

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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

825

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DATE OF DECISION

17.11.89

Prem Prakash Sharma Applicant (s)

Sant Singh Advocate for the Applicant (s)

Versus
Union of India & Others Respondent (s)

M.L. Verma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, V.C.

The Hon'ble Mr. Mr. P.C. Jain, A.M.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for confirmation of the applicant with effect from 1.5.71 and benefits of seniority, promotion from 8.10.65, the date of the applicant's initial appointment. There is also a prayer to quash an order contained in Govt. of India's letter dated 7.12.78, Annexure-A whereby the service rendered by the applicant prior to 7.12.78 was held not to count for the purposes of seniority, promotion and confirmation. There is also a prayer for fixation of salary, arrears, and promotion as U.D.C.

2. It is admitted that on 8.10.65 a large number of persons, including the applicant were appointed as IDC in lieu of combatant when they were all over-age. On 24.2.66, opposite party No.5, K.L. Bhatia was also appointed as IDC

as he too was over-age. Out of these, 545 persons including opposite party No.5, K.L. Bhatia, were regularised on 14.5.71 (vide Annexure-C), but the applicant was not regularised. The case of regularising of remaining 102 persons was considered later on; and on 7.12.78 the impugned order, Annexure-A was passed by which they, including the applicant had been regularised by relaxation of the upper age limit but it was specifically ordered that the service rendered by those persons prior to 7.12.78 would not count for seniority, promotion and confirmation as it had to be treated as ad hoc service.

3. In the meantime, K.L. Bhatia, opposite party No.5 had been confirmed as IDC with effect from 1.5.71 whereas the applicant had been confirmed as IDC with effect from 17.1.72 by order dated 17.5.76, Annexure-G. However, there was a second order of confirmation of the applicant with effect from 7.12.80, by order dated 24.7.86 contained in Annexure-H.

4. The applicant's grievance is that K.L. Bhatia, opposite party No.5 was junior to him not only because he was appointed on 8.10.65 whereas opposite party No.5 was appointed on 24.2.66 but also because the Department's seniority list, extract Annexure-E had placed him at Sl.No.1784 while K.L. Bhatia was placed at Sl.No.1880. He says that in this situation his confirmation with effect from 17.1.72 as against K.L. Bhatia's confirmation with effect from 1.5.71 is illegal. His further grievance is that having been once confirmed by Annexure-G with effect from 17.1.72, there was no question of making his second confirmation with effect from 7.12.80 by Annexure-H.

5. His last grievance is that in connection with the regularisation of his service by relaxation of the upper age limit under order dated 7.12.78, Annexure-A, the opposite parties had arbitrarily and in their a discriminatory manner ~~and~~ refused to count his service prior to 7.12.78 towards seniority, promotion and confirmation.

6. This petition was filed on 18.9.1986. The case of the opposite parties is that the claim is barred by limitation. It is pointed out that the first order of the applicant's confirmation as IDC with effect from 17.1.72 was passed on 17.5.76, Annexure-A and the impugned order for regularising him by relaxation of the upper age limit while refusing benefit of past service towards seniority, promotion and confirmation was passed on 7.12.78, Annexure-A. The claim of the applicant in respect of Annexures-A & G had become time barred long before the Administrative Tribunals Act, 1985 came into force and this Tribunal was constituted.

7. The learned counsel for the applicant however says that the delay in filing the application under Section 19 of the Act has already been condoned by order dated 30.10.86. The applicant filed an application for condonation of delay being M.P.No.706/86. That application was allowed by order dated 30.10.86.

8. We have heard the learned counsel for the parties and have been taken through the material on the record. We notice that the application for

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condonation of delay had been allowed without notice to the opposite parties. Moreover, the condonation of delay is only in respect of filing of the application, not in respect of entitlement to the relief sought. It will have to be found in every case whether or not the claim in respect of which the right is sought had become time barred before the application under Section 19 of the Act was filed. There can be no doubt that both in respect of Annexure-G dated 17.5.76 and Annexure-A dated 7.12.78, the applicant's claim had become barred by time, not only on the date when the application was filed on 18.9.86 but also before the constitution of this Tribunal under the Act. The learned counsel for the opposite parties has referred to the case of K.R. Mudgal and Others Vs. R.P. Singh and Others ATR 1987(1) SC 1 where the Supreme Court rejected the Writ Petition filed in 1976 as bad for laches, where the relief was sought against a seniority list which had been issued in 1958 and in respect of which objections had been called but the petitioners there did not file any objection. The observations of the Supreme Court in the case of R.S. Makashi and Others Vs. I.M. Menon and Others (1982) 2 SCR 69 were relied upon where it was noticed that the laches sought to disrupt the vested rights regarding seniority, rank and promotion which had accrued to a large number of persons in the meantime.

9. The decision in the case of V.P. Rego Vs. Union of India & Others (1984) 4 ATC 346 rendered by the Jabalpur Bench of this Tribunal is directly on the

point. There the petitioner who had been made Quasi Permanent on 18.11.69 retired on 31.7.77 without confirmation so that he could not get the benefit of pension. The petitioner had been making representations from 1979 onwards to the various authorities, the last one being dated 7.3.86 which was forwarded to the Defence Ministry but the Ministry chose not to pass any orders. On the application under Section 19 of the Administrative Tribunals Act filed on 10.11.86, the Jabalpur Bench held that miscellaneous representations or petitions not provided under statutory or Departmental Rules, are not covered by Section 20 or 21 of the Act for allowing limitation. It was held that where cause of action arose within three years preceding ^{the} ~~setting~~ up of the Tribunal an application under Section 19 of the Act could be made within six months thereafter; but since in that case the cause of action had arisen long before three years preceding the setting up of the Tribunal, the application was barred by time. The Bench had placed reliance upon a decision of the Supreme Court in the case of Jagdish Narain Vs. State of Bihar 1973 SC 1343 where it had been held that if the aggrieved applicant had already allowed his remedy to become time barred he could not get a fresh lease of life merely by filing repeated or successive representations. The same holds good in the case before us.

10. The learned counsel for the applicant has referred to the case of Durga Das Vs. Union of India decided by the Delhi High Court and reported in (1970) 6 Delhi Law Times 2 (Short Notes) to show that when a

selection for promotion by a Departmental Selection Committee is held to be arbitrary, it must be quashed even at the cost of inconvenience to the Govt. and the selected candidates. Apart from the fact that the report is not a complete report of the decision, the points decided do not cover the question of limitation.

11. The learned counsel for the applicant has referred the case of P.L.Shah Versus Union of India & Another 1989 (2) AI SLJ 49 to show that even in respect of cases which are more than three years old prior to the date of establishment of the Tribunal relief in respect of the period within three years may be given. That case related to the payment of subsistence allowance which is a recurring cause of action. The Hon'ble Supreme Court observed that in such a case the cause of action arises every month in which subsistence allowance at reduced rate is paid. In the case before us there is no continuing cause of action.

12. Nevertheless, we notice that the second order of confirmation of the applicant passed on 24.7.86 contained in Annexure-H, confirming the applicant with effect from 7.12.80 is not barred by time. It has not been shown that there is any justification for the passing of the second order of confirmation. This petition will succeed only to that extent.

13. The petition is partly allowed and while

the impugned order of confirmation of the applicant with effect from 7.12.80 under order dated 24.7.86 contained in Annexure-H is quashed, the petition is dismissed in all other respects. The opposite parties are directed to consider the question of confirmation of the applicant as LDC afresh in accordance with law, after giving an opportunity to the applicant to show cause, within a period of three months from the date of receipt of this order. Parties shall bear their costs of this petition.

(Signature)
(P.C.Jain)
Member (A)

(Signature)
(Kamleshwar Nath)
Vice Chairman

Dated the 17th November, 1989.

RKM