr.D.C.Vohra, counsel.

For the Respondents ... Sh.N.S.Mehta, counsel.

1. Whether the local reporters may be allowed to see the judgement? *yes*.
2. To be referred to the reporter or not? *yes*.

JUDGEMENT

(DELIVERED BY HON'BLE SH.T.S.OBEROI, MEMBER)

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for the following reliefs:-

- "(1) The respondents be directed to fix the seniority of the applicant in terms of Rule 25(6) according to the date of the result of the Cypher Examination (4.6.62) held in 1960 and not according to date of appointment and the impugned order No.Q/CAD/582/8/78 dated the 2nd June, 1986 be not treated as having finally disposed of the question of applicant's seniority;
- (2) The respondent's Order No.Q/CAD/582/8/78 dated the 16th August, 1979, which introduced an executive exception to the statutory Rule 25(6) of the IFS(B)-RCSP Rules, 1964, as amended from time to time, and which still does not form part of the said Rules, depriving the applicant of his legitimate seniority rights, be revoked/ quashed/set aside;
- (3) The applicant's name be included in the Select List published by the Respondent vide its Memorandum No.Q/CAD/584/17/85 dated the 25th November, 1985, in terms of which officers junior to the applicant in seniority, fixed according to Rule 25(6), stand promoted;

(4) The costs of the proceedings may kindly be granted in favour of the applicant and against the respondent;

(5) Any other or further relief(s) as deemed fit and proper under the circumstances of the case."

2. The applicant's case briefly is that he joined Government service in 1949(in boy-service), and later on served as L.D.C in the Ministry of Finance till 1953. In 1953 his services were transferred to Ministry of External Affairs, where he was absorbed in the Indian Foreign Service 'B', when the service was constituted on 1.8.1956. He, however, later passed a written examination for selection into Central Cypher Bureau(CCB, for short), a sub-cadre maintained by the respondents under the Indian Foreign Service 'B'.

He ~~had~~ passed the said test held on 22.8.60, and also completed the basic training for empanelment, in the CCB. Vide the details given in para 2 of the OA, he served in various Embassies of India, as well as at headquarters, during the period from 1953 to 1986. He was appointed as Assistant in the general cadre on 22.10.65 on ad hoc basis. By virtue of passing the test and completing the basic training, referred to above, he claims his appointment in the CCB as Cypher Assistant, from the date of his passing the test and completing the requisite training, rather than from the date, he was appointed as Cypher Assistant from 24.7.68. His several representations submitted to various authorities concerned, in this regard,

brought forth no result, and eventually he filed the present OA, with the reliefs as indicated above.

3. In the counter filed on behalf of the respondents, the applicant's case has been opposed. The respondents have taken up preliminary objections regarding the limitation as well as the concerned persons whose interests will be adversely affected, in case the prayers in the OA are granted, having not been impleaded as respondents in this case. On merits, the respondents have opposed the OA on the ground that the rules regarding the appointment of Cypher Assistant were enforced on 1.6.1964, and, therefore, any relief claimed by the applicant, before coming into force of the recruitment rules, is of no consequence. It was also pleaded on behalf of the respondents that the applicant had been availing of his foreign postings and having availed of the same and the benefits accruing therefrom, he has chosen to agitate his appointment as Cypher Assistant, retrospectively from much earlier date, which deserves to be denied to him for the aforesaid reasons.

4. In the rejoinder filed by the applicant, his submissions in the OA were broadly reiterated.

5. We have also heard the learned counsel for both the parties and have gone through the relevant record carefully. The learned counsel for the applicant urged that because of the applicant's posting abroad in the exigencies of service, the applicant could not earlier avail of the legal remedy, to seek the reliefs in the case, as has also been communicated by him to the authorities concerned in some of his communications/representations in this regard. The respondents' contention in this regard is that the cause of action, if at all, arose to the applicant, after his passing the examination in August, 1960, and he got his promotion in the general cadre of Assistants on 22.10.65 and had been appointed as CCB Assistant on 24.7.68, whereas he had agitated the matter, by way of the present OA in July, 1986, and, therefore, the OA is not only hopelessly time-barred, but also not within the jurisdiction of this Tribunal, being a matter, cause of action in much earlier than which arose /three years before the coming into force of the Administrative Tribunals Act, 1985. By citing & others the State of Punjab / Vs. Gurdev Singh (1991) 4 SCC 1, the learned counsel for the respondents pleaded that

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the limitation in a case of this nature is of essence and it cannot, therefore, be ignored. The plea of the applicant that because of his foreign assignments, he could not actively pursue and seek remedy in an appropriate judicial forum, at the relevant time, though he had been taking up the matter with the administrative authorities concerned, would also, according to the learned counsel for the respondents, not come to applicant's rescue, as repeated reminders do not extend the period of limitation involved in the case. The learned counsel for the respondents cited S.S.Rathore Vs.State of Madhya Pradesh(AIR 1990 SC 10) in support of his contention in this respect. As regards the affected persons not having been made a party in this case, the learned counsel for the respondents referred to an order passed a Misc.Petition in in /OA No.1872/89(Miss Indira Gidwani Vs.Union of India & Ors.) dated 18.1.91 by a Bench of this Tribunal in which one of us(Hon'ble Sh.P.C.Jain) was a party, wherein it was held that the defect regarding not making the affected persons as a party in the case, was a vital one and goes to the root of the case.

6. Coming to the preliminary objections raised by the respondents regarding limitation as well

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as the concerned affected parties having not been made respondents in this case, we are of the view that even in spite of a finding by a Bench of this Tribunal, as per order dated 21.1.1987 that the OA is within time, the concerned persons whose interests may adversely be affected in case the prayers in the OA are granted, not having been impleaded as respondents, the OA suffers from the legal flaw, which cannot be ignored, inviting the dismissal of the OA, on this account alone. Besides, the applicant having availed postings abroad without insisting upon his appointment as Cypher Assistant, at the relevant time, diminishes force, if any, in his prayers in the present OA. We also find force in the submissions of the respondents that the rules on the subject having come into force much later than the passing of the test and completing the basic training by the applicant, his appointment to the post of Cypher Assistant, from the date of his passing the said examination, cannot be conceded to him. In the result, the OA is devoid of any merit and is dismissed as such, without any order as to costs.

(P.C.JAIN)
(P.C.JAIN)
MEMBER(A)

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