

(16) (20)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 9/1986
T.A. No.

198

DATE OF DECISION 15-12-1989.

Shri Dhanpat Rai Applicant (s)

Shri G.D. Bhandari Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

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

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

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. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(The Judgment of the Bench delivered by Hon'ble Shri D.K. Chakravorty, Administrative Member)

The applicant who retired as Deputy Director in the Central Water Commission with effect from 31st December, 1985 filed this application under Section 19 of the Administrative Tribunals Act, 1985 on the same date seeking the following reliefs:-

- (i) Promotion and pay as Assistant Engineer, CWC from 17.8.1951, the date on which his junior (Shri Wadhwa) was promoted to the said post in the scale of pay of Rs.275-800;
- (ii) Promotion and pay as Assistant Executive Engineer (Class I) with effect from 8.2.1955 when his junior (Shri Wadhwa) was promoted to Class I in the grade of

Rs.400-950;

47-92

(iii) Promotion and pay as Executive Engineer (Senior Class I) from 16.11.1956 when Shri Wadhwa's and hence the applicant's junior (Shri H.J. Desai) was promoted as Executive Engineer in the scale of Rs.700-1250;

(iv) Promotion and pay as Superintending Engineer from 21.4.1962 when his junior (Shri B.S. Kohli) started drawing pay as Superintending Engineer in the scale of Rs.1300-1800;

(v), (vi) & (vii) Promotion and pay as Chief Engineer, CWC in the scale of Rs.2,000/- fixed, As Member CWC in the scale of Rs.2750 fixed and as Chairman, CWC in the scale of Rs.3,000/- fixed from the dates to be decided by Tribunal in consultation with ^{the} applicant; and

(viii) Compensation to the tune of Rs.20 Lakhs for mental agony and torture, loss of social status and prestige and humiliation suffered by him.

2. The applicant has also prayed for an interim relief to the extent of Rs.8 Lakhs by way of ad hoc payment. Further he has prayed that his pension and gratuity and other post-retirement benefits should be fixed at the rank of Secretary to the Government of India.

3. Though the pleadings are complete, the case has not yet been formally admitted.

4. We have heard the learned counsel of both parties and have perused the records of the case carefully. From the reliefs sought by the applicant, as mentioned above, it would appear that his grievance relates to a period of ^{more than three} decades of the past and he is seeking the aid of this Tribunal to set right things which have gone wrong in his case during this period when several promotions/appointments had been made and some have even retired from the service. The

respondents have contended, in their counter-affidavit, that, as the applicant is claiming promotion to the grade of Assistant Engineer, Assistant Executive Engineer, Executive Engineer and Superintending Engineer with effect from 17.8.51, 8.2.55, 16.11.56 and 21.4.1962 respectively, the application is time barred under Section 21 of the Administrative Tribunals Act, 1985. We may first consider the plea of limitation raised by the respondents by way of preliminary objection.

5. It is evident from the records that the applicant has made repeated representations from 1962 onwards. With reference to his representation dated 1.7.1983, the respondents informed him vide their Memorandum dated 29.4.1984 that his case had again been considered carefully in the Ministry and that after taking all the relevant factors into consideration, the Ministry had informed that the seniority already assigned to him in the grade of Extra Assistant Director/Assistant Engineer was in order. The Ministry had also added that a number of representations from him regarding the fixation of his seniority had been considered carefully from time to time and that the matter was now being treated as closed. No further representation from him on the same subject would thereafter be entertained. The applicant did not move a civil court thereafter nor did he file the present application

within the period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

6. A Constitution Bench of the Supreme Court consisting of seven Judges has held in the recent case of S.S. Rathore Vs. State of Madhya Pradesh, AIR 1989(2) SC 335 that "the cause of

19/24

action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representations^{is} made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have been first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle".

7. The Supreme Court further observed that "in every such case only the appeal or representation provided by law is disposed of, accrual of cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation".

8. The position prior to the setting up of this Tribunal may also be briefly mentioned. The doctrine of laches would have applied to the maintainability of a writ petition in the High Court in the event of such a petition being filed after inordinate delay. In P.S. Sadasivaswamy Vs. State of Tamil Nadu,

1975 SCC (L&S) 22, the appellant, who had entered service as a Junior Engineer in the then Province of Madras in 1946, had been promoted as Assistant Engineer in 1951. In 1955 he was selected by the State Public Service Commission as an Assistant Engineer along with respondent Nos. 2 to 4 and was placed above them in rank. In 1957, the second respondent was promoted as Divisional Engineer. Thereupon, he made a representation to the Government in 1957 and made another representation in the same year. This was followed by two other representations in the year 1968 to consider his case for promotion as Superintending Engineer along with his juniors. Respondent Nos. 2 to 4 were again promoted as Superintending Engineers over the head of the appellant. The appellant himself was promoted as Superintending Engineer in 1971. He filed a writ petition in the High Court of Madras, which was dismissed as also the appeal against the dismissal. The grievance of the applicant in the appeal filed in the Supreme Court was that the second respondent, who was junior to him as Assistant Engineer, was promoted as Divisional Engineer in 1957 by relaxing the rules. The Supreme Court observed that if the appellant was aggrieved by the same, he should have approached the Court even in the year 1957, after the two representations made by him had failed to produce any result. It was further observed that one cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971.

91/26

Further, even after respondent Nos. 3 and 4 were promoted as Divisional Engineer over the head of the appellant, he did not come to the Court questioning it. There was a third opportunity for him to have come to the Court when respondent Nos. 2 to 4 were again promoted as Superintending Engineers over his head. This was also not done. After 14 long years because of the tempting prospect of the Chief Engineer/^{ship} he came to the Court. The following observation made by the Supreme Court are pertinent:-

" In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. In any case as the Government had decided as a matter of policy, as they were entitled to do, not to relax the rules in favour of any except overseas scholars it will be wholly pointless to direct them to consider the appellant's case as if nothing had happened after 1957. Not only respondent No. 2 but also respondents Nos. 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957, apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work".

9. The aforesaid observations made by the Supreme

93/27

Court in Sadasivaswamy's case are equally relevant to the facts and circumstances of the present case.

10. In Gian Singh Mann Vs. High Court of Punjab and Haryana, 1980 SCC (L&S) 527, the Supreme Court observed that a writ petition filed after about 11 years of delay was not maintainable and that making of successive representations cannot justify overlooking the inordinate delay. In that case, the petitioner had claimed for promotion to the selection grade post in the Punjab Civil Service (Judicial Branch) with effect from November 1, 1966 and to a post in the Punjab Superior Judicial Service with effect from May 1, 1967 on the basis that a post had been reserved in each of the Services for a member of the Scheduled Caste. The writ petition was filed by him in 1978 which, according to the Court, was grossly belated.

11. In K.R. Mudgal & Others Vs. R.P. Singh & Others, 1986(2) SCALE 561, the Supreme Court observed that satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petition filed after several years. It was essential that any one who felt 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. In that case, even after nearly 32 years, the dispute regarding the

23
28

appointment of some of the respondents to the writ petition was still lingering in the Supreme Court. In these circumstances, the Supreme Court considered 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.

12. In Yashbir Singh & Others Vs. Union of India & Others, 1987(2) SCALE 371, the Supreme Court observed that the petitioners could not be permitted to challenge in 1981 the validity of a circular issued by the Railway Board in 1970, i.e., after 11 years. It was observed that if they were aggrieved by the said circular, they should have challenged the same within a reasonable period of time which they did not do so. It was further observed that it is well settled that any one who may feel aggrieved with an administrative order or decision affecting his right should act with due diligence and promptitude and not sleep over the matter. Raking of old matters after a long time is likely to result in administrative complications and difficulties and it would create insecurity and instability in service which would affect its efficiency.

13. In the light of the aforesaid judicial pronouncements, we may consider the delay involved in filing of the present application before us.

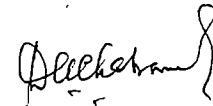
21/22

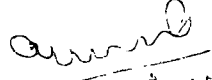
14. The applicant had made his first representation to the Chairman, CWR&PC regarding his seniority in Class II on 14.2.1962. This was followed by another representation on the same subject dated 1st September, 1964. In the same year, he made another representation to the Chairman, CWR&PC regarding fixation of his seniority in EAD/AE cadre and to the Secretary, Ministry of I&B. Thereafter, he has made 19 representations from 1965 to 1985. The applicant has not pointed out as to whether any of his representation were made pursuant to any statutory provision. The reply of the respondents contained in their Memorandum dated 29th April, 1984 referred to above, clearly states that his earlier representation, had been considered from time to time and there was nothing new to be considered. All these clearly indicate that the applicant did not choose to seek redress in a Court of law in time. The present application is grossly belated and in our opinion, it is not maintainable, in view of the provisions of Section 21 of the Administrative Tribunals Act. The reliefs sought by the applicant as regards his promotion as Assistant Engineer from 17.8.1951, as Assistant Executive Engineer (Class I) w.e.f. 6.2.1955, as Executive Engineer (Senior Class I) from 16.11.1956, as Superintending Engineer from 21.4.1962, as Chief Engineer, Member, CWC and Chairman, CWC are, therefore, not maintainable at this stage.

25/12/88
30

15. As regards the claim for damages to the tune of Rs.20 Lakhs for the alleged mental agony and torture suffered by him, this Tribunal has no jurisdiction to entertain the claim as it is ^aclaim in tort. The applicant will be at liberty to move the competent Court of law to seek his redress in accordance with law, if he is so advised.

16. In the result, we see no merit in the present application and the same is dismissed at the admission stage itself. The parties will bear their own costs.


(D.K. CHAKRAVORTY)
MEMBER (A)


(P.K. KARTHA)
VICE CHAIRMAN (J)