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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A.No. 2048/90

New Delhi, dated the 8th June, 1995

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Bhola Ram,
S/o Shri Ghasi Ram,
R/o 14, School Lane,
Radhey Puri
Delhi-110051.

(By Advocate: Ms. Nitya Ramakrishna)... APPLICANT

VERSUS

1. Union of India through its
Secretary, Ministry of Communication,
Sanchar Bhawan, New Delhi.
2. Post Master General,
Delhi Circle,
New Delhi-110001.
3. Sr. Superintendent,
Delhi Sorting Division,
Kotla Road,
New Delhi.

(None appeared for the Respondents)... RESPONDENTS

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application filed on 21.9.90
Shri Bhola Ram has prayed for promotion in ISG
cadre w.e.f. 1.10.68 with consequential benefits.

2. Shortly stated, the applicant joined
service on 23.12.54 as a Class IV employee and
was promoted as a sortr on 16.11.66. Consequent
to a general strike in the RMS Wing of the Postal
Dept. in Sept. '68 where the applicant was
working, a number of sorters struck work, and
to carry on the work 19 loyal sorters who had
not struck work were promoted to ISG and given
related monetary benefits calculated on the basis
of next higher grade. One Shri Kulwant Singh
who was on deputation at that time, therefore,
filed a writ petition in the Delhi High Court
claiming similar promotion to ISG on par with
juniors. Consequent to that writ being allowed,

others who were similarly senior to those 19, also petitioned the respondents for promotion upon which the respondents gave notional promotion to 14 officials who were on deputation to Army Postal Service on 30.9.68 vkde orders dt. 15.3.85.

3. One Shri P.I. Tiwari challenged the 1985 order before the Tribunal No. 155/86 claiming that there was violation of statutory rules and by-passing of the seniors. The Division Bench heard the matter and by its judgment dt. 7.9.87 reported in 1988 (3) SLJ (CAT) 279, allowed the application. It appears that it was admitted by the respondents in that case before the Tribunal that only those who were loyal during the 1968 postal strike, had been considered for promotion.

4. It appears that thereafter a number of similarly situated persons made representations to the authorities, and getting no satisfactory response, they filed O.As in the Tribunal which were disposed of by judgment dt. 28.8.90 in O.A. 2345/86 Bawaji Saluja & Ors. Vs. UOI & another; and connected cases. The plea taken in those O.As was that since the applicants had repeatedly been superseded by a number of persons who had been granted promotions to the ISG from 1968, justice demanded that the promotions of the applicants also, who by this time had been promoted to ISG, be antedated to 1968 and they be also given their pay and allowances on the

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promoted posts from 1968. Inter alia, it was mentioned that those applications were against the continued arbitrariness in the policy of the respondents, and those individuals who had superseded the applicants, had not been impleaded them as parties.

5. The Tribunal by its judgment dt. 28.8.90 in O.A. 2345/88 Bawaji Saluja & Ors. Vs. UOI & another and other connected cases, allowed the O.As holding that the applicants were entitled to promotions from 1.10.68 with all monetary benefits. Since the applicants had already been promoted, it was only the difference in pay and allowances from 1.10.68 to the date of actual promotion which would be admissible to them. That judgment also noticed the Tribunal's decision in Yash Pal Kumar & Ors. Vs. UOI & Ors. (O.A. No. 1746/88 and 4 connected O.As); Madan Mohan & Ors. Vs. UOI & another (O.A. 1019/87), decided 11.1.88); P.P.S. Gumber Vs. UOI & another (1984 (2) SLJ 633, decided on 31.3.84); Bakshi Ram Vs. UOI (O.A. 142/86) and Roshan Lal Vs. UOI (ATR 1987 (1) CAT 121). In all these cases, the prayer for promotion together with arrears of pay and allowances w.e.f. 1.10.68, the date on which their juniors were promoted, was allowed. Subsequently, by decision dated 17.5.91 (Annexure A.7), it was made clear that by judgment dt. 28.8.90 it would not only cover promotion but also the pay of the promotional post as due to the applicants, as well as for calculation for pension, DCRG and leave encashment etc. and it

had nowhere restricted the payment of dues after the date of actual promotion. Subsequently, in the Tribunal's decision dated 20.11. 91 in O.A. No. 2111/91 (MA No. 2590/91) Ram Prakash Bagh & Ors. Vs. UOI wherein the applicant had similarly sought promotion to ISG with effect from the date their juniors were granted it was noted that the applicants should first exhaust departmental remedy before approaching the Tribunal.

6. Thereafter yet some more sorters filed a petition for similar relief in O.A. No. 1610/91 Rajinder Ial Bansal & 15 Ors. Vs. UOI & another (decided on 23.7. 92). In that O.A., the Tribunal while subscribing to the view taken in a number of judgments as quoted by the applicants, had observed that they could not give a direction to the respondents to promote all the applicants from 1.10.68 as prayed for by them in the O.A. straightway. In the circumstances of that O.A., the Tribunal directed the respondents to consider the case of the applicants from the date any of their juniors were promoted to ISG, for promotion to ISG cadre on the basis of their seniority-cum- fitness. In case, they were fit to be promoted to ISG from the date any of their juniors were promoted, they were to be deemed to be entitled to all monetary benefits including consequential benefits. As the applicants also included the four widows of similarly placed deceased employees, it was directed that if the four deceased officials were found fit for promotion, their widows would also be entitled to the monetary dues.

10. However, in O.A. 2540/91 Shiv Charan & Ors. Vs. UOI & another, decided by the Tribunal on 24.8.92, the prayer of the six applicants for promotion to the cadre of ISG w.e.f. 1.10.68 was dismissed on the ground that nothing had been placed on record to show that the persons promoted by the deptt. in 1968 of their own or subsequently in pursuance of various judgments were junior to the applicants and there was no material on record to establish that anyone of the juniors to the applicants had been given promotion to the ISG cadre w.e.f. 1.10.68. Again in O.A. 1163/93 ^{in v. UOI. The prayer} Smt. Iajwanti _{for} similar relief was rejected on the ground that the cause of action related to the year 1968, which was much prior to 1.11.82. O. A. 702/93 Smt. Hoshyari Devi Vs. UOI & another, decided by the Tribunal on 26.10.94, in which a similar prayer was made for grant of promotion to the applicant's late husband on 1.10.68 was likewise rejected on the ground that the cause of action died with the demise of applicant's late husband and furthermore, it was also hit by limitation in as much as the benefit claimed was w.e.f. 1.10.68. Again O.A. 1081/93 Iajpat Rai Vs. UOI & another was dismissed as withdrawn. Yet in another O.A. 62/92 decided on 9.7.92, the applicant had sought promotion in ISG w.e.f. 1968 with consequential benefits and the same was rejected on the ground that it was barred by limitation. The order pointed out that the applicant before coming into force ^{of} the AT Act, did not seek any remedy in the proper forum within a period of three

years. From Nov. 85, after coming into force of the Act, the applicant did not approach the Tribunal within 18 months. It was also noted that not even a petition for condonation of delay had been filed in that case and the O.A. was dismissed at the admission stage itself.

8. An identical prayer was considered in O.A. 1368/92 Shri Kure Ram Vs. UOI & Ors. decided in 10.5.95 and in O.A. 508/91 Shri Bhola Dutta Sharma & Ors. Vs. UOI & Ors. and other connected case decided on 2.6.95. All those O.As were dismissed on grounds of delay and laches and lack of jurisdiction as well as on merits. We see no reason to differ with those judgments. Applicants' counsel Ms. Nitya Ramakrishna has argued that her clients' case stands ~~under~~ ^{on} a different footing because he was a "loyal" worker, who remained loyal in a subsequent strike (vide certificate dt. 30.8.79 at Annexure E), and but for his being got arrested by the respondents, he would have performed his duties during the strike period. This does not change the position that this O.A. is grossly barred by limitation, as well as lack jurisdiction and on that ground is fit to be rejected.

10. During arguments applicants' counsel Ms. Nitya Ramakrishna has urged that these O.As cannot be hit by limitation because in the matter of exercise of Fundamental Rights, limitation is of no account and furthermore there is no specific order from which dates/period of limitat-

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ion would run. In this connection she has argued that the cause of action is a recurring one and has relied upon the judgment of a Division Bench of the Tribunal dated 12.5.93 in O.A. 683/90 Byomkesh Ghosh Vs. UOI & another 1993 (25) ATC 552. We are not persuaded to accept that argument in view of the Tribunal's judgment in Om Prakash Satija Vs. UOI 1995 (29) ATC 1 which is also by a Division Bench, and is later in point of time than the judgment in Byomkesh Ghosh's case (Supra). The judgment in Satija's case (Supra) which has been discussed extensively in the Tribunal's judgment dated 10.5.95 in Kure Ram's case (Supra) and connected cases, has conclusively held that the provision of Sec. 21 of AT Act which provides for limitation is complete in itself and has to be taken into account while deciding whether any original application is within limitation or not. It may be mentioned that the judgment in Satija's case (Supra) has itself relied heavily on the Hon'ble Supreme Court's judgments in Bhoop Singh Vs. UOI 1992 (3) SCC 136 and Rattan Chand Samanta Vs., UOI & Ors. 1994 (26) ATC 228. Furthermore, even on point of fact it is not correct to say that there is no specific order from which date of limitation would run, because in P.I. Tiwari's case (Supra) it has been held that the specific orders are those of 1968 and 1985 under the circumstances this argument fails.

11. Arguing on merits Ms. Ramakrishna has admitted that the respondents by promoting the "loyal" workers, ignored the minimum eligibility conditions, consideration of seniority-cum-fitness, DPC scrutiny, all of which were prescribed in the Recruitment Rules which have statutory force, but argues that the judgment in P.I. Tiwari's case (Supra) and similar cases, where the relief prayed for was granted to some employees, are judgments in rem, and the same relief now cannot be denied to others who are similarly situated; otherwise it will amount to hostile discrimination. There is no averment in the O.A. that the applicant himself fulfils the minimum eligibility conditions, and Ms. Nitya Ramakrishna has very fairly conceded that the applicant does not possess the minimum requirement of 10 years regular service in the grade as on 1.10.68 making him eligible for promotion to ISG ⁱⁿ ~~W.E.F. that date~~, as laid down in the Recruitment Rules. These Recruitment Rules have been framed under Art. 309 of the Constitution and have statutory force. In the absence of any such materials we are bound to conclude that the grant of the relief prayed for, would do violence to the recruitment rules referred to above, and in the judgment in Kure Ram's case (supra) it has been observed that "discrimination cannot be pleaded successfully in a situation where the relief if granted would violate the statutory provisions".

12. We are fortified in our view by the Hon'ble Supreme Court's judgment in Chandigarh Admn. & another Vs. Jagjit Singh & another 1995(1) SCC 745 decided on 10.1.95 relevant extracts of which are reproduced below:

"The basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Generally speaking, the mere fact that the authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted orders cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order".

13. As the Hon'ble Supreme Court in UOI Vs. Vijendra Singh has held that the jurisdiction of the CAT is akin to the jurisdiction of the High Court under Art. 226 of the Constitution, the extracts reproduced above would be equally applicable in the cases before us.

14. For the above reasons this O.A. fails and is dismissed. No costs.

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AKSHMI SWAMINATHAN
(AKSHMI SWAMINATHAN)
Member (J)

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S.R. ADIGE
(S.R. ADIGE)
Member (A)