

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1205/1990.

DATE OF DECISION: July 3, 1990

V.R. Rao Applicant.
Shri D.R. Gupta Counsel for the Applicant.
V/s.

Union of India
through Secretary,
Department of Statistics,
New Delhi Respondent.

None for the Respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*.
2. To be referred to the Reporter or not? *yes*.
3. Whether their lordships wish to see the fair copy of the judgement? *Na*.
4. To be referred to all Benches of the Tribunal? *Na*.

J. P. Sharma
(J.P. SHARMA)
Member(J)

P. C. Jain
(P.C. JAIN)
Member (A).

2

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1205/1990.

DATE OF DECISION: July 30, 1990

V.R. Rao Applicant.
Shri D.R. Gupta Counsel for the Applicant.
V/s.

Union of India
through Secretary,
Department of Statistics,
New Delhi Respondent.

None for the Respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

The applicant, who retired from the post of Deputy Statistical Adviser, Intelligence Bureau, Ministry of Home Affairs, New Delhi on 28.2.90 (A.N.), has in this application under Section 19 of the Administrative Tribunals Act, 1985, impugned the Office Memorandum dated 23.2.1990 (Annexure A-1) with reference to O.M. dated 8.5.86 (Annexure A-5) and O.M. dated 22.5.86 (Annexure A-7). He has prayed for:

- (1) rectification of the wrong date shown against his name in the seniority list of Grade IV of Indian Statistical Service (for short, ISS) by substituting 29.1.66 in place of 26.4.66 and placing him at Sl. No.72 in place of his junior Shri Narang, who is shown at Sl. No.72, in Annexure A-5, with which the final seniority list in Grade IV of ISS as on 11.2.86 was circulated;
- (2) he consequently prays to be placed at Sl. No.33 in the list of promotees to Grade III published on 22.5.86 and to antedate his promotion to Grade III to 31.5.74; and

Ce

(3) for payment of consequential financial benefits within a reasonable time to be fixed by the Tribunal.

2. Very briefly, the relevant facts are as below: -

The applicant joined as Investigator Grade-I on 11.4.1959 at Labour Bureau, Simla, under the Ministry of Labour & Employment, Government of India. He was promoted as Research Officer, in the same Ministry, according to him, on 29.1.66, vide Gazette Notification dated 15.2.1966 (Annexure A-2). The post of Research Officer was redesignated as Assistant Director with effect from 1.7.1966. The post of Investigator Grade I became feeder post to Grade IV of ISS on the constitution of this Service on 1.11.1961. The appointment as Research Officer is said to have been against a Grade IV cadre post of ISS. In pursuance of the judgement dated 11.2.1986 of the Supreme Court in the case of Shri Narendra Chadha & Others Vs. Union of India & Others in CMP 2604 of 1985 in CWP 1595 of 1979, Department of Statistics (for short, DOS), Ministry of Planning, Government of India, who was then the cadre controlling authority of ISS, circulated a revised draft seniority list of Grade IV of ISS, in which the name of the applicant was shown at Sl. No.71 and the date of continuous officiation was shown as 26.4.66. He made a representation dated 2.4.1986 addressed to the Secretary, Department of Personnel & Training, Government of India, with a copy to D.C.S. (Annexure A-4), in which he requested that the date of his continuous appointment as Assistant Director in the Ministry of Labour against a Grade IV ISS cadre post should read as 29.1.1966 and not 26.4.1966. The name of Shri K.L. Narang, whom the applicant states to be his junior, did not appear in this draft seniority list. Final seniority list was circulated vide O.M. dated 8.5.86 (Annexure A-5) in which the name of Shri K.L. Narang appeared at Sl. No.72

U. can

and the name of the applicant appeared at Sl. No.73. The date of continuous officiation in the case of Shri K.L. Narang is shown as 2.3.66 and the date in the case of the applicant is shown as 26.4.66. He again made a representation dated 15.5.1986. Vide Notification dated 22.5.1986 (Annexure A-7), 176 officers of Grade IV of ISS were promoted to Grade III of the Service. The Supreme Court had directed in Narendra Chadha's case (supra) for a review of the promotions made till 11.2.86 from Grade IV of ISS to higher posts in the light of the revised seniority list of Grade IV of the Service. These promotions were in pursuance of that direction. The list of promotions in Annexure A-7 starts from Shri R. Calla, whose name appeared at Sl. No.38 of the final revised seniority list, as the officers at Sl. No.1 to 37 of the seniority list had already been holding posts in the higher grade or had left the service. In this list, the applicant's name appeared at Sl. No.36 and he was given promotion with effect from 15.12.76, while Shri K.L. Narang's name appeared at Sl. No.33 and he was given promotion with effect from 31.5.74. There are two other names, viz., J.P. Kamble and A.K. Sarkar above the name of the applicant, at Sl. Nos. 34 and 35 respectively and they were also given promotion with effect from 31.5.74. According to the applicant, these two names were inserted at Sl. No.34 and 35 in the promotion list of Grade III "probably under the requirement of reserved quota for SC/ST". He made another representation dated 18.6.86. This was followed by representations / reminders dated 17.7.86, 4.8.86, 19.9.86, 5.11.86, 27.1.87, 23.8.88, 3.4.89, 11.9.89, 4.1.90 and ^{he} met with Secretary of D.O.S. on 12.2.90. The applicant's case is that he received a reply dated 15.9.1989 rejecting the applicant's representation (Annexure A-13) and a hearing was granted by the Secretary, vide Memo dated 25.1.1990 (Annexure A-16), which actually took place on 12.2.1990. Final reply is said to be contained in O.M. dt. 23.2.1990 (Annexure A-1).

No other reply to any other representation is said to have been received by him.

3. This application had been filed on 1.6.1990 and came up for admission on 8.6.1990 when none was present for the applicant. It was, therefore, directed to be listed on 3.7.90 i.e., on the first day after the vacation. The applicant was present in person and we heard him. We observed that the application was prima facie barred by limitation and also suffered from the defect of non-joinder of necessary parties. The applicant prayed ~~for applicant's prayer~~ for two weeks' time to make his submissions on the above points. The case was, therefore, directed to be listed on 20.7.1990. On that date, the applicant appeared through his counsel and we heard him on the above two points.

4. The learned counsel for the applicant submitted that the final order on his representation has been passed only on 12.2.90 and, therefore, the application is well within time. He also cited the judgement of the Bangalore Bench of the C.A.T. in the case of Smt. SARASWATI, K Vs. Head of Utilisation Research (1989 (3) CAT p. 84) and the judgement of the Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh (Judgements Today 1989 (3) S.C. 530).

5. Before we discuss the above two authorities, certain facts on record may be mentioned. In para 4.3 of the application, the applicant has stated that "The applicant was on deputation to Department of Administrative Reforms and Public Grievances (D/AR&PG) as Senior Analyst from 1.1.1986 to 30.7.1987, during which period the cause for action leading to this petition occurred." (emphasis supplied). Thus, on the applicant's own admission, the cause of action arose during the above period. The final seniority list was issued with O.M. dated 8.5.86. The O.M. states that "The comments/observations/objections etc.

Ueer

received from the various Ministries / Departments / offices / individual officers etc. on the draft seniority list have been examined. After such examination the draft seniority list has been duly revised and finalised. The representations not covered by the enclosed revised seniority list are rejected." (emphasis supplied). The cause of action thus will be deemed to have arisen immediately after the issue of O.M. dated 8.5.86. In regard to the applicant's prayer for relief for promotion to Grade III from 31.5.74 instead of 15.12.76, the cause of action will be deemed to have arisen immediately after the Notification in regard to promotions was issued on 22.5.86. Even if the applicant's representation was not considered before the issue of final revised seniority list on 8.5.86, it will be deemed to have been rejected, specially when it is stated as such in the O.M. dated 8.5.86. Repeated representations do not extend the period of limitation (Gian Singh Mann Vs. High Court of Punjab & Haryana and Another - 1980 (4) SCC 266). In the case of S.S. Rathore V/s. State of Madhya Pradesh (supra) also, the Supreme Court held that repeated unsuccessful representations not provided by law are not to be taken into account. In para 20 of their judgement, their Lordships observed as below: -

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law.

Repeated unsuccessful representations not provided

(C. S. M.)

by law are not governed by this principle." material

6. In our view, the facts in the case of Smt. Saraswati, K (supra) are different from the facts of the case before us. Even otherwise, in view of the law laid down by the Supreme Court in the case of S.S. Rathore (supra), we are not bound by the view taken by the Bangalore Bench in Smt. Saraswati, K's case. We are, therefore, of the view that the present application is barred by limitation.

7. In regard to the final revised seniority list of Grade IV of ISS, the applicant has prayed for a relief, which if granted would adversely affect Shri K.L.Narang, whose name appeared above the name of the applicant. He was, therefore, a necessary party, but he has not been impleaded by the applicant. The learned counsel for the applicant stated that Shri Narang has already retired from service and, as such, he is not likely to be adversely affected. We are unable to accept this contention because if the applicant is held to be senior to Shri K.L. Narang, the applicant would get promotion to Grade III from 31.5.74 instead of from 15.12.76 and Shri K.L. Narang would get promotion only from 15.12.76 instead of from 31.5.74, as given to him. The fact of the retirement of Shri K.L. Narang is, therefore, not relevant.

8. In regard to the relief for antedating the date of promotion to Grade III, not only Shri K.L. Narang, but S/Shri J.P. Kamble and A.K. Sarkar also would be adversely affected in case the relief prayed for is granted to him. Therefore, they are also necessary parties, but they have not been impleaded. The application, thus, suffers from the defect of nonjoinder of necessary parties. This defect could have been removed by amending the application, but no such suggestion came from the applicant's side. The defect of bar of limitation cannot, however, be cured. No

(u)

prayer for condonation of delay has been made in this case. Even if such a prayer had been made, it will not have been possible in the facts and circumstances of this case to condone the delay of nearly two years.

9. In view of the above discussion, we hold that the application is not maintainable under Section 21 of the Administrative Tribunals Act, 1985 as well as for nonjoinder of necessary parties and it is accordingly disposed of as such.

J.P. Sharma
(J.P. SHARMA)
Member(J)

P.C. Jain 3/7/90
(P.C. JAIN)
Member(A)