

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH, NEW DELHI

O. A. NO. 1350 OF 1987

DATE OF DECISION: 13-9-1991.

S.K.Mitra.

.. Applicant.

Vs.

Chief Election Commissioner
of India.

.. Respondent.

Applicant in person.

Shri P.H.Ramchandani, Counsel for the respondent.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr.S.Gurusankaran, .. Member (A)

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JUDGMENT

Hon'ble Mr.S.Gurusankaran, Member (A):

The case of the applicant is that he was appointed on regular basis in the grade of Lower Division Clerk ('LDC' for short) with effect from 8-12-1973 along with other employees (Annexure-A2). In this appointment order it was stated that the inter-se seniority of the employees will be counted from the date of their continuous appointment as ad hoc LDCs in the Commission, subject to their passing the typewriting test by 30-4-1975, unless in the meanwhile they are exempted from passing the typewriting test. Later vide Annexure-A3 the time for passing typewriting test was extended upto 30-6-1976 and the applicant passed the test on 31-3-1976. The applicant has stated that the Commission issued an Office Order dated 11-5-1976 (Annexure-A4) indicating the order of seniority of LDCs in which the applicant's name was shown at Sl.No.62, whereas he should have been at Sl.No.32. The applicant has submitted that the office order dated 11-5-1976 was issued in contravention of Annexures-A2 and A3, since in the original

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order Annexure-A2 it was never stipulated that failure to pass the typewriting test by the date originally fixed would entail loss of seniority and in any case such a condition was not intimated to him at the time of granting the extension of time vide Annexure-A3. He has contended that such an action is also in violation of the Recruitment Rules for LDCs (Annexure-A5), wherein it has been stated that the LDCs will neither be eligible to draw increments nor will they be entitled to confirmation till they pass the typewriting test. He has stated that in his case the increments were never stopped even before the issue of the office order regularising his services as LDC, as he had passed the typewriting test conducted by the Election Commission at the time of initial appointment on ad hoc basis in December, 1966 and an entry to this effect has also been made in the service register. Since his representation dated 19-1-87 was rejected by the respondent vide his order dated 6-3-1987 ^{aside} he has filed this application praying for setting aside the office order dated 11-5-1976 (Annexure-A4) and directing the respondent to issue a revised seniority list restoring the original seniority of the applicant with all consequential benefits.

2. The respondent has taken a preliminary objection that the alleged cause of action in the case of the applicant arose in the year 1976 and hence the application is barred by limitation.

3. During the hearing, the applicant personally argued his case and stated that even though his original representation was turned down on 20-5-1976 (Annexure-RIII), he went on representing his case, since his representation had not been turned down by the competent authority, namely the Chief Election Commissioner, who is his appointing authority. He has also stressed the fact that only by the reply dated

6-3-1987 (Annexure-A7) the respondent has turned down his request clearly indicating that his earlier representation was rejected with the approval of the Chief Election Commissioner. He has, therefore, contended that this application which was filed in September, 1987 is within the period of limitation. He has also argued that the action of the respondent in bringing down his seniority for his failure to pass the typewriting test within the stipulated period, initially specified, is against the provisions in the Recruitment Rules and hence the order is illegal and void. The learned counsel for the respondent strongly argued that this application is hopelessly barred by limitation since the main relief prayed for is to set aside the seniority list issued in 1976.

4. We agree with the contention of the respondent that this application is hopelessly barred by limitation, ~~but~~ since repeated representations do not extend the period of limitation, the applicant's contention that the period of limitation would run only from the date he got clarification that his earlier appeal has been turned down by the competent authority cannot be accepted, since he should have approached the proper legal forum, within the period of limitation from the time his original representation was turned down and he could as well have agitated at that time that his representation was not turned down by the competent authority. Further as observed by the Supreme Court in the cases of P.S. SADASIVESWAMY v. STATE OF TAMILNADU (AIR 1974 SC 2271) and GOVERNMENT OF ANDHRA PRADESH AND OTHERS v. M. A. KAREEM AND OTHERS (1991 (2) S.L.J. 157) the Courts and Tribunals should be slow in disturbing the settled affairs in a service for such a long time. Hence, this application is hit by both laches and limitation. Since the application is liable to be dismissed on the ground of laches and limitation alone,

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we are not going to the merits of the other contentions raised by the applicant.

5. The application is dismissed.

M. S. S.
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13/9/1991
MEMBER(A)

Ch. Secy
Ch. Secy
13.9.1991
VICE-CHAIRMAN.