

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1170 of 1987
T.A. No.

DATE OF DECISION 11.1.1990

D.M.S. Employees Union Applicant (s)

Shri K.L. Bhatia Advocate for the Applicant (s)

Versus
Union of India & Another Respondent (s)

Shri N.S. Mehta, Sr. Standing Counsel ~~Advocates~~ for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

The Hon'ble Mr. J.P. Sharma, 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 ?

JUDGEMENT

(Judgment of the Bench delivered by the Hon'ble
Mr. J.P. Sharma, Member (J)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by the Delhi Milk Scheme Employees Union through its General Secretary seeking relief that the applicants who are LDCs and have not been given Selection Grade should be allowed Selection Grade retrospectively from 1977. It has been stated that the beneficiaries remained LDCs throughout and there was no chance of getting Selection Grade in the same grade although their counter-parts in the same Department, namely, Cash Clerks and Counter Clerks have been allowed the Selection Grade. They have claimed that 20% of the posts of LDCs be upgraded in the Selection Grade from 1977 and till such a sanction is issued, notification dated 10.8.79 regarding amendment of the Recruitment Rules be held in abeyance and the posts of UDCs may be filled by LDCs only. They have also asked all consequential benefits to be given to the beneficiary LDCs.

2. It has been stated in the application that prior to 1972 there was a joint cadre of LDCs and Cash Clerks, but in 1972 they were treated as two separate cadres, but both were made eligible for promotion to the post of UDCs. Since 1.1.1973 the Cash Clerks were given a higher scale of Rs. 290-400 as against the scale of Rs. 260-400 for the LDCs. In addition, the Cash Clerks were also eligible for promotion to the post of Sales Assistants in the scale of Rs. 330-560 which was not applicable to LDCs. In order to give additional benefits to Cash Clerks, the Recruitment Rules for the post of UDCs were amended twice during the period 1977 and 1979 without assigning any reasons.

3. The respondents have raised a preliminary objection regarding the admissibility of the application on the grounds of limitation. The respondents have stressed that under Section 19 of the A.T. Act, 1985, unless a person is aggrieved by any order, no application lies before the Tribunal. Since the present application is not against any particular order of which the applicants are aggrieved, the application is not maintainable. On reading of the application, it appears that the applicants seem to be aggrieved by the notification dated 10.8.79 as in the application it has been prayed that the aforesaid notification should be held in abeyance till the Selection Grade posts are created and offered to the LDCs. Obviously, the grievance arises out of the order of 1979 or an earlier order and, therefore, the application is barred by limitation.

4. The point of limitation was heard at length. It is accepted that limitation should not be allowed to defeat the just cause of a party and a lenient view should be taken avoiding technicalities so that a person may be allowed to redress his grievance without taking a narrow or technical interpretation of the limitation normally provided under the law. The proceedings under the Administrative Tribunals Act are, however, governed specifically under Section 21 of the A.T. Act which lays down the period of limitation and the manner in which any application barred by limitation may be treated after condoning the delay, wherever necessary. Section 21 of the

A.T. Act on Limitation lays down:-

- (1) A Tribunal shall not admit an application,
 - (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
 - (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
- (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.

NOTE

The phrase "whichever period expires later" comes into play only when sub-sections (1) and (2) both are applicable to the case. (R.Y. Srivastava V. Union of India (1987) 2 ATC 583 (CAT)(All).

- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."



5. In the present case, Annexure A to the counter affidavit of the respondents is a letter from the Ministry of Agriculture to the General Manager, D.M.S. dated 30.3.84 in reply to the letter of the General Manager dated 16.12.83 which states that Selection Grade cannot be given in the posts sanctioned for LDCs in the Delhi Milk Scheme. A perusal of the application moved by the Union on behalf of the beneficiaries in para 7 of the application shows that representations were made in the years 1983 and 1984 and copies of some of them are attached as Annexures A-7 and A-8 to the application. Once the representation has been made by the beneficiaries and the Union representing those beneficiaries steps into their shoes, the representation made again on 29.5.86 cannot in any way enlarge the period of limitation. In this case, the cause of action took place in 1977 to 1979 and apparently, the applicants did not take any steps to file a case in the court of law if the respondents failed to give them any redressal. If that is accepted, then there will be no case at the moment to entertain the application under the A.T. Act. If the refusal of the Ministry of Agriculture dated 30.3.84 is taken into consideration, even then under Section 21, the application should have been made under Section 21(ii)(a) of the Act. The present application was filed in August 1987 and this is clearly outside the limitation period prescribed under the Act.

6. In the case of V.K. Mehra Vs. Secretary, Ministry of Information & Broadcasting ATR 1986(1) CAT 203 this Tribunal has held that the Tribunal has no power to entertain a grievance arising prior to 1.1.1982 or condone delay in such a case.

7. The learned counsel for the applicants filed extracts taken from the minutes of the Divisional Committee's meeting held on 25.1.86 under the Chairmanship of JS(DD) in which the question of Selection Grade of LDCs was taken up and it was decided that the matter should be examined by the DMS for further necessary action. This, however, is not an acceptance or rejection of the claim. although the learned counsel for the applicants claimed that this amounts to an assurance in the Divisional Committee's meeting and as such the limitation would not be attracted.

8. We have considered this matter and we feel that this will at best be taken as a step of further representation, but ^{as} ~~not~~ positive or negative reply by the competent authority. In the case of Jagdish Narain Vs. State of Bihar 1973(1) S.C.C. 811 it has been held by the Supreme Court that repeated or successive representations do not enlarge the limitation time. The learned counsel for the applicants conceded that the aggrieved persons did not take up the question of their being provided Selection Grade immediately in 1977 and 1979, but as this affects their pay on a continuous basis, the limitation would not be attracted. He cited the case of Charan Singh Vs. U.O.I. SLJ 1988(1) CAT 336 where the Jodhpur Bench of this Tribunal has decided that as pension is a continuing benefit, no limitation would arise ⁱⁿ taking up the question of pensions. We consider that the Jodhpur case is on a different footing. Pension is a right of all Government employee throughout his life whereas fixation of pay has to be taken up at the appropriate time as provided under the law and there is not enough justification for not agitating this matter before a court of law or coming before the Tribunal immediately after the establishment of the Tribunal as provided under Section 21 of the A.T. Act. We are of the view that the present application is barred by limitation under Section 21 of the A.T. Act, 1985, and as such the applicants cannot be granted any relief on that account alone. In the circumstances, we do not propose to go into the merits of the case and ~~do~~ dismiss the application. There will be no orders as to cost.

J.P. Sharma
(J.P. Sharma)

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