

In the Central Administrative Tribunal
Principal Bench: New Delhi

(8)

OA No.263/87

Date of decision: 07.09.1992.

Dr. Chander Prakash

...Petitioner

Versus

Union of India through the
Secretary to the Govt. of India,
Ministry of Human Resource Development,
(Department of Education) & Others.

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the petitioner Shri V. Prasad, Counsel.

For the respondents None for Respondents No.1 & 2.

Shri S.K. Dhingra, Respondent
No.3 in person.

Judgement (Oral)

(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The grievance of the petitioner in this case is in regard to the direct appointment to the post of Assistant Director, Commission for Scientific and Technical Terminology. Applications were invited by the Union Public Service Commission (UPSC for short) in response to which the petitioner as well as respondent No.3 applied. That invitation was superseded by another advertisement, made on 4.6.1983. The said advertisement made it clear that those who had applied in response to the earlier advertisement need not apply again. The petitioner having applied in response to the earlier advertisement was not required to apply again. The post was required

to be filled up by holding an interview by the UPSC from among the eligible candidates. The notification says that if large number of applications are received, the short listing of candidates would be done for purpose of limiting the number of candidates to be interviewed having regard to the qualifications by preferring candidates possessing higher qualifications. The interview was held on 13.1.1984 and respondent No.3 was appointed by order dated 20.03.1984. It is in this background that the petitioner has approached the Tribunal by filing an Original Application on 17.2.1987. The petitioner has also filed an application for condonation of delay in filing the application. The respondents have opposed the application for condonation of delay by filing reply. When this matter was taken up for hearing, learned counsel for the petitioner Shri V. Prasad was present and argued his matter. None appeared for Respondents 1&2. Respondent No.3 Shri Dhingra was present in person.

2. At the outset, we are required to examine the question as to whether this Application is barred by time. As the appointment was made on 20.3.1984 cause of action accrued in favour of the petitioner to challenge the same on that date. As the cause of action accrued in this case before the coming into force of the Administrative Tribunals Act, 1985,

limitation is governed by Section 21 (2) of the Act, which provides:-

"21.(2) Notwithstanding anything contained in sub-section (1), where--

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."

3. It is necessary to point out that the order of appointment of respondent No.3, in pursuance of the selection made by the UPSC, was made in this case by the President of India. It is not the case of the petitioner that there is any statutory remedy of presenting an appeal or filing a representation

available against the order of the President of India, making the appointment in pursuance of the selection made by the UPSC. In the absence of any statutory remedy available, it is obvious that the cause of action accrued on 20.3.1984. The petitioner had issued notice on 13.3.1984 under Section 80 of the Code of Civil Procedure on the allegation that his candidature is not being considered whereas the candidature of Respondent No.3 is being considered. On that date only interviews had taken place and the final order regarding appointment by the President had not been made. The petitioner gave another representation on 21.8.1985 after the appointment order was made in favour of Respondent No.2 on 20.3.1984. There is a clear statement in the representation about respondent No.3 having been appointed, ignoring his claim and without considering his case for direct appointment. In this background, even assuming for the sake of arguments that the petitioner became aware of the order of appointment of respondent No.3 when he made his representation on 21.8.1985, we find that the Application would still be barred by limitation. As this is not a case covered by clauses (a) and (b) of sub-section (1) of Section 21, the Application should have been filed by the petitioner within a period of six months from the date of accrual of the cause of action, even on a liberal interpretation.

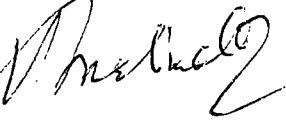
of the facts in regard to the accrual of the cause of action by treating 21.08.1985 as the date on which the cause of action arose. For the reasons stated above, the petition having not been filed within a period of six months from the date of coming into force of the Act, the Application has to be held as barred by limitation.

4. It is no doubt true that the petitioner has filed an application for condonation of delay which is opposed. On a perusal of the reasons given in the application for condonation of delay, we find that the petitioner has not furnished any material from which an inference can be drawn that there was sufficient cause for the petitioner in not filing the Application in time. He has stated in the application that he had made a representation against the order of appointment of respondent No.3 on 21.8.1985 and that he had made the Application before the Tribunal on 17.2.1987 before the expiry of $1\frac{1}{2}$ years from 21.8.85. He has not assigned a single reason as to why he did not approach the Tribunal within the time. He has not stated as to what prevented him from approaching the Tribunal for relief within a reasonable period from the date of accrual of the cause of action. We, therefore, have no hesitation in holding that the petitioner has failed to establish that there was sufficient cause for not filing the Application in time. We should bear in mind that the appointment

of Respondent No.3 took place nearly 9 years back. The petitioner was well aware of his appointment, as he was himself a rival candidate and knew that he was not called for the interview. That is why he issued a notice on 13.3.1984 and thereafter he made a further representation on 21.08.1985, after the order of appointment of respondent No.3 was made. In this background, we do not feel justified, having regard to the facts and circumstances of the case in condoning the delay and interfering with the appointment of respondent No.3 at this stage.

5. For the reasons stated above, this Application fails and is dismissed. No costs.


(I.K. Rasgotra)
Member(A)


(V.S. Malimath)
Chairman

September 7, 1992.

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