CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 352 1987.
T.A. No.

DATE OF DECISION August 16, 1989.

Shri R.Sangeetha Rao Petitioner

Shri J.P.Verghese, Advocate for the Petitioner(s)

Versus

Union of India Respondent

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

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mrs. J.Anjani Dayanand, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND—12 CAT/86—3-12-86—15,000

(Amitav Banerji)
Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.352/87 Date of decision:August 16,8

Shri R. Sangeetha Rao ... Applicant

vs.

Union of India ... Respondents

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman
Hon'ble Mrs J. Anjani Dayanand, Member (A)

For the Applicant ... Shri J.P. Verghese, counsel

For the Respondents ... Shri P.P. Khurana, counsel

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman)

This Original Application has been filed on 10th March, 1987 by Shri R. Sangeetha Rao, Grade I officer in the Indian Economic Service (IES). He is employed in the Town and Country Planning Organisation, Ministry of Urban Development, Vikas Bhavan, New Delhi. This Application has been filed on the ground that the Applicant has been denied promotion and automatic inclusion in the Select List of Grade I Indian Economic Service from Grade II IES as per reservation orders for SC/ST and also by virtue of being senior most in 1975. He is also aggrieved by wrong fixation of inter-se seniority between Departmental Promotees, Direct Recruits and inductees from 1975 onwards to 1986 treating this period as a single unit of recruitment and ignoring seniority rules.

The Applicant has prayed for six reliefs viz. to include his name in the Select List of promotees of 1975 Grade I IES, he be placed at No.6 in the seniority list for 1986, he be promoted or appointed to an ex-cadre or any posts equivalent to Joint Secretary, he be placed in the Selection Grade at least w.e.f. 15.12.77, direct the Department to stop appointing junior non-SC Grade I IES officers against ex cadre post of the level of Joint Secretary and above until the Applicant is appointed as such and lastly, all benefits accruing as a result of acceptance of this Application.

The factual aspects of the case show that the Applicant is a departmental promotee of 1977. Recruitment Rules of the Indian Economic Service show that 75% of the Grade I vacancies were to be filled up by promotion from amongst Grade II officers. The promotion was based on merit with regard to seniority. Applicant's case is that he should have been included in the Select List of Grade I officers of 1975 and appointed in 1977. In accordance with the above Rules and he being senior most, his inclusion should have been automatic in view of the reservation orders for Scheduled Caste candidates. He was not selected in 1975 but was selected in 1977 and placed below subsequent promotees and direct recruits of 1979, 1980 and 1983. The Cadre Controlling Authority invited objections on the seniority list of Grade I and Grade II on 1.8.1986. The Applicant had claimed that his name should have been included in the

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Select List of 1975 and as such he would be senior most as per reservation orders.

Before we proceed any further in this case, it will be relevant to notice that the Applicant is actually aggrieved by non-inclusion of his name in the Select List of 1975. Although he was selected in 1977, he was placed below the subsequent promotees and direct recruits of 1979, 1980 and 1983. Admittedly he had not moved any court at any time between 1975 and 1985. A question arises whether this Tribunal will entertain a belated claim as in the present case and exercise jurisdiction. Shri P.P. Khurana, learned counsel for the Respondents urged that the Application is very much belated and no relief can be given by the Tribunal for a cause of action which arose in 1975 or any time before 1.11.82. He also urged that it was not a continuing cause of action. Since the Applicant is aggrieved by the non-inclusion of his name in the Select List, he ought to have challenged this within a reasonable period of time before a court of law. That having not been done, this Tribunal will not have any jurisdiction to interfere in a matter which occured 10 years before coming into effect of the Tribunal.

Shri J.P. Verghese, learned counsel for the Applicant refuted the claim that the Tribunal has no jurisdiction to entertain an Application in which the

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cause of action arose in 1975. He urged that even if no court had been moved before 1985, it could still be moved before the Tribunal after it was constituted. He urged that the provision of Section 21(2)(a) of the Administrative Tribunals Act provides for limitation but this clause has been misinterpreted and it was being argued as if jurisdiction of the Tribunal depends on Section 21. He further argued that the jurisdiction of the Tribunal is governed by the provisions of Section 14 of the Act and not by Section 21. A right given cannot subsequently be taken away by a normative provision. Once again, given the jurisdiction by virtue of Section 14 of the Act, it could not be abridged or taken away by any subsequent provision in the Act. He also argued that a 'judicial review' has been given to the Tribunal in all service matters of Central Government employees. The power given under Section 14 of the Act is substantive and cannot be taken away by the normative powers which are contained in Sections 19, 20 and 21 of the Act. The power of judicial review is substantive and not complementary. Consequently, the powers once given to the Tribunal under Section 14 of the Act cannot be restricted by means of the provisions of Section 21 of the Act by providing that it will not be able to exercise its powers in cases which arise beyond a certain period of time. In other words, he contested that even if the OA had been filed beyond the time stipulated under Section 21 of the

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Act, it would still be maintainable and not liable to be thrown out on the ground of limitation. We have to consider this aspect first before we proceed to consider and decide the case on merits.

The question, therefore, is whether the Central Administrative Tribunal is empowered to exercise its powers in respect of a service matter of an employee of the Central Government where a cause of action arose more than three years before the constitution of the Tribunal. Section 14 of the Act prescribes the jurisdiction, powers and authority of the Central Administrative Tribunal in respect of service matters concerning a member of any All India Service. 'Service matter' has been defined under Section 3(q) of the Act which includes tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation. The matter in respect of seniority of a member of All India Service comes within the jurisdiction of the Central Administrative Tribunal. Section 14 of the Act does not speak at all anything about the cases in which the cause of action arose prior to coming into force of the Act. Section 1(3 of the Act makes it clear that the provisions of the Act, in so far they relate to Central Administrative Tribunal, shall come into force on such day as the Central Government may, by Notification appoint. Every Act is prospective unless it is specifically made retrospective in operation. There is no

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indication anywhere in this Act that it has any retrospective effect except what is stated in Section 21 of the Act. Section 21(2)(a) is relevant. It reads as follows:

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

The above provision makes it clear that if an employee had a grievance arising within three years of the constitution of the Tribunal, the latter will have jurisdiction to entertain. Consequently, it is clear that Section 21(2)(a) provides for retrospective operation of the Act for a period of three years prior to its coming into force. The Act in the present case came into force from 1.11.1985. It, therefore, means that a cause of action which had arisen any time on or after 1.11.82 could be entertained by the Tribunal. Any cause of action which arises prior to the above date will not be entertained.

In the case of J. Guruswamy vs. Council of Scientific and Industrial Research, New Delhi (1988 ATC(Vol.6) 24) a Division Bench sitting at Bangalore while considering a case where a cause of action has arisen on 1.1.82 which

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was more than three years prior to the coming into force of the Act, held that -

> "Therefore causes of action which arose more than 3 years prior to the establishment of this Tribunal are not within the jurisdiction of this Tribunal and no application with respect thereto can be made in respect thereof. This Tribunal cannot assume jurisdiction in such cases by condoning delay in filing an application."

In the case of Amin Singh Tyagi vs. Delhi Administration (ATR 1989(1) 227, a Division Bench of the Tribunal comprising of the then Chairman, K. Madhava Reddy and Shri Kaushal Kumar, held that a cause of action which arose on 22.5.74 was barred by time. The Bench held that since the relief is sought against the above order which was made prior to 1.11.82 it was barred by time and no relief should be given. The Bench referred to three earlier decisions of the Tribunal in R.N. Shinghal v. Union of India, V.K. Mehra v. The Secretary, Ministry of Information and Broadcasting and Satyabir Singh v. Union of India.

It is, therefore, clear that the Tribunal has been taking a consistent view that any cause of action which arose before 1.11.82 would be not within the purview of the Tribunal.

While subscribing to the above view, we, however, make one exception. The exception is that in case there is a recurring cause of action like e.g. payment of salary or pension, then the above law laid down by the Tribunal, as mentioned above, will not hold good. If the cause of action

brings the case within the orbit of Section 21(2),it will still be entertained in principle.

In the present case, there is no continuing cause of action. The cause of action not being included in the Select List of 1975 arose in 1987. There is no question of cause of action having survived or continued in the present case. Consequently, the claim in the present case for inclusion in the Selection List of 1975 is hopelessly barred by time.

Learned counsel for the Applicant, Shri Verghese argued that the Tribunal has power for it was specifically given the jurisdiction under Section 14 which could not be taken away by Section 21(2) of the Act. This argument, in our opinion, is untenable as indicated earlier. The Act is a prospective Act and not a retrospective Act except to the extent indicated in Section 21(2) of the Act. Now if the Act is prospective, the question of being clothed with powers and jurisdiction to entertain a matter which arose 5, 10 or 15 years before the Act came into force, does not arise. The cause of action would arise at a particular date. The non payment of salary or non payment of the correct salary or non payment of the pension or part thereof may give rise to a repeated cause of action each month. That position will be different. A person is included in the Select List or not would be indicated in the Select List when the list is prepared on a particular date. The cause of

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action of an employee arises on that date when he notices that his name is not included therein. That cause of action would not be a recurring cause of action. Consequently, the argument that the Tribunal was clothed with powers under Section 14 of the Act which have been taken away by Section 21(2) is also untenable.

Another argument raised by the learned counsel of the Applicant was that the Administrative Tribunals Act, 1985 was made under the purview of Article 323 A of the Constitution and it took away the powers of the High Court or other Civil Courts in the service matter or any other matter of the employees of the Central Government or the State Government and vested them in the Central Administrative Tribunal or the State Administrative Tribunal as the case may be. Consequently the Administrative Tribunal was a substitute of the High Court or other Civil Courts and, therefore, it could entertain the matter as a substitute of the High Court. This argument is also without merits. Once again, if it is accepted that the cause of action arose in 1975, then the Applicant had a remedy provided under the law by approaching the High Court under Article 226 of the Constitution or moving a Civil Court for an appropriate relief. The Applicant did not move either court mentioned above. Had he gone to the High Court or the Civil Court within a reasonable period of time, the High Court or the Civil Court would have entertained the suit or the writ unless there were laches. There is no dispute that until 1.11.1985 the High Court had power to entertain such a

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petition and exercise its jurisdiction but whether it would have entertained or not would depend on the facts of each case. However, if a certain petition was unduly delayed or suffered from laches, the High Court may have refused to exercise its discretion. Even then, the remedy was there but the remedy was not availed of by the Applicant. He now seeks to avail of the same remedy after the coming into force of the Tribunal by filing the present application. He is seeking a relief which cannot be given by the Tribunal, as it has no jurisdiction in respect of the matter, even though it has substituted the High Court in respect of matters under Section 14 of the Act, for the reasons indicated earlier.

Want of jurisdiction of a court or/Tribunal precludes it from exercising its power. Where the court/Tribunal finds a petition or application which is beyond its jurisdiction, the application/petititon will have to be rejected without going into the merits. The Tribunal is legally barred from exercising its jurisdiction in such cases. Where the court/Tribunal does not lack jurisdiction but where the Applicant has approached the Court or the Tribunal belatedly, the question is one of condonation of delay. The court/Tribunal may or may not condone delay, depending on the facts of the case. In the present case, the Tribunal came into existence on 1.11.85. The Administrative Tribunals Act is a prospective enactment. Consequently, it cannot entertain any Application in which the cause of action arose prior to 1.11.82 unless it was specifically provided for. The Act under Section 20 has provided that an Application may be entertained where the cause of action arose within three years,

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immediately before the coming into force of the Act. The Act also provides for transfer of suits, appeals pending in the Civil Courts and Writ petitions pending in the High Court which came within the purview of the Administrative Tribunals Act, 1985. In those cases the cause of action arose much earlier but since those cases were pending proceedings to which the provisions of Section 29 of the Administrative Tribunals Act applied, those were to be heard by the Tribunal. This was a case of being specifically provided by the Statute. Hence, such cases were transferred to the Tribunal. Consequently if the Applicant was interested in agitating the matter, he could have filed the writ petition and in case it was pending in the High Court on 1.11.85, it would have been transferred and the Tribunal would go into the matter as indicated under Section 29 of the Act.

In view of the above, we do not see any ground to entertain the matter regarding the non-inclusion of the Applicant's name in the Select List of 1975. His entire case is based on the plea that his name should have been included in that Select List. Rest of the argument on merit is built thereupon.

Since we cannot go into that matter, as seen above, it would be futile, in our opinion, to examine the merits of the case. We, therefore, dismiss the OA without going into the merit. However, we leave the parties to bear their own costs.

(J. Anjani Dayanand)
Member (A)

(Amitav Banerji)
Chairman

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