OA.437/87

22.7.87

Present : None for the parties, although served.

Pleadings of the case are complete. Let the matter may be posted on board for final hearing.

(V.K.SHALI)
Deputy Registrar

EH/MS
Adj to 6.3.92.
BOO
CP, CF

6.3.92 MP 4006/91

None present.

No good grounds. Dismissed.

(V.S. MALIMATH)
CHAIRMAN

SRD

20.8.92

To remain on Board.
BO.
Anil
20.8.92

24.8.92

Adj to 28/8/92.
BO.
Anil Chandra
26/8/92

In the Central Administrative Tribunal

Principal Bench: New Delhi

Regn. No.OA 437/87 Date of decision:31.08.92.

Shri C.P. Gupta ...Petitioner

Versus

Chief Secretary, Delhi Administration ...Respondent

Coram :-

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

The Hon'ble Mr. J.P. Sharma, Judicial Member

For the petitioner Shri G.R. Matta, Counsel.

For the respondent Mrs. Sumedha Sharma, proxy Counsel for Mrs. Avnish Ahlawat, Counsel.

Judgement(Oral)

(Hon'ble Mr. I.K. Rasgotra, Member (A))

The petitioner in this case was an Upper Division Clerk in the department of Rationing and Civil Supplies and was promoted as Inspector Grade-II (Executive) Rs.425-700 vide order dated 19.10.1979 by relaxation of the provisions made in Rules 6 and 32 of Delhi Administration Subordinate Service Rules 1967. The said order provided that the petitioner will be promoted "with immediate effect" but will be given assumed seniority in Grade-II (Executive) w.e.f. 7.3.1967. The said order was partially modified vide order dated

24.09.1984 (Annexure A-II) to say that seniority of the petitioner will be assigned from the date of issue of the order in accordance with the provisions of Delhi Administration Seniority Rules, 1965 instead of the date mentioned in column 5 of the 1979 order. Aggrieved by this order, the petitioner has filed this Application under Section 19 of the Administrative Tribunals Act, 1985 on 27.3.1987 and has prayed for the following reliefs:-

i) To quash and set aside order No.F.10/7/-75-S.II dated 24.9.1984, the final seniority list of Grade II (Executive) of Delhi Administration Subordinate Service as circulated vide letter No.F.4(1)/85-JSC dated 2.1.1987, as arbitrary, unjust, null and void and violative of principles of natural justice in so far as it relates to the petitioner.

ii) To direct the respondent to fix the seniority of the petitioner as Grade II(Executive) of Delhi Administration Subordinate Service with effect from 7.3.1967.

2. Before going into the merits of the case, the issue of limitation came up, as according to the learned counsel for the petitioner the case of

Shri Gurcharan Singh in OA 223/87 decided by the Tribunal on 23.03.1992 who was placed in identical circumstances was dismissed by the Principal Bench on the ground of limitation. The learned counsel sought to distinguish the said case from the matter before us on the ground that he had not challenged the order dated 24.9.1984 which gave the original cause of action in the said petition and that in the matter now being agitated, the said order has been challenged. The learned counsel, therefore, argued that the present Application does not suffer from the infirmity which afflicted the case of Shri Gurcharan Singh Vs. Delhi Administration, OA No.223/87 decided on 23.3.1992. He further submitted that the petitioner herein has a vested right, as according to the Limitation Act of 1963 the petitioner could have filed a suit for declaration in a Civil Court upto 24.09.1987. The fact, however, is that the Tribunal was set up w.e.f. 1.11.1985 and in accordance with Section 21 (2) (a) of the Administrative Tribunals Act, 1985 the petitioner could have approached the Tribunal upto 30.04.1986. Relying on the Hon'ble Supreme Court's decision in **N.I. Insurance Company Vs. Shanti Misra AIR 1976 SC 237** the learned counsel submitted that since there was a change in the forum the reasonable view to take would be that such an application can

(6)

be filed within a reasonable time of the constitution of the Tribunal which ordinarily and generally would be the time of limitation mentioned in sub-section (3).

3. We have perused the case of **N.I. Insurance Company** (supra) decided by the Hon'ble Supreme Court. The facts of that case are totally different from the matter before us. In fact the facts in that case relate to the claim for compensation arising out of an accident which occurred prior to the constitution of the Claims Tribunal but since there was a change of forum in the meantime their Lordships held that the reasonable time to take would be that such an application can be filed within a reasonable time of the constitution of the Tribunal which ordinarily and generally would be the time of limitation mentioned in sub-section (3). Thus the principle that strictly speaking the bar does not operate in relation to an application for compensation arising out of an accident is not germane in the present case. Further the Tribunal came into being w.e.f. 1.11.1985 whereas the petitioner filed this O.A. on 27.3.1987 wherein he challenged the order of the respondents issued on 24.09.1984. There is a specific provision regarding limitation in the Administrative Tribunals Act, 1985 vide Section 25 of the Act.

(7)

Section 33 of the Administrative Tribunals Act further provides that the provisions made in the Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any other instrument having effect by virtue of any law other than this Act. The implications of the specific provisions of limitation in the Administrative Tribunals Act, 1985 have been the subject matter of the judgement of the Hon'ble Supreme Court in **S.S. Rathore Vs. State of M.P. AIR 1990 SC 10** wherein their Lordships observed:-

> "21. It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

In **State of Punjab & Others Vs. Gurdev Singh JT 1991 (3) SC 465** the Supreme Court has further observed that "the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for."

In view of the above well established position of law we are not persuaded to accept the argument of the learned counsel for the petitioner that he could have filed the petition within a reasonable time of the constitution of the Central Administrative Tribunal.

4. The next point argued by the learned counsel for the petitioner was that the petitioner was called by the Deputy Secretary (Services) in response to his representation. In this context he drew our attention to paragraph-5 of the rejoinder, filed by the petitioner. We, however, do not find any precise information in this regard in the rejoinder. In fact all that is stated in the rejoinder is that one Shri Gurcharan Singh was called by the Deputy Secretary (Services) vide memorandum dated 6.4.1985 (a copy of which is not enclosed with the rejoinder) and that the

petitioner herein alongwith several other persons had gone to the Deputy Secretary concerned. As said earlier, the application of Shri Gurcharan Singh has already been dismissed by the Tribunal. Further no precise information in regard to the meeting with the Deputy Secretary (Services) been provided in O.A. or in the rejoinder. The petitioner cannot build his case to cross the hurdle of limitation on the basis that Shri Gurcharan Singh was called by the Deputy Secretary (Services) and that he also went to see him.

5. In the above conspectus of the case the O.A. is dismissed for want of jurisdiction being barred by limitation. No costs.

(J.P. Sharma)
Member(J)

(I.K. Rasgotra)
Member(A)

August 31, 1992.

san.