

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 1689/91

DATE OF DECISION: 7.2.1992.

SHRI A.K. SRIVASTAVA & ORS. ...APPLICANTS

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:

HON'BLE MR. T.S. OBEROI, MEMBER (J)

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

SHRI B.S. MAINEE, COUNSEL

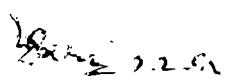
FOR THE RESPONDENTS

SHRI R.L. DHAWAN AND
SHRI K.C. GUPTA, COUNSEL

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes


(I.K. RASGOTRA)

MEMBER (A)


(T.S. OBEROI)

MEMBER (J)

7.2.92.

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Heard the learned counsel for both the parties.

The learned counsel for the applicant Shri B.S. Mainee submitted that the applicants who are working as Senior Draftsmen (Rs.425-700) were on deputation w.e.f. 1.5.1986 to Railway Electrification Project, Kota.

According to the seniority list notified on 4.9.1986 the applicant No.1 Shri A.K. Srivastava appears at srl. No.19 and Shri Sita Ram at srl. No.20 while respondent NO.3 Shri Bhushan Kumar was at srl. No.23. The seniority list was subsequently modified vide order dated 19.5.1987 when respondent No.3 was assigned seniority at srl. No.17A i.e. two places above applicant No.1 and three places above applicant No.2. The learned counsel contended that no show cause notice was given to the applicant before taking this decision to revise the seniority.

The next point raised by the learned counsel for the applicants was that the decision to modify the seniority had already been taken as is evident from the order dated 13.2.1987 which is purported to be a show cause notice

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although this notice was not served/brought to the notice of the applicants. They, therefore, had no occasion to make any representation against the modification of the seniority. The applicants were subsequently transferred from RE Kota to Construction Department in October, 1987 and the fact that applicants' seniority had been depressed came to their notice on 30.1.1990 vide Annexure A-6. The applicants made a representation on 30.1.1990 to the respondents. There was however no response. In the meantime, based on the revised seniority a selection was held for the post of Head Draftsman (Rs.550-750) and respondent No.3 was placed on the panel vide order dated 12.2.1988. Thereafter the respondents issued a notice for selection of Chief Draftsman Rs.2000-3200 vide notice dated 5.7.91 which prejudiced the right of the applicants to be considered for the post and according to the learned counsel this is cause of action for approaching the Tribunal.

2. Shri R.L. Dhawan, learned counsel for respondents No.1 &2 raised the preliminary objection that the Original Application was barred by limitation. The learned counsel in this connection referred to his reply to the application for condonation of delay filed by the applicants and stated that the cause of action in the case of the applicants initially arose when their seniority was depressed. Even if that event is ignored, the cause of action can be said to have been arisen on 11.2.1988 when Shri Bhushan Kumar, respondent No.3 was placed on the panel for the post of Head Draftsmen. At that point of time the applicants were working in the office of CSTE Construction Department at Tilak Bridge and some persons junior to them in the construction department figured on the said panel. The applicants, therefore, cannot take the plea that even the order dated 11.2.1988 did not come to their notice. The

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said order was received in the CSTE construction office on 12.2.1988, while this O.A. has been filed on 25.7.91. The application is, therefore, highly belated and barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. In support of his case the learned counsel cited the case of **P.S. Sadashivawamy v. State of Tamil Nadu 1976 (1) SLR SC 53.** The learned counsel further submitted that the representation dated 30.1.90 had also not been received in the office of the respondents and as such the applicants have not exhausted the departmental remedies. The O.A. is therefore, also pre-mature and deserves to be dismissed at this stage. In support he cited the decision in case of **B. Parmeshwara Rao v. The Divisional Engineer, Telecommunications, Eluru and Anr.**

Full Bench Judgments (CAT) Vol.II-250.

The learned counsel for the respondents further pointed out that the applicants have no cause for grievance against the order at Annexure A-1 which is for the selection of Chief Draftsman in grade Rs.2000-3200. The post of Chief Draftsman is a selection post and only Head Draftsmen with two years service are eligible for selection whereas the applicants are working only as Senior Draftsmen. The Original Application is also not maintainable on the ground that as no order, as envisaged in Section 19 of the Administrative Tribunals Act, 1985 has been brought on record which the applicants are aggrieved of.

3. Shri K.C. Gupta, learned counsel for respondent N.3 adopted the arguments of the learned counsel for respondents No.1 & 2, Shri R.L. Dhawan.

4. Shri B.S. Maine, learned counsel for the applicants refuting the arguments of the learned counsel for the respondents drew our attention to paragraph 6 of the decision of the Jodhpur Bench of the Tribunal in **OA 292/86 decided on June 14, 1988 Shri Jagdish Rai Aggarwal v. UOI &**

Ors. where the Tribunal observed:-

"This is apart from the fact that the applicant's grievance regarding depression of his seniority furnishes recurring cause of action. The plea of limitation is, therefore, hereby repelled."

5. The facts of the case in **Jagdish Rai Aggarwal** (supra) are, however, distinguishable as in that case the impugned communication was dated November 21, 1986 and the O.A. was filed on December 2, 1989. Before coming to the portion relied upon by the learned counsel, the Bench also observed that "As the Application has been filed within few days of the receipt of the aforesaid communication, the same is clearly within time. This is apart from the fact....."

6. Shri Maine further cited a number of judicial pronouncement which are listed below, in support of the plea that the applicants should have been given a show cause notice before revising their seniority and the order revising seniority should have communicated with reasons for such revision to enable them to make effective representation:

- i) **1976 (1) SLR 764 Rishi Kesh vs. State of Himachal Pradesh & Ors. (HP)**
- ii) **SLR 1970 526 C.P. Josph v. UOI**
- iii) **SLR 1973 (2) 184 Abdul Rashid v. State of J&K (J&K).**
- iv) **ATLT 1987 (2) 191 A.S. Singh v. The State of Manipur.**

7. We have heard the learned counsel for the applicant and for respondents No.1,2 & 3 and considered the matter very carefully. We are of the view that the cause of action in this case arose on 11.2.1988 when the applicants juniors were promoted. The applicants should have represented immediately thereafter and after waiting for six months approached the appropriate legal forum. They, however, filed this O.A. only on 25.7.91. The memorandum

dated 5.7.91 does not provide the applicants any cause of action as vide the said order envisaging selection for the post of Chief Draftsman (Rs.2000-3200) for which post of Chief Draftsman only Heads Draftsman are eligible whereas the applicants are working as Senior Draftsmen. In the MP 2099/91 filed by the applicants seeking condonation of delay the only reason adduced is that "the applicants had been working out of the cadre in RE and the Construction Project and as such could learn the factum of promotion of their junior only in January, 1991 when the applicants represented..."

We do not consider the reasons given as sufficient and adequate for condonation of delay. The applicants were working in the CSTE construction office in Delhi when the panel for promotion to the grade of Head Draftsman dated 11.2.1988 was published. They were no longer in Railway Electrification Project, Kota. They were working in Tilak Bridge, Delhi and some of their juniors belonging to the CSTE construction are also placed on the said panel. They cannot therefore feign ignorance of the said order. In our view, the applicants have failed to justify the delay of almost three years in filing the O.A. In the **State of Punjab & Ors. v. Gurdev Singh JT 1991 (3) SC 465** their Lordships in the Supreme Court have observed:-

"3. These are not the only cases in which the Punjab and Haryana High Court has taken the view that there is no limitation for instituting the suit for declaration by a dismissed or discharged employee on the ground that the dismissal or discharge was void or inoperative. The High Court has repeatedly held that if the dismissal, discharge or termination of services of an employee is illegal, unconstitutional or against the principles of natural justice, the employee can approach the Court at any time seeking declaration

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that he remains in service. The suit for such reliefs is not governed by any of the provisions of the Limitation Act (See: State of Punjab v. Ajit Singh (1988(1) SLR 96) and (ii) State of Punjab v. Ram Singh (1986(3) SLR 379).

4. First of all, to say that the suit is not governed by the law of Limitation runs afoul of our Limitation Act. The statute of Limitation was intended to provide a time limit for all suits conceivable....."

The law on limitation cannot, therefore, be brushed aside without adequate and sufficient grounds for condoning the delay. The Administrative Tribunals Act makes a specific provision in this connection vide 21 which is more rigorous than the Limitation Act of 1963.

In **S.S. Rathore v. State of MP AIR 1990 SC 10** the Hon'ble Supreme Court has declared the law in most lucid terms in regard to the limitation, regulating the O.As filed in the Tribunal. In the circumstances of the case there is little room for considering the plea of the applicants for condoning the delay.

In the above conspectus of the matter we do not find sufficient justification for condoning the delay and interfere in the matter to unsettle the settled position which reached this stage of finality because of the latches on the part of the applicants and timely action of the respondents. The O.A. is, therefore, dismissed with no order as to costs.

Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

7/2/92

7.2.92.

Oberoi
(T.S. OBEROI)
MEMBER(J)

'SKK'