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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A.NO.339 OF 1987

DATE OF DISPOSAL 11-9-1991.

S.C.Kathuria.

.. Applicant.

Vs.

Union of India and others.

.. Respondents.

Shri M.K.Gupta, Counsel for the Applicant.

Shri P.H.Ramchandani, counsel for Respondent-1.

Mrs. Raj Kumari Chopra, counsel for Respondent-2.

CORAM:

Hon'ble Mr.G.Sreedharan Nair,

.. Vice-Chairman.

Hon'ble S.Gurusankaran,

.. Member(A)

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J U D G M E N T

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

The applicant who was employed as a Machine Technician with the Labour Bureau, Ministry of Labour, being declared surplus, was absorbed by the Surplus Cell at the Collectorate of Central Excise and Customs, New Delhi as Inspector (ordinary grade). His grievance is that he was not offered the post of Inspector (Senior Grade), though the post was available at the time of absorption, despite the instructions of Government that surplus staff on absorption should be granted the same position and the scale of pay. It is stated that from 1980 onwards, the applicant had been making requests in this behalf, but the relief has not been allowed. The prayer is for retrospective fixation of the seniority of the applicant in the cadre of Inspector (Senior Grade).

2. In the reply filed on behalf of the respondents, it is contended that the application is barred by limitation as the cause of action arose in the year 1974. It is also stated that the application is liable to be dismissed for non-joinder of necessary parties as persons who will be affected by the

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grant of the relief have not been impleaded.

3. At the time of hearing, counsel of the respondents pressed the preliminary objection with respect to the bar of limitation. Though a strenuous attempt was made by the counsel of the applicant to get over the same, we are of the view that the preliminary objection has to prevail.

4. The sole relief that is claimed in the application is for retrospective fixation of seniority of the applicant in the cadre of Inspector (Senior Grade). Admittedly, the applicant was appointed only as an Inspector (Ordinary Grade) in 1974. It is only after appointment as Inspector (Senior Grade) that a claim can be put forward for fixation of seniority in that grade. It was submitted by the counsel of the applicant that since the applicant was holding ^apost equivalent to the Inspector (Senior Grade), there was no justification in appointing him as Inspector (Ordinary Grade). However, by the order dated 31-8-1974, the applicant was appointed only as Inspector (Ordinary Grade). Hence, as per the averments in the application, the grievance of the applicant arose immediately on the offer of appointment. Since the cause of action arose in the year 1974, there is force in the contention of the respondents that the original application filed in the year 1987 is hopelessly barred by limitation.

5. Reliance was placed by the counsel of the applicant on the decision of the Supreme Court in A.SAGAYANATHAN v. DIVISIONAL PERSONNEL OFFICER (AIR 1991 SC 424) to argue that despite the delay in filing the application, it has to be considered on merits. We are afraid, the decision of the Supreme Court does not warrant the submission. No doubt, in that case, since the question of alleged promotion of the juniors to the applicant was not considered, it was held that despite the delay the matter requires investigation

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and for that purpose it was remitted to the Tribunal to afford an opportunity to implead the necessary parties, file fresh affidavits and adduce any other evidence.

6. Section 21 of the Administrative Tribunals Act specifically prescribes a period of limitation for filing an original application. That there is a good case on merits is no ground for overlooking the mandate under Section 21 of the Act.

7. The counsel of the applicant stressed that the applicant had been submitting repeated representations for the relief and because he was not specifically informed that the relief cannot be allowed, ~~that~~ he did not approach a court of law. Reference ^{is} made to the representations commencing from 16-8-1980. If the representations filed in the year 1980 were not considered within a reasonable time, the applicant should have approached a Court of law then and there instead of waiting for a period of seven years.

8. In addition to what has been stated above, as has been pointed out earlier, the grant of relief can be made only after the appointment of the applicant in the cadre of Inspector (Senior Grade). There is nothing in the application to hold that such an appointment was ever made and hence on the face of it the relief is illconceived.

9. The application is dismissed.

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11/9/1991
MEMBER

Handwritten signature
11-9-1991
VICE-CHAIRMAN