

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 283/87 198
T.A. No.

DATE OF DECISION 24-11-89.

Shri A.L. Berry _____ Applicant (s)

Shri S.C. Luthra _____ Advocate for the Applicant (s)

Versus
U.O.I. & Another _____ Respondent (s)

Shri P.P. Khurana _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. Srinivasan, Member (A)

The Hon'ble Mr. T. S. Oberoi, Member (J)

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 ?

Yes

JUDGEMENT

(delivered by Shri P. Srinivasan, Member).

This is the third bout of litigation by the applicant concerning his seniority in the initial grade of Government service to which he was appointed, and his consequent promotion to higher posts thereafter. Considering that he entered Government service as far back as on 30.11.1948 and has since also retired from service on 30.4.1983, the present application filed on 3.3.1987, is indicative of the 'never-say-die' spirit.

2. Shri S.C. Luthra, learned counsel for the applicant and Shri P.P. Khurana, learned counsel for the respondents, have been heard.

3. The case of the applicant in this application is briefly as follows: Having entered Government service as an Inspector in the Central Excise Department on 30.11.1948, - i.e. prior to 22.12.1959 -

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his seniority in that grade had to be determined in accordance with the principle of continuous officiation in the grade as set out in the Office Memorandum dated 22.6.1949 of the Ministry of Home Affairs and not in accordance with the date of his confirmation in that grade, the latter criterion having been introduced for the first time by Office Memorandum dated 22.12.1959, ~~which~~ would be applicable only to those Government servants who entered service after that date. This claim is based on the ruling of the Supreme Court in Union of India Vs. Ravi Verma - AIR 1972 SC 670. His seniority was originally fixed in accordance with the O.M. of 22.6.1949, but the respondents altered his seniority to his disadvantage after 22.12.1959 by taking into account the date of his confirmation, which was in violation of the judgment in Ravi Verma's case. On the basis of the seniority rightly assigned to him in the first instance - i.e. on the principle of continuous officiation in the grade - he should have been placed in the selection grade of Inspectors with effect from 19.4.1961, when his junior got that grade, but the respondents had placed him in the selection grade much later in 1967 on the basis of his revised depressed seniority according to ^{the} subsequent O.M. dated 22.12.1959. His prayer in this application is that the respondents should be directed to treat him as having been placed in the selection grade from 19.4.1961 and to re-fix his pay from that date accordingly, including the pay that he should have drawn in the next higher post on that basis, and to pay him all arrears accruing from such re-fixation.

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4. In order to appreciate the claim of the applicant in its proper perspective, it is necessary not only to go back to the first writ petition filed by the applicant before the Supreme Court, but also still further back to Ravi Verma's case decided by the Supreme Court in AIR 1972 SC 670. The respondents, S/Shri Ravi Verma and Ganapati Kini in that case, were initially appointed as Inspectors of Central Excise before 22.12.1959 like the applicant and they contended that their seniority in the grade of Inspectors should have been determined according to the O.M. of 22.6.1949 on the principle of continuous officiation and not in accordance with the subsequent O.M. of 22.12.1959 based on the dates of their confirmation in the grade. They first approached the High Court which upheld their contention and against that judgment, the Union of India went up to the Supreme Court by Special Leave. The Supreme Court affirmed the judgment of the High Court, observing that "there is no escape from the conclusion that the seniority of Ganapati Kini and Ravi Verma, respondents, who were appointed prior to December 22, 1959, would have to be determined on the basis of their length of service in accordance with Office Memorandum dated June 22, 1949, and not on the basis of the date of their confirmation."

5. The cause title in Ravi Verma's case, as appearing in the law report, shows the name of the applicant as an intervener, as he had, in the meantime, filed a writ petition directly to the Supreme Court under Article 32 of the Constitution, raising the same issues as Ravi Verma and Ganapati Kini. However, the writ petition of the applicant was not decided by the Court in Ravi Verma's

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case. The applicant's writ petition came to be decided subsequently by the Supreme Court and the judgment is reported at AIR 1975 SC 538 under the cause title 'Amrit Lal Vs. Collector, CEC, Revenue'. Before the applicant's case was heard by the Supreme Court, the Government of India issued another O.M. dated 22.7.1972, purporting to implement the judgment in Ravi Verma's case. The applicant assailed this Memorandum on the ground that it did not fully implement the ruling in Ravi Verma's case. In the words of their Lordships of the Supreme Court, "The petitioner contends that Office Memorandum, dated 22-7-1972, was based on a wrong interpretation of the law laid down by this Court inasmuch as, while determining the seniority of the petitioner according to the 1949 rule, it does not award consequential benefits which would have been reaped by the petitioner in the past, if the seniority rule, laid down in the 1949 memorandum, had been followed in the past."

(para. 3 of the judgment in Amrit Lal's case at page 540 of the report). The relevant portions of the office Memorandum dated 22.7.1972, which came up for consideration before their Lordships have been paraphrased in para. 10 of the judgment in the following words:-

"We find, from paragraph 4 of the memorandum of 1972, that, with effect from 4.1.1972, when this Court pronounced judgment in Ravi Verma's case (1972) 2 SCR 992 = (AIR 1972 SC 670) (supra), the pre 1959 seniority of all persons was restored, or, in other words, it was to be governed by the 1949 memorandum.....

Nevertheless, it is laid down there that this restoration of seniority will neither affect the confirmations already made in a grade nor promotions made therefrom prior to 4-1-1972. Evidently, this was an attempt to recognise and preserve the rights,

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if any, of those already confirmed or promoted before 4-1-1972 so that these are not undone. The prospect, however, of confirmation, after due consideration of their cases, was held out to Government servants who were still not confirmed although their juniors had been so confirmed in a grade provided that such Government servants satisfied eligibility tests. Similarly, cases of those superseded by juniors in making promotions were to be considered afresh for promotion. Such consideration for confirmation or promotion was, however, made to depend on the existence of vacancies in the quotas for confirmation or promotion of Government servants."

6. While challenging the later portion of the office Memorandum, the applicant, inter alia, also complained before the Court that "he was not given the senior grade of the Inspector with effect from 21.3.1961 but only from 8.12.1967", which as stated above, is the main claim in this application.

There is apparently some confusion in the date and designation because in the present application, the applicant contends that he should have been placed in the selection grade from 19.4.1961, but this need not detain us at this point.

7. It is instructive to note how the claim of the applicant was dealt with by the Supreme Court in Amrit Lal's case because it was contended on behalf of the respondents ^{M here} that the matter, which is agitated here, stood concluded against the applicant in that case and, therefore, cannot be considered again by us. At para. 11 of the judgment (page 544 of the report), the Court observed:-

"It does appear to us that, in so far as memorandum of 1972 does not direct reconsideration of cases of all those persons who have actually missed confirmation or who were not considered at all for promotion at the time when they ought to have been considered, it fails to give due

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and complete effect, as a matter of general policy, to what was decided by this Court in Ravi Verma's case..... We are unable to commend the argument, coming as it does on behalf of a Department of the State, that the effect of the decision of this Court in Ravi Verma's case, must be confined to parties before the Court in that case."

Incidentally, their Lordships also referred to another argument put forward on behalf of the Union of India that rights "said to be created by the actual facts of confirmation and promotion in the past cannot now be taken away by the respondents, and that more persons cannot be introduced in any grade than its sanctioned strength."

8. While, as indicated above, in Amrit Lal's case, the Supreme Court observed that the Memorandum of 1972 failed to give full effect to the judgment in Ravi Sharma's case, Their Lordships went on to point out that in order that Amrit Lal's petition under Article 32 to succeed, the petitioner had to show not merely a failure to apply a rule which ought to have been applied, but that such failure had infringed his fundamental rights. They referred, in particular, to the delay in confirming the applicant, i.e. Shri Amrit Lal as compared to his junior, Shri Narendra Singh, and noticed that it was due to the fact that the applicant passed the prescribed departmental examination late and, thus, there was no discrimination against him. The earlier confirmation of persons junior to the applicant was justifiable on grounds other than the length of service and so, he could not make a complaint of it in terms of Article 16 of the Constitution. Dealing next with Shri Amrit Lal's claim that he should have been given the senior grade of Inspectors - what is here referred to as the selection grade - with effect

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from 1961 and not from 1967, in accordance with his seniority based on the length of continuous officiation in the grade of Inspectors, the Court observed that he had not shown that he had been denied equality of opportunity in not being given the senior scale in 1961 but only in 1967. Moreover, the Court observed that the applicant was urging his claim for appointment to the senior grade so late - when he filed his writ petition in 1971 - that if it were to be granted to him, those who had been promoted earlier and had been satisfactorily discharging their duties in that grade for long periods before the filing of the petition, would be adversely affected. "The inequality in equitable balance brought into being by a petitioner's own laches and acquiescence cannot be overlooked when considering a claim to enforce the fundamental right to equal treatment"; their Lordships observed further, "If a petitioner has been so remiss or negligent as to approach the Court for relief after an inordinate and unexplained delay, he certainly jeopardises his claim as it may become inequitable, with circumstances altered by lapse of time and other facts, to enforce a fundamental right to the detriment of similar claims of innocent third persons". Though Amrit Lal, by challenging the office Memorandum of 22.7.1972, made it appear that the cause of action for him arose only in 1972, the Court noticed that what he was really seeking was setting aside a number of confirmations and promotions which had taken place long before his writ petition had been filed. On this ground also, the Court dismissed Amrit Lal's petition alongwith those of others covered by that judgment. Referring to representations stated to have been made by Amrit Lal to the

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Department on 6.3.1965 and 13.8.1971, the Court observed that by merely filing repeated or delayed representations, the petitioner could not get over the obstacles which delay in approaching the court creates because equitable rights of others have arisen in the meanwhile.

9. After the writ petition was rejected by the Supreme Court as set out above, the applicant filed another writ petition before the Delhi High Court, which was heard and disposed of by a Single Judge of that High Court. In this writ petition, the applicant did not raise the question of his appointment to the selection grade of Inspectors in 1961, but claimed appointment to the still higher post of Superintendent in accordance with his seniority in the initial grade based on continuous officiation therein. While disposing of this petition (C.W.P. No. 1192/76), the learned Single Judge held that even though the applicant was not given the selection grade in 1961, his seniority in the grade of Inspectors based on continuous officiation in that grade would remain unaffected and on that basis, he was entitled to promotion as Superintendent in 1973 itself and to all consequential benefits by way of arrears of pay and allowances etc. in the post of Superintendent. He had, in fact, been promoted as Superintendent in 1976, but the learned Single Judge ordered his promotion to that post from 1973 itself and all consequential benefits due to him on that basis. The Government filed a Letters Patent Appeal against this judgment to a Division Bench of the Delhi High Court, which was decided on 2.3.1984. The Division Bench reversed the judgment of the Single Judge and held that the applicant was not entitled to promotion to the post of Superintendent prior to the date on which

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he had actually been promoted. Thereafter, two years later, the applicant filed a Civil Misc. petition before the High Court of Delhi (CMP No. 1359/86) claiming that as a consequence of the judgment of the Single Judge, and the decision in the Letters Patent Appeal, his seniority in the initial grade of Inspectors based on continuous officiation having been upheld, he was entitled to the consequential relief of appointment to the selection grade from 19.4.1961 and not from 1967. Disposing of this C.M.P., the Delhi High Court noticed that no such relief had been claimed either in the writ petition or in the LPA and so, no such relief was granted. If the applicant wanted to make a further grievance, about his appointment to the selection grade, it was open to him to make a petition to the competent authority and since by then, all service matters had been transferred to this Tribunal, the High Court would have no further jurisdiction in the matter. This judgment was rendered on 6.2.1987 and thereafter, the present application was filed before this Tribunal.

10. The detailed narration of the events set out above will show that even in 1975, the Supreme Court rejected the applicant's claim of promotion to the selection grade, *inter alia*, on the ground of laches and delay. In other words, the Supreme Court very definitely observed that the cause of action so far as that claim was concerned, arose in 1961 and in 1971, when the writ petition was filed, the claim had become stale. Even if it involved a violation of a fundamental right, it was too late in the day to agitate the claim, as it would affect the equitable rights of others acquired in the meanwhile. Now, the applicant again went to the High Court with a writ petition in 1976, wherein he

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claimed restoration of his seniority according to the rule of continuous officiation. But there he did not raise the issue of his appointment to the selection grade. It is precisely for this reason that the CMP, referred to above, was rejected by the Delhi High Court. Even though while disposing of the CMP, the High Court did observe that the applicant could, if he so desired, move the competent authority with his grievance regarding appointment to the selection grade, that does not entitle the applicant to have his application automatically granted by this Tribunal. The cause of action arose long before three years prior to the establishment of this Tribunal and several Benches of this Tribunal have held that in such cases, this Tribunal is not competent to adjudicate the cause of action. In any case, with the passage of more than 20 years from the date when the applicant was denied appointment to selection grade, the cause of action, if any, has become so stale that it cannot be considered by us.

11. In view of the above, the application is dismissed as badly delayed and not maintainable before this Tribunal. Parties to bear their own costs.

24.11.87
(T.S. Oberoi)
Member (J)

P. Srinivasan
(P. Srinivasan)
Member (A)