

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
--

G.A.No. 874/86.

Date of decision 18.9.92

Shri D.S. Kapoor

... Applicant

v/s

Union of India & Ors.

... Respondents

CORAM:

The Hon'ble Shri S.P. Mukherji, Vice-Chairman (A)

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

For the applicant ... In person

For the Respondents ... Shri M.L. Vorma, Counsel

(1) Whether Reporters of local papers may be Yes
allowed to see the Judgement ?

(2) To be referred to the Reporter or not ? Yes

J_U_D_G_E_M_E_N_T

[Delivered by Shri J.P. Sharma, Member (J)]_7

The applicant, at the relevant time of filing this application, was working as Office Superintendent Grade I, in the Directorate General, Defence Estates, Ministry of Defence, New Delhi and since retired on superannuation on 31.5.87.

The grievance of the applicant is that on account of administrative error his reversion on 15.6.1957 from the post of U.D.C. to that of L.D.C. has affected adversely his service career and he was prevented from officiating in the higher posts of

5

Head Clerk Grade II, Technical Assistant and Head Clerk Grade I from the dates his juniors were given such promotion and was not considered for promotion to the post of Cantonement Executive Officer (Group 'B' post) while his immediate juniors were promoted on 16.2.1970. His claim for promotion to the post of Cantonement Executive Officer was finally rejected by the impugned order dated 18.4.1986 (Annexure XXVII).

2. The applicant has claimed the relief vide page 23 of the application, para 7 clause 1 and clause 2.

3. The facts as stated by the applicant are -

- (1) That he was working as UDC with effect from 19.1.1952 in Lands, Hirings and Disposals Service (LH&D) Department under the Ministry of Defence. The said Department stood wound up w.e.f. 15.6.1957 and the residual work of the Department was transferred to Military Land and Cantonement Service (now designated as Defence Estates Service) another Department under the Ministry of Defence.
- (2) On 13.6.1957 the staff was transferred to Defence Estates Service against the

additional posts sanctioned for the purpose by the Government. 11 U.D.C. working in the Department of LH&D were appointed as UDC but the applicant was appointed as LDC in the Defence Estates Service.

- (3) The applicant represented against the same and in October 1967 the Government informed that the applicant's reversion was due to administrative error and informed the applicant by the letter dated 16.11.1967 (Annexure I) that he shall reckon seniority in the grade of UDC w.e.f. 19.1.1952. During this period certain juniors to the applicant were given promotion as officiating Head Clerk Grade II w.e.f. 1.12.1962 and were made regular w.e.f. 1.10.1966 and were further promoted as officiating Technical Assistant w.e.f. 21.9.1964 and made regular w.e.f. 21.12.1967. The applicant again represented on 20.11.1967 (Annexure II) that the benefits accruing to him from the aforesaid mentioned promotions should be granted to him and he should be restored to the position which his juniors were holding and

7

which the applicant would have held but for his wrongful reversion caused by the administrative error and inordinate delay of 10½ years on the part of the Govt. in taking a decision. The applicant was, however, ordered promotion as Head Clerk Grade II w.e.f. 11.1.1968 and the applicant took charge on 24.1.1968.

- (4) The applicant again represented to the Directorate General, Defence Estates on 20.2.1968 (Annexure III) to restore to him to the position which he would have held but for the erroneous reversion and inordinate delay in admitting the error. However, his request was rejected by the order dated 4.4.1968 (Annexure IV).

The applicant again represented on 6.4.1968 (Annexure V). In the mean time his juniors were promoted as Head Clerk Grade I with effect from 23.10.1968 and Cantonement Executive Officer with effect from 16.2.1970. On his representation the Government conveyed the decision on 23.2.1970 (Annexure IX) and ordered that the applicant will reckon seniority in the post of Head Clerk Grade II vis-a-vis erstwhile juniors and will be accorded a place commensurate with his seniority in the UDC grade and secondly he will become eligible for promotion to the grade of Technical Assistant after 10.1.1971 when he will complete three years' service as Head Clerk Grade II. This condition was pre-requisite for becoming eligible for consideration for promotion to the next higher grade.

le

The applicant, therefore, again represented on 1.7.1970 (Annexure X) against the decision requiring three years' service in the grade of Head Clerk grade II for promotion to next higher grade. The case the applicant represented was that he could not put in three years service in the grade of Head Clerk Grade II due to wrongful reversion which was ultimately found to have been caused by administrative error. In the mean time, the supervisory posts of Head Clerk Grade II and Grade I were merged and redesignated as Office Superintendent w.e.f. 1.6.1970 in the payscale of Rs. 210-475 which scale was higher than that of Technical Assistant post and Head Clerk Grade I post. The applicant was informed on 6.11.1970 (Annexure XII) that with the creation of common cadre of Office Superintendent his grievance should stand redressed and secondly in so far as his promotion to the next higher grade i.e. Head Clerk Grade I is concerned, the position in the seniority list is of no consequence, since one of the essential pre-requisite is passing of the common qualifying test which is open to one and all in the field of eligibility. The grievance of the applicant still subsisted inasmuch as till 1970 the promotion to the higher post of Cantonment Executive Officer was made without passing the common qualifying test which was

9

introduced for the first time w.e.f. 21st August 1970. The juniors of the applicant were promoted as Class II Officers with effect from 16.2.1970 without passing test. The applicant again made a representation on 20.11.1970 (Annexure XIII) complaining that his grievances have not been re-dressed inasmuch as he has not been restored to the position which his juniors held from time to time; has not been given pay which his juniors drew in the higher posts from time to time; and if the position in the seniority list is of no consequence, there is all the more no reason for not allowing the applicant to regain seniority over his erstwhile juniors. On this representation the Directorate General, Defence Estates wrote to his subordinate office for pay fixation proforma fixing pay of the applicant in each of the grade be forwarded to the CDA for approval and if he does not agree to the pay fixation, the papers should be forwarded to the Directorate General for taking up the matter with the Ministry and further the applicant shall be allotted his rightful place in the nominal roll of Office Superintendent in the light of the decision contained in the Directorate General's letter dated 23.2.1970. However, the request of the applicant for counting three years' service

le

(10)

in the grade from the date of his juniors'
promotion was not acceded to. The applicant
was further advised not to make further re-
presentations on the points on which decisions
have already been taken. Thereafter, there
was certain correspondence between the appli-
cant's office to the Directorate General Defence
Estates. The Directorate General, Defence Estates
by the letter dated 10.1.1972 opined that the
benefit of pay was not mentioned in the decision
dated 16.11.1967 conveyed to the applicant as
it was an impression that the term 'seniority'
also include the benefit of pay and sought
advice of the Controller of Defence Accounts as
to what would meet the audit requirement for the
purpose of pay fixation. The applicant made
another representation dated 3.4.1972 to the
Secretary, Ministry of Defence highlighting his
grievances and requesting for ordering his
proforma promotion in the grades of Head Clerk
Grade II, Technical Assistant and Head Clerk
Grade I. To the letter dated 10.01.1972 of the
Directorate General, Defence Estates referred to
above (Annexure XVIII), the CDA informed on
10.6.1972 that the sanction of the Govt. of
India would be required for regulation of seniority

in the posts of Head Clerk Grade II, Technical Assistant and Head Clerk Grade I and consequential fixation of pay in these posts w.e.f. 1.12.1962, 21.9.1964 and 23.10.1967 respectively. However, the applicant's pay had not been fixed in the aforesaid mentioned grades. The pay of the applicant was, however, fixed as Head Clerk w.e.f. 23.10.1968 i.e. from the date the applicant's juniors were promoted and a bill in their regard was prepared but the CDA did not pass the bill. The applicant's office again referred the case to the Directorate General of Defence Accounts on 10.1.1974 for revising sanction to meet the audit requirement, but no reply was received. The applicant's office fixed his pay as Head Clerk Gr. I in the payscale of Rs 335-15-425 w.e.f. 23.10.1968 restricting its financial benefits w.e.f. 1.6.1970 i.e. a date from which the aforementioned payscale was revised for the redesignated post of Head Clerk Gr. I as Office Superintendent and the applicant drew pay in the revised higher payscale. The grievance of the applicant again remained that seniority w.e.f. 23.10.1968 in the grade of Head Clerk Gr. I (now Office Superintendent) was accepted by the Government and he was placed above his juniors who were officiating as C.E.O.

le

(12)

with effect from 16.2.1970 but no action was taken by the Government to sanction applicant proforma promotion as CEO w.e.f. 16.2.1970. Applicant's claim in this regard was not accepted because as already referred to the applicant has to qualify by passing the common qualifying test. The applicant could not press his claim at that time for want of documentary evidence and in the mean-time the applicant was transferred from his office at Agra to the Directorate General Defence Estates in March 1974. Again as an effort to retrieve the last straw on the camel's back, the applicant (after ten years) represented on 26.11.1984/with reference to his earlier the representations with/request for removing the adverse affect of wrongful reversion. The applicant was replied by the impugned order dated 18.4.1986 and the reply given was the same which was given to him on 6.11.1970 that promotions to the post of C.E.O. (Group 'B') is not made on the basis of seniority by but/passing of common qualifying test is a pre-requisite for promotion to the post of CEO which had not been fulfilled by the applicant. Thus the present application for the reliefs mentioned above.

4. The respondents contested the application and took the preliminary objections that the petition is barred by limitation as laid down under Section 21 of the Administrative Tribunal Act 1985 inasmuch as the applicant has claimed relief against the reversion

↓

order dated 15.6.1957 and other orders dated 4.8.1973, 25.4.1958, 15.6.1957, 1.12.1962, 21.9.1964 and 23.10.1968 respectively. Non-joinder of necessary party has also been averred in the reply.

5. On merits the respondents stated that the erstwhile applicant belongs to L Land, Hiring and Disposal service. The question of promotion in the grade of LDC and UDC ^{was} restricted to the zonal authority instead of on all India seniority on winding of LH&D Organization. The working was taken over by the Military Engineering Service and the remaining ^{work} balance by the then Military Lands and Cantonment Service (now Indian Defence Estates Service) on all India basis, even in the matter of establishments concerning confirmation, promotion and the allied matters. By this winding up of LH&D Organization, the applicant was not the only person affected but there were so many as nine Class III employees. During the period from 1.6.1956 to 15.6.1957 he was found locally promoted in October 1956 owing to short-term

le

14

vacancies arising out of promotions of his seniors. As he was not holding UDC's post substantively and also there being no equivalent vacancy available for him he was reverted as LDC by LH&D Organization. Therefore, Military Lands & Cantonment treated him as such on his request ML&C considered him in the light of the existing instructions which did not permit any financial benefit with retrospective effect on the analogy the higher the pay, the higher the responsibility. However, the Government considered his request to restore his seniority exgratis. Having achieved this, he kept on enlarging his requests by stressing repeatedly for grant of unintended benefits. It is correct that 16 vacancies of UDC were created but this was not meant for surplus employees of LH&D Organization. In the application the applicant has not furnished any details of 27 juniors who were alleged to have been promoted and confirmed ignoring rights of the applicant. The applicant was informed as early as in April 1968 that his request to grant the financial benefits in the various grades cannot be given effect retrospectively. The restoration of

le

seniority to the applicant was granted on 16.11.1967 and in January 1968 he was given his due promotion and place of seniority by permitting him as a Head Clerk Gr.II. It is further stated that promotion to Class II from Class III without passing qualifying test was open to category 'C' and not to the grade as contemplated by the applicant. Since both Head Clerk Gr. I and Head Clerk Gr. II fell in the category 'C' from where the promotion to category 'B' took place were based on selection and not by seniority. There was no wrongful reversion of the applicant and he was reverted due to the progressive reduction in the establishment of LH&D Organisation owing to its winding up. The applicant was neither qualified under the recruitment rules for promotion as CEO nor there was any post of ACSO in the ML&C Organisation to allow any proforma promotion. Thus, according to the respondents, the application is barred by limitation and liable to be dismissed.

6. The applicant filed the rejoinder and reiterated the averments stated in the original application.

7. We have heard the Ld. Counsel of the parties at length and have gone through the records.

8. The question of limitation is a very

↓

important question in the present case. The applicant is assailing the old stale grievance of the year 1957. The Ld. Counsel for the respondents therefore cited the authorities in support of his contention that the relief claimed by the applicant cannot be now even considered as being beyond limitation/provided in Section 21 of the Administrative Tribunal Act, 1985. It has also been argued that the applicant is raising the grievance which arose even three years earlier of coming into force of the AT Act, 1985. Section 21, clause 2 specifically lays down that the Tribunal shall not admit any application the grievance in respect of which an application is made had arisen ~~made~~ at any time during the period of three years immediately preceeding the date on which the jurisdiction, powers and authority of the Tribunal becomes exerciseable under this Act in respect of the matter to which such orders relates.

9. Otherwise also, the applicant now assails particularly the order dated 19.4.1986 (Annexure XXVII) By this order the applicant was informed that

be

promotion to post of CEO (Group 'B') is not on the basis of seniority. Passing of common qualifying test is a pre-condition for appointment/promotion to the post of CEO, which has not been fulfilled by the applicant. The applicant was informed on 6.11.1970 as given in para 17, clause (b) of the O.A. as follows :-

" In so far as promotion to the next higher grade i.e. Class II (i.e. C.E.O.) is concerned, the position in the seniority list is of no consequence since one of the essential pre-requisite is passing of the common qualifying test which is open to one and all in the field of eligibility."

When the applicant was informed as early as in 1970 by this specific order, he should have assailed the same before the competent authority that he was not satisfied regarding his grievance of promotion to the post of CEO w.e.f. 16.2.1970 when, as alleged by him, a junior to him was promoted. On the other hand, the applicant continued to make representations which were

le

mainly confined to the seniority and promotion

in the grade of Head Clerk Gr. II, Technical

Assistant and Head Clerk Gr. I and he claimed

that he should be deemed to have been promoted

with effect from the date his juniors drew higher

officiating pay. The Ld. Counsel for the respon-

dents has referred to the decision of Nirmalendu

& Ors.

(4)

Pandit/quoted in 1987/SLJ p.482 (CAT) Calcutta,

where it is laid down that even in a case which

has been admitted, the question of limitation can

be raised, being a legal issue at any time. He

also referred to the authority of Hon'ble Supreme

(2)

Court P.L. Shah referred in 1989/SLJ SC 49 where

the Hon'ble Supreme Court held that only that much

of claim which falls within the period of limitation

can be considered. The Ld. Counsel for the respon-

dents also argued that the application under Section

19 of the AT Act cannot be treated as a writ petition

and AT Act 1985 is a self-contained Act which specifi-

cally laid down the period in which the applicant

can come for re-dress of his grievances. He referred

to the case of Dr.(Kum) K. Padmavally v/s Union of

& Ors.

(3)

India/reported in 1988/SLJ 130 (CAT) Bombay. In

b

(19)

this reported case the cause of action arose in 1983 and the application was filed in 1987 and was held that it is barred by limitation. Thus the respondents have taken the stand that the applicant in any eventuality should have assailed the order of 6.11.1970 in the competent forum at the relevant time. The applicant could have filed a civil suit within the limitation provided under Article 58 of the Indian Limitation Act, 1963 or he would have filed a writ petition but he has not done so. After 16 years he cannot almost assail the same order which has been passed on his subsequent representation informing him the factual position.

10. The Ld. Counsel for the respondents has also referred to the authority of S.S. Rathore v/s State of Madhya Pradesh [AIR 1990 SC 107]. Para 21 of the same is reproduced below :-

" Article 58 would have no application to cases involving Govt. servants in view of the special limitation prescribed by S.21(1)(3) of the Administrative Tribunals Act."

11. The Ld. Counsel for the respondents has also referred to the decision of State of Punjab v/s

be

Gurdev Singh reported in 1991(4)SCC 1. Their Lordship of the Supreme Court held that even in the service matters the applicant has to come for the redress of his grievance within the prescribed period of limitation. In the present case the applicant should have come before the court after the rejection of his first representation and the rejection of subsequent representations on the same cause of action or grievance will not add to the period of limitation as held in Parwez Ahmed's case [1992 (19) ATC 548_7].

The Ld. Counsel for the respondents also referred to the case of Bhoop Singh v/s Union of India & Ors.

(2)

reported in 1992 SLJ 103 in which also the Lordship of the Supreme Court have considered the point of limitation on the basis of judgement delivered in an earlier case. The Ld. Counsel for the applicant, however, on the point of limitation, has firstly argued that he is taking limitation from the rejection of the last representation by the impugned order. It is also argued that the applicant has been given reliefs in stages and so he continued to represent for other reliefs also and in this

le

connection the Ld. Counsel has referred to the authority of 1991 1 ATJ (CAT) PRINCIPAL BENCH 577.

On a perusal of the case it would appear that, that related to a seniority matter and it was also observed that financial loss to an employee is of recurring nature and cannot be barred by limitation. The issue in the present case is different. In the present case the applicant is claiming promotion not any with-holding of financial benefits which will accrue to the applicant after he is given promotion to the higher posts. The applicant has already been given promotion to the post of Head Clerk w.e.f. 1968 and that to the post of Office Superintendent from 1.6.1970. He has also accepted the promotion and the benefits w.e.f. 1.6.1970 without demure. In any case, the applicant was informed about these benefits some time in 1974 after due approval by CDA. He was given pay w.e.f. 1.6.1970 in the grade of Office Superintendent and proforma fixation pay of Head Clerk Gr. I w.e.f. 23.10.1968. At that time the applicant did not take any proceedings for judicial review of these

le

orders and even thereafter continued to make representations. It has been held in 1991(1) ATC 507 and 508 that denial of higher pay is not a continuing cause of action. The same view has been held in the case of Shri P.C. Sharma Vs. Union of India, 1992(1) SLJ 251. In that case, the cause of action arose three years before appointment to higher post which was held not to be a continuing cause of action. It was rejected on the ground of limitation.

12. The learned counsel for the applicant also argued on the basis of the case of B.Kumar, reported in 1988 (1) ATR (CAT) 1 where it has been considered that if the Government decides to consider representation and reject on merit, that will further enlarge the limitation period. However, in the present case the applicant has been finally told on 6.11.1970 that he does not fulfil the qualification for promotion to the post of CED and any subsequent representation on this point will not amount to a fresh decision on his representation and the same order has been conveyed to him in 1986.

13. The learned counsel for the applicant also argue

that the subsequent provision for passing a common qualifying test cannot apply to him because a junior to him was promoted on 16.2.1970 to the post of CEO. It is a fact that ^{the} test was introduced for the first time in August 1970 but the applicant had been specifically told that he can qualify for next higher promotion after putting in three years service in Head Clerk Gr. II. This was finally communicated to the applicant in various orders passed on his representations particularly dated 23.2.1970 (Annexure IX). This three years condition was necessary for becoming eligible for consideration for promotion to the next higher grade could not be relaxed. The applicant was eligible for consideration for promotion to the grade of Technical Assistant after 10.1.1971. It is evident from the record that the Head Clerk Gr. II and Head Clerk Gr. I were merged together and the post was redesignated as Office Superintendant w.e.f. 1.6.1970. However, the order dated 23.2.1970 was never modified by any subsequent order passed on the representation of the applicant which he continued to make.

14. The Ld. Counsel for the applicant also argued

b

(24)

that this violation of Articles 14 and 16 of the Constitution of India inasmuch as the principle of 'equal pay for equal work' was not followed and he referred to the case of Mohd. Salim Akhtar Vs. UOI, 1992 Vol. I ATJ (CAT) 202. In the present case the question of equal pay for equal work does not apply. The grievance of the applicant had been that while LH&D Organization was wound up, then he was working as UDC and on transfer to ML&C he was reverted as LDC in June 1957, though by a subsequent order of 23.2.1970 his seniority was restored in the grade of UDC and he was also given promotion as Head Clerk Gr. II w.e.f. 24.1.1968. So it is a case of next higher promotion to Technical Assistant then to Head Clerk Gr. I and finally to CEO. So it cannot be said a case involving the principle of equal pay for equal work. The Ld. Counsel for the applicant also argued that technical pleas of limitations should not stand in doing justice and referred to the authority of 1991(1)SLJ 362; Sh.Bankir Choudhary & Ors. ^{Vs.} UOI. In the present case the question which arises for consideration relates that to a period before November 1982 and there is an injunction

25

by virtue of Section 21 of the Act not to entertain any such grievance for which a cause of action has arisen three years prior coming into fore of the authority of the Tribunal.

The plea of limitation is a legal plea and in particular circumstances and facts of the case it may amount to a technical plea but not in every case as that of the present nature. On the point of delay and laches, the matter in the case of State of Uttar Pradesh v/s Bahadur Singh & Ors., reported in 1983 (3) SCC 73 where it has been held that court will not interfere in stale cases as the court helps the vigilant and not the indolent. The same point was considered by the Hon'ble Supreme Court in the case of A.L. Berry v/s Collector of Central Excise reported in 1975 (4) SCC 714. Thus on the point of delay and laches, the claim of a person can be rightly denied irrespective of the merit of the matter. Limitation gives a valuable right ^{to the} adversary and in deserving cases it can be condoned in favour of a person coming late. But there should be specific reasons and reasonably sufficient cause for condoning that delay. Only a few months before retirement, the

6

applicant has filed this application in October, 1986, while he retired on 31st May, 1987. The applicant has not given a reasonable and sufficient cause except that he was pursuing this matter departmentally in spite of the warning given to him not to make any further representation. For this the applicant is equally at fault in not seeking a judicial review of an order which was adverse to him or which did not satisfy his grievance.

15. The Ld. Counsel for the applicant also argued that the applicant has been making constant representations from 9.10.1968 onwards and his reliefs have been granted partially from time to time as is evident by the various orders passed on his representations and in this connection the applicant has placed reliance on the case of Balwant Singh v/s Union of India and another reported in 1990 Vol. 4 ATC 258 and highlighted the report at page 262. However, in the present case, the only grievance of the applicant for which he has come is non-promotion to the post of CEO w.e.f. the date his juniors had been promoted i.e. 1.2.1970. Taking the facts as stated by it is only the applicant as correct, after the year 1974 the

16

applicant made after ten years another representation on 26.12.1984 stating that he has made another effort to "retrieve the last straw on the camel's back".

There is no explanation for the period from 1974 to 1984. There were certain departmental communications whereby on 4.8.1973 the pay of the applicant was fixed notionally as Head Clerk from 23.10.1968 and as Office Superintendent w.e.f. 1.6.1970 which he continued to draw till the date of retirement in the same scale of pay. Thus it is not a case where there is some unavoidable circumstances before the applicant to seek judicial review of the various orders passed against him. His juniors have been promoted on different dates to higher posts as Head Clerk Grade II in December 1962, as Technical Assistant in September 1964, as Head Clerk Grade I in October 1968 and as Chief Executive Officer on 16.2.1970. The applicant was only raising the old issue again and again without seeking the judicial review and at the fag-end of the retirement he wants to assail all these promotions given to his juniors and also reversion as LDC in 1957 when he was transferred as surplus to L&CS Organisation.

be

16. Taking all these facts into account and
and giving a thorough consideration to the facts
of this case; we have no hesitation to hold that
the present application is hopelessly barred by
time and is accordingly dismissed leaving the
parties to bear their own costs.

J. P. Sharma

J.P. Sharma 18.9.92
Member (J)

S. P. Mukherji
18.9.92

S.P. Mukherji
Vice-Chairman (A)