

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 525/1990

DATE OF DECISION: MAY ¹⁶ ~~2~~, 1990

SHRI H.S. RAWAT & ANOTHER

APPLICANTS

SHRI N.D. BATRA

ADVOCATE FOR THE APPLICANT

VERSUS

UNION OF INDIA

RESPONDENTS

SHRI R.S. AGGARWAL

ADVOCATE FOR THE RESPONDENT

CORAM:

The Hon'ble Mr. T.S. Oberoi, Member (J)

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

O R D E R

(Delivered by the Hon'ble Mr. I.K. Rasgotra)

This OA has been filed by the applicant against the impugned memoranda dated 27.2.1990 (Annexure-I) and dated 26.2.1990 (Annexure-II). The latter memorandum of 26.2.1990 is a notice of show cause to the applicant Shri Jagdish Lal to the same effect.

2. Briefly the facts of the case are that the applicant No.1 and Applicant No.2 were appointed as peons in the Directorate of Inspection (Income Tax & Audit), New Delhi on 15.3.1974 and 6.1.1976, respectively. They were appointed as Lower Division Clerks on adhoc basis w.e.f. 15.12.1980 and 12.2.1981 respectively. Both of them were subsequently regularised as Lower Division Clerks and are holding permanent post w.e.f. 4.3.1986 and May 1, 1986 respectively. Later, however it transpired that their appointment as Lower Division Clerks made against the 10 per cent promotion quota were erroneous as there was no vacancy available in the promotion quota in violation of the Recruitment Rules. Accordingly, they were asked to show cause within the specified period as indicated in the respective show

3

caust notices as to why they should not be deconfirmed in the grade of Lower Division Clerks. The applicants instead of answering the show cause notices and defending their appointment, promotion etc. have chosen to file this application under Section 19 of the Central Administrative Tribunals Act, 1985. The learned Counsel for the applicants submitted that the application may be admitted and interim relief be granted to the applicants restraining the respondents from taking action envisaged in the impugned memoranda without answering the show cause notices. The learned counsel submitted that it is no use exhausting the departmental remedy as the mind of the respondents is already made up, as seen from the show cause notice and therefore he would press the O.A. for admission.

3. The relvant law in this regard is postulated in Sections 20 read with 19 and 21 of the Central Administrative Tribunals Act, 1985. Section 19(i) reads as under:-

"19. Applications to Tribunals. (1). Subject to the other provisions of this Act, a person aggrieved by any order (emphasis supplied) pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance."

Thus the applicant has to be aggrieved by an order before filing an application. Until such an order is passed the cause of action for the applicant does not arise and he therefore cannot approach the Tribunal under Section 19 of the Act. Under Section 20(1) even if an application is made under Section 19 of the Act, the Tribunal shall not ordinarily admit such application unless it is specified that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievance. The person aggrieved can file an application under Section 19 of the Act, when the cause of action arises i.e. when the impugned order is passed provided that there is no provision for filing an appeal/representation. If there is a provision for filing such an appeal/representation, such remedy is required to be exhausted.

2
*(Underling - emphasis supplied)

(M)

The applicant is however not required to indefinitely wait for disposal of his appeal/representation. Section 21(2) of the Act provides that where an appeal or representation under 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, an application can be filed within one year from the date of expiry of six months.

The conditions narrated above are precedent to maintaining of claims under the Act. We also draw support from the pronouncement of the honourable Supreme Court in the case of S.S. Rathore Vs. State of M.P. AIR 1990 SC 17.

4. In this case we do not find any order against which the applicants have approached the Tribunal. The memoranda referred to as the cause of action for approaching the Tribunal are only show cause notices. The relevant authority would consider making an order, only after the show cause notices have been responded by the applicants. It is not necessary that the action contemplated in the show cause notice would automatically be translated into action in the order to be made by the relevant authority without applying itself to the explanation of the applicants in response to the show cause notices.

5. Under these circumstance we are of the view that the application is premature and is accordingly dismissed. The applicants will be at liberty to file a fresh application after an order is made by the relevant authority and if they are aggrieved by the same.

I.K. Rasgotra
(I.K. Rasgotra)
10/5/90

Member (A)

T.S. Oberoi
(T.S. Oberoi)
Member (J)