CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 10th May 1995

HON'BLE MR.JUSTICE B.C.SAKSENA, VICE CHAIRMAN.

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

1) O.A.No.1368/92

Shri Kure Ram,
s/o Late Shri Chandan Lal,
LSG Sorting Assistant,
Delhi Sorting Division,
RMS Bhawan, Kashmere Gate, Delhi .....Applicant.

VERSUS

Union of India & another .....Respondents.

2) O.A.No.494/91

Shri Satpal Anand,
s/o Late Shri Gurditta Mal,
LSG Supervisor(Retd.),
Air Main Sorting Division,
New Delhi -23.

2. Shri Kant Chandra Rampal,
Late Shri G.C.Rampal,
LSG Supervisor (Retd) Sorting Div.Delhi.-21.

3. Shri Mamtani Chhatumal,
s/o Shri Khem chand Mamtani,
LSG Supervisor (Retd),
Sorting Div. New Delhi -1.

4. Shri Chaman Lal II,
s/o Late Shri L.Jagan Nath Chadha,
LSG Supervisor(Retd),
Delhi Airmail Sorting Division,
New Delhi.

5. Shri Pahlaj F.Ahuja,
s/o Shri Fateh Chand,
LSG Supervisor (Retd),
New Delhi Sorting Division.

6. Shri Jagir Chand,
s/o Shri Gurdit Singh,
LSG Supervisor(Retd).,
Air Mail Sorting Division,
New Delhi -21

7. Shri Dev Raj-II,
s/o Shri Kanshi Ram,
Sorting Asstt.(Retd),
New Delhi Sorting Division,
New Delhi.

8. Shri Amar Nath-I ,
s/o Shri G.R.Nath,
LSG Supervisor (Retd),
New Delhi Sorting Division.

9. Shri Narender Kumar Beri,
s/o Late Shri Gian Chand Beri,
LSG Supervisor (Retd),

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Senior Supdt. New Delhi Sorting
Division, New Delhi.

10. Shri Dharam Pal Sharma,
s/o Late Shri Jagan Nath,
Sorting Assistant,
New Delhi Sorting Division.

11. Shri R.N.Chand,
S/o Late Shri Satyadev Chand,
Sorting Assistant,
New Delhi Sorting Division.

12. Shri Sukhpal Singh,
s/o Shri Kala Singh,
LSG Supervisor (Retd),
New Delhi Sorting Division,
New Delhi-I.

13. Shri Dharam Singh,
s/o Shri Jog Nath,
Sorting Asstt.(HSG)
New Delhi Sorting Division.

14. Shri Chandra Bhan- II,
s/o Shri Tirkha Ram,
working as LSG Supervisor,
New Delhi Sorting Division .....Applicants.

Versus

1. The Union of India through
Secretary to the Govt.
Department of Posts, Daktar Bhawan,
New Delhi.

2. The Post Master General,
Delhi Circle,
Mohan Singh Place,
Baba Karak Singh Marg,
New Delhi -1 .....Respondents.

3) O.A.No. 431/91

1. Shri R.N.S.Agarwal,
s/o Late Shri Janaki Ram,
Sorting Officer(Retd.)
Goldakhana Post Office,
New Delhi.

2. Shri Ramphal -I,
s/o Shri Bayya Ram,
Sorting Assistant,
New Delhi RMS Sorting Division.

3. Shri Mool Raj Soni,
s/o Late Shri B.D.M.Soni,
LSG Supervisor,
Sorting Office, ...Applicants.
New Delhi

VS.

1. Union of India through
Secretary to the Govt, Department
of Posts, Daktar Bhavan,
New Delhi.

2. The Post Master General,
Delhi Circle, Mohan Singh Place,
Baba Karak Singh Marg, New Delhi-1 ...Respondents.

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4) O.A.No.495/91

1. Shri Amar Lal Babbar,
s/o Shri Hari Chand Babbar,
HSG Head Sorting Assistant,
Delhi Sorting Division,
Delhi-6

and 19 others .....Applicants.

Versus

1. Union of India through
Secretary to the Govt.
Department of Posts,
Daktar Bhawan,
New Delhi -1.

2. The Chief Post Master General,
Delhi Circle,
Megdoot Bhawan,
New Delhi -1 .....Respondents.

5) O.A.No.614/91

Shri Krishan Jindal,
s/o Shri Lakhi Ram Jindal,
Asstt. Superintendent,
Delhi RMS, Delhi-6

and 28 others .....Applicants.

Versus

Union of India through
the Secretary to the Govt.
Department of Posts,
Daktar Bhawan,
New Delhi -1.

2. The Chief Post Master General,
Delhi Circle, Meghdoot Bhawan,
New Delhi .....Respondents.

6) O.A.No.785/91

Shri Surjan Mal Jain,
s/o Banarsi Dass Jain,
Asstt. Accounts Officer,,

O/o Chief General Manager,
Maintenance, Naraina,
New Delhi - 110 028

and 2 others .....Applicants.

Versus

Union of India, through
the Secretary to Govt.,
Department of Posts,
Daktar Bhawan,
New Delhi.

2. The Chief Post Master General,
Delhi Circle, Megdoot Bhawan,
Jhandewalan,
Delhi - 110 001 .....Respondents.

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7) O.A.No.794/91

1. Shri Kartar Chand Dhiman ,
s/o Late Shri Chajju Ram Dhiman,
Sorting Assistt.(Retd.),
Delhi Sorting Division, No.5/6, R.K.Puram,
New Delhi -22

and another .....Applicants.

Versus

1. Union of India through
the Secretary to Govt.,
Department of Posts,
Daktar Bhawan,
Parliament Street.,
New Delhi -110 001

2. The Chief Postmaster General,
Delhi Circle,
Megdoot Bhawan,
Jhandewalan Extension,
New Delhi .....Respondents.

8) O.A.No.1261/91

1. Shri Lakhan Singh Gaur,
s/o Shri Ram Ratan,
Supervisor (Retd.)
Delhi Sorting Division,
New Delhi

And 9 others .....Applicants.

Versus

1. Union of India through
the Secretary to Govt.,
Department of Posts,
Daktar Bhawan,
New Delhi-1 .

2. The Chief Post Master General,
Delhi Circle, Megdoot Bhawan,
New Delhi .....Respondents.

9) O.A.No.1361/92

Shri Ram Prakash Bagh,
s/o Late Shri Sant Hama Das,
LSG(Retd.), Delhi RMS.,
Delhi .....Applicant.

Versus

1. Union of India through
the Secretary to the Govt.
Department of Posts,
Dak Bhavan,
New Delhi - 110 001.

2. The Chief Post Master General,
Delhi Circle,
Meghdoot Bhawan,
Jhandewalan Extension,
New Delhi .....Respondents.

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10) O.A.No.1309/91

1. Shri Padam Lal,
s/o Shri Parma Nand,
Ex. LSG, Sorting Asstt.
Air Sorting Office,
New Delhi-110019.

And 9 others .....Applicants.

Versus

1. Union of India, through
the Secretary to the
Govt.,
Department of Posts,
Daktar Bhawan,
New Delhi -110 001 .

2. The Chief Post Master General,
Delhi Circle,
Megdoot Bhawan,
New Delhi . .....Respondents.

11) O.A.No.1022/92

1. Shri Rama Shankar,
s/o Shri Munna Lal,
RMS Sorter (LSG) Retd.
C/o Delhi Sorting Division,
H.No.17-A (near Shiv Kala Mandir),
Ram Nagar, Krishna Nagar,
Delhi -51 .....Applicants.

Versus

1. The Union of India through
the Secretary to the Govt.,
Department of Posts,
Daktar Bhawan,
New Delhi-110 001.

2. The Chief Post Master General,
Delhi Circle,
Meghdoot Bhawan,
Jhandewalan Extension,
New Delhi-110 001 .....Respondents.

12. O.A.No. 290/92

Shri Radhey Shyam Srivastava,
s/o Late Shri Jai Narayan Srivastava,

LSG Sorter (Retd),
New Delhi Sorting Office,
New Delhi

And 3 others .....Applicants.

Versus

1. The Union of India through
the Secretary to the Govt.
Department of Posts,
Daktar Bhawan,
New Delhi

2. The Chief Post Master General,
Delhi Circle,
Meghdoot Bhawan,
Jhandewalan Extension,
New Delhi - 110 001 .....Respondents.

13) O.A.No.1665/92

Shri Inder Lal,
s/o Shri Ladha Ram,
HSG Grade-II(Retd),
Air Main Sorting Division,
New Delhi. .....Applicant.

Versus

The Union of India through
Secretary to the Govt.,
Department of Posts,
Daktar Bhawan,
New Delhi-1

2. The Chief Post Master General,
Delhi Circle,
Meghdoot Bhawan,
Link Road,
New Delhi .....Respondents.

Shri E.X.Joseph, Counsel for the applicant.

Shri P.H.Ram Chandani, Senior Counsel with Shri N.S. Mehta, Shri M.K.Gupta and Shri M.M.Sudan for the respondents.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A) .

As these O.As involve common questions of law and fact, they are being disposed of by a common judgment.

2. In these O.As , the applicants have sought a direction to the respondents to grant them promotion from the grade of Sorters to the Lower Selection Grade (LSG) in the Railway Mail Service of the Department of Posts and Telegraphs, Communication Ministry w.e.f. 1.10.68, the date from which their juniors were promoted with all consequential benefits including arrears of pay and allowances , refixation of pay/ pension etc with effect from the same date.

3. Shortly stated, the applicants were appointed as Sorters on different dates. There was a general strike in the RMS Wing of the Postal Department

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in September, 1968 where all these applicants were working as Sorters. A large number of the employees remained absent from duties unauthorisedly during the strike period and the respondents directed that the said period of absence be treated as 'Dies-non' entailing loss of pay and allowances for the said period apart from the adverse entries be made in their service records. Meanwhile, as the strike had paralysed the work in the RMS Offices and to ensure that the Offices were not completely closed down, those Sorters, who had not gone on strike during this period, and had continued to perform their duties, and were considered by the respondents fit to supervise the work of those persons who had been engaged as fresh hands on daily wages basis, to run the work in the Sorting Offices, were given promotion and related monetary benefits, calculated on the basis of next higher grade . 19 such Sorters were given promotions, as according to the respondents, they had displayed a sense of responsibility , zeal and devotion to duties and performed the Govt. work despite heavy odds. Shri Kulwant Singh who was on deputation to the Army Postal Service, filed a Writ Petition in Delhi High Court bearing No.1243/71 claiming his promotion to LSG on par with those juniors belonging to his cadre in Civil side who had been promoted to LSG. The Delhi High Court in its judgment dated 2.8.80 passed the following directions:-

> " The impugned orders dated 30.9.68 and June, 1969 are quashed to the extent filling one post in case the applicant is found fit for promotion under statutory rules. The Govt. will consider the case of the applicant for promotion as on 30.9.68 and grant adequate relief in accordance with the law."

4. Pursuant to the above directions of the Delhi High Court, promotions were granted to said Kulwant Singh, whereupon the other officials who were seniors to those who had been promoted during the strike period, also represented to the respondents for such promotions on the ground that the directions in Kulwant Singh's case (Supra) should be extended to them.

5. The respondents state that after considering their cases, they gave 14 notional promotions to the officials who were on deputation to Army Postal Service on 30.9.68 vide orders dated 15.3.85.

6. One Shri P.L.Tewari challenged the 1985 order before the Tribunal in O.A .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 dated 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.

7. 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 dated 28.8.90 in O.A.No. 2345/88 Shri Bawaji Saluja & others 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 LSG 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 promoted posts from 1968, Inter alia, it was mentioned that those applications were against the continued arbitrariness in the policy of the responoents, and those individuals who had superseded the applicants , had not been impleaded them as parties.

8. The Tribunal by its judgment dated 28.8.90 in O.A.No.2345/88 Shri Bawaji Saluja & others Vs. UOI & another ; and 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 & others Vs. UOI & others (O.A.No.1746/88 and 4 connected O.As); Madan Mohan & others Vs. UOI & another (O.A.1019/87 decided on 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.No. 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-A7), it was made clear that by judgment dated 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 of 1991 (M.P.No.2590/91) Ram Prakash Bagh & others Vs.UOI wherein the applicants had similarly sought promotion to ISG with effect from the date their juniors were granted ,

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it was noted that the applicants should first exhaust departmental remedy before approaching the Tribunal.

9. Thereafter yet some more Sorters filed a petition for similar relief in O.A.No.1610/91 Rajinder Lal Bansal & 15 others 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 applicant from the date any of their juniors were promoted to LSG, for promotion to LSG cadre on the basis of their seniority-cum-fitness. In case, they were fit to be promoted to LSG from the date any of their junior was promoted, they were to be deemed to be promoted to LSG from that date, and would 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 & others Vs. Union of India & anothers, decided by the Tribunal on 24.8.92, the prayer of the six applicants for promotion to the cadre of LSG 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 department in 1968 of their own or subsequently in pursuance of various judgments, were junior to the applicants and there was no material

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on record to establish that anyone of the juniors to the applicants had been given promotion to the LSG cadre w.e.f. 1.10.68. Again in O.A.No.1163/93 Smt. Lajwanti Vs. UOI & others, decided on 26.7.93, the prayer of Smt. Lajwanti 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.No.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 further more, it was also hit by limitation in as much as the benefit claimed was w.e.f. 1.10.68. Again O.A.No.1081/93 Lajpat Rai Vs. UOI & another, was dismissed as withdrawn. Yet in another O.A.No. 62/92 decided on 9.7.92, the applicant had sought promotion in LSG 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 the AT Act, did not seek any remedy in the proper forum within a period of three years. From November, 1985, after coming into force 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.

11. In this bunch of O.As, which are being disposed of by this common order, the following facts are relevant: -

Sl. No.	O.A. number	Name of the applicant S/Shri	Date of promotion in LSG	Date of filing the O.A.
1	2	3	4	5
1.	1368/92	Kure Ram	1984	20.5.92
2.	494/91	Satpal Anand & 13 others	15.3.85.	6.2.91
3.	431/91	R.N.S.Agarwal & 2 others	Applicants 1 & 3 promoted in 1974	25.5.90.
4.	495/91	Amar Lal Babbar & 19 others.	Applicants 1 to 5 in 1974 Applicant No.8 on 1.7.76. Applicant 10 on 6.12.76. In the case of other applicants no specific averment about date of promotion has been alleged.	5.2.91.
5.	614/91	Krishan Jindal & 28 others.	1975 to 1984	28.2.91
6.	785/91	Surjanmal Jain & 2 others.	Applicants 1 & 3 on 30.11.83 Applicant No.2 voluntarily retired on 30.4.81 without promotion to LSG.	1.4.91.
7.	794/91	Kartar Chand Dhiman & 1other.	Date allegedly not specified in respect of applicant No.1. Applicant No.2 promoted in July, 1982.	12.4.91.
8.	1261/91	Lakhan Singh Gaur & 9 others.	Between 1976 and 1986. In case of some applicants date not specified, or stated that they were not promoted.	5.3.91.
9.	1361/92	Ram Prakash Bagh	30.11.83.	20.5.92.
10.	1309/91	Padam Lal & 9 others.	Applicant No.8 promoted to LSG in 1974. Date not specified in case of others.	27.5.91.
11.	1022/92	Rama Shankar	30.11.83	9.4.92.
12.	290/92	Radhey Shyam & 3 others	Applicant No.1 1974 . Regarding others, date not specified.	3.2.92
13.	1665/92	Inder Lal	1.4.86	30.6.92.

12. Shri E.X.Joseph appeared along with Shri N.Amresh for the applicants & Shri P.H.Ramchandani, Senior Counsel with M.K.Gupta, N.S.Mehta and M.M.Sudan appeared for the respondents.

13. The main ground taken by the applicants' counsel is that the claim of the applicants for promotion w.e.f. 1.10.68 is covered by the judgment in Tewari's case, Sharma's case, Saluja's case etc., which have been referred to above and in view of the promotion of the employees junior to the applicants w.e.f. 1.10.68, these applicants are also eligible to be granted promotion with effect from the same date. It is emphasised that it is settled law that similarly placed persons have to be treated alike and as the applicants are senior to those who have been given promotion w.e.f. 1.10.68, pursuant to the orders dated 28.8.90 in Saluja's case (Supra), and other related cases denital to promotion to them from that date would be violative of Articles 14 and 16 of the Constitution. It is emphasised that the applicants were denied due consideration for promotion w.e.f. 1.10.68 on the ground that they had participated in the strike and arrested, but later on they were acquitted and this could not be a ground for non-consideration for their promotion. It has also been emphasised that the recruitment rules to the ISG cadre are on the basis of seniority-cum-fitness from the cadre of Sorting Assistants and the applicants' records of service were without any blemish and they were eligible to be given promotion. It has further been emphasised that the Tribunal's judgment in Saluja's case and connected cases are judgments in rem and, therefore, they apply to all the applicants and if they are not granted the benefits of promotion w.e.f. 1.10.68, they would be subjected to hostile discrimination.

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14. The respondents have challenged the contents of the O.As in their replies mainly on the ground that these claims are highly belated as they seek relief from 1.10.68 and, therefore, are barred by limitation under Section21 A.T.Act. Various judgments have been cited in support of this contention. It has also been contended that the applications are premature under the I.D.Act,1947 as the applicants have not exhausted the remedy available to them and are liable to be dismissed on this count also. It has also been contended that the loyal workers initially promoted, form a seperate class

15. In the rejoinder, the applicants have broadly reiterated the stand taken in their O.As.

15. We have heard the counsel for both the parties and perused the materials on record and given the matter our careful consideration.

16. The preliminary objection of the respondents that all these O.As are hit by delay, laches, limitation and lack of jurisdiction possesses considerable force . The Tribunal derives its powers and jurisdiction from the Administrative Tribunals Act,1985, Section21 of which provides for limitation and reads as follows:-

> " 21 (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

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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.

(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) or 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 making the application within such period."

17. In Om Prakash Satija Vs. UOI & others- 1995 (29) ATC 1, it has been held that these provisions are complete in themselves and have to be taken into consideration while deciding whether the application is within limitation or not . No doubt, Section 21(3) provides for condonation of delay if sufficient cause is shown, but in the present O.As before us, the cause of action aries on 1.10.68, while these O.As have been filed during 1991-92 i.e. after a lapse of 23 years. There is no cogent explanation for this great delay in filing these O.As, The applicants have sought for the same relief as granted to the applicants in O.A.No.2345/88 Shri Bawaji Saluja & others Vs. UOI & others and other connected cases decided on 28.8.90, but it has been settled by the Hon'ble Supreme Court in Bhoop Singh Vs. UOI -1992(3) SCC 136 that the judgments and orders of the courts in other cases do

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not give rise to a cause of action . The cause of action has to be reckoned from the actual date. In Bhoop Singh 's case, the appellant before the Hon'ble Supreme Court had also based his claim on being similarly situated as other police constables of the Delhi Armed Police whose services had been terminated on account of their participation in a mass agitation of 14.4.67. Some of the dismissed Constables who were not taken back in service, approached Delhi High Court through writ petitions in 1969-70 which were allowed in October,1975. Subsequently, some other constables whose services were similarly terminated also filed writ petitions in 1978 which were too allowed. Another writ petition filed in Delhi High Court challenging the termination of services contending their claim was identical with that of petitioners in the writ petitions filed 1978. These petitions were eventually transferred to the Central Administrative Tribunal which were allowed by the Tribunal and the Delhi Administration preferred appeals before the Hon'ble Supreme Court which were dismissed by the judgment in L.G.Delhi Vs. Dharampal- 1990(4) SCC 13. The petitioner Bhoop Singh claiming to be a similarly dismissed Police Constable filed O.A.No.753/89 in the Tribunal for his reinstatment, which was rejected for being highly belated and for absence of any cogent reasons for the inordinate delay in filing the application . Against the Tribunal's judgment, the petitioner filed an SLP in the Hon'ble Supreme Court. In Paragraph 6 of their judgment in Bhoop Singh's case (Supra), the Hon'ble Supreme Court observed that:-

"If the petitioner's contention is upheld that laches of any length of time is of no consequence in the present case it would mean that such police constable can choose to wait even till he attains the age of superannuation and then assailed the termination of his service and claim monetary benefits for the entire period on the same ground that would be a startling proposition. In our opinion, this cannot be the true impose of Article 14 or the requirement of the principle of non-discrimination embodied therein which is the foundation of petitioner's case ."

The Hon'ble Supreme Court was further pleased to observe that:-

" Article 14 on the principle of non-discrimination is an equitable principle and therefore any relief claimed on that basis must itself be founded on equity and not be alien to that concept..... It was therefore held that the grant of relief to the petitioner in the said case would be inequitable instead of its refusal being discriminatory.

18. Again, the Hon'ble Supreme Court in Ratan Chandra Summanta Vs. UOI -1994 (26) ATC 228, where the petitioners who were appointed as Casual Labourers in the South Eastern Railway between 1964-69, and were retrenched between 1975-78 , sought for inclusion of their names in the Live Casual Labourers Register after due screening in 1990 for re-employment, dismissed those petitions because of the delay of 15 years observing that:-

" Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation, a person who has lost his remedy by lapse of time loses his right as well."

19. In the light of the rulings cited above, in the set of original applications before us also the conclusion is irrestible that consequent to the delay in filing these applications, unsupported by any cogent reasons which would justify condonation, these O.As are barred by limitation under Section 21 Administrative Tribunals Act.

20. In fact, the cause of action relates to a period so far back in time, that the Tribunal has no jurisdiction even to entertain these O.As. It is well settled that the Tribunal has no jurisdiction in the matters where the cause of action lies beyond three years from the date the Administrative Tribunals Act came into force i.e. 1.11.85. Hence the Tribunal has no jurisdiction, where the cause of action arose prior to 1.11.82. In the present cases, the cause of action arose on 1.10.68. It may be argued that as many of the applicants have retired, the relief prayed for, if allowed, would favourably affect their pensions, or in cases of those who are still serving, would favourably affect their salaries, which is a continuing cause of action. However, this argument has been negatived in the judgment dated 14.1.91 of the CAT Patna Bench in O.A.No.533/90 Jamna Prasad Verma Vs. UOI. In that judgment , it was observed as follows:-

> "The submission is that if promotion had been allowed, the applicant would have been allowed higher pay at retirement and as pension is being continuously drawn, the cause of action is recurring one. We are affraid that an attempt is being made to extend the proposition absurd lengths. If this submission is accepted, the person who stakes his claim for appointment which is rejected say

(27)

> 10 years back, can at present approach the Tribunal with an O.A. alleging that if he had been appointed, he would have got a salary which is a continuous process and as such the cause of action is recurring one."

21. Coming to the merits of the case, we note that the Indian Posts and Telegraphs (Selection Grade Post) Recruitment Rules, 1962 filed by the applicants themselves at Annexure -A1 prescribe that 1/3rd of the LSG posts are to be filled by selection and 2/3rd by seniority, subject to the rejection of the unfit from the cadre of RMS Clerks/Sorters. These rules have been framed under Article 309 of the Constitution and thus have statutory force. The applicants have not furnished any materials to satisfy us that the grant of seniority w.e.f. 1.10.68 as prayed for by them would not upset the ratio of 1:3 between the posts to be filled in by selection and those to be filled in by seniority. In the absence of any such materials, we are bound to conclude that this ratio would be upset on the date the cause of action arose, with consequent violence being perpetrated upon the recruitment rules referred to above, which have statutory force. Discrimination cannot be pleaded successfully in a situation where the relief, if granted would violate the statutory provisions, and on this ground also these applications do not succeed.

22 . Further more, there is no evidence furnished by the applicants to suggest that as on 1.10.68, such a large number of vacancies exist as may be required to accommodate all these applicants upon their being promoted. In that event, fresh posts

may have to be created; yet, it is well settled that the Tribunal has no jurisdiction to direct the creation of new posts, as this is a purely executive function, and for that reason also no interference in the matter is warranted.

23. Viewed at from any angle, therefore, no interference in the matter would be justified and these OA's therefore, fail. They are accordingly dismissed. No costs.

24. Let copies of this order be placed in all the connected cases.

(S...ALIGE)
MEMBER(A)

(B.C.SAKSENA)
VICE CHAIRMAN.

/ug/

(बिमला देवी)
(BIMLA DEVI)
कोर्ट अधिकारी/Court Officer
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रधान पीठ, फरीदकोट हाउस
Principal Bench, Faridkot House
नई दिल्ली/New Delhi-110001

6.7.15