CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

Date of Decision 2.6.1995

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

HON'BLE MR. P. SURYAPRAKASAM, MEMBER (J)

1) O.A.No. 508/91

1. SH.BHOLA DUTT SHARMA
   SON OF SH.MANGAT RAM
   SHARMA.
2. Sh.DEVI DITTA RAM
   S/o SH.THAKUR DASS
3. SH.MOOL RAJ ARORA
   S/o SH.NARAIN DASS
4. SH.SULEKHA RAM GARG
   S/o SH.PIARE LAL
5. SH.DHARAM VIR YADAV
   S/o SH.PRABHU DAYAL
6. SH.SRIKRISHAN GUPTA
   S/o Sh.NAURATA RAM
7. SH.HUKAM CHAND GIROTRA
   S/o SH.RAM SHARAN DASS
8. SH.KRISHAN LAL KAPUR
   s/o SH.MANOHAR LAL KAPOOR
9. SH.UJALA SINGH
   S/o SH.GOKAL CHAND
10. SH.DEEP CHAND-II
    s/o SH.SUDHAN SINGH
11. SH.ONKAR NATH-I
    S/o SH.KHUSHI RAM

12. Sh.KARAN SINGH-II
S/o SH.TIKA RAM

13. Sh.CHANDER MANI SHARMA
S/o SH.RAVI SHANKAR

14. SH.BHIM SAIN SACHDEV
S/o SH.BAKSHI RAM

15. SH.LAXMAN SARUP RATHORE
S/o SH.RAM PRASAD RATHORE

16. Sh.PYARE LAL-I
S/o SH.DALIP SINGH

17. SH.H.D.GARG
S/o Sh.BIJA RAM

18. SH.JAI NARAIN AGGARWAL
S/o Sh.LALA HAR SWARUP

19. SH.RAGHUBIR SINGH-I
S/o SH.RAM PHAL

20. SH.GURDIAL SINGH SAINI
S/o SH.GULAB SINGH SAINI

21. SMT.BIMLA DEVI
/Late
w/o/SH.JAGDISH PRASAD-II
s/o SH.SURAJ MAL (On behalf
of the deceased)

22. SMT.ANGURI DEVI
W/o Late Sh.QABUL CHAND
RUSTOGI (on behalf of deceased)
(By Advocate: Ms. Nitya Ramakrishna) .... APPLICANTS

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. SENIOR SUPERINTENDENT

DELHI SORTING DIVISION

KOTLA ROAD

NEW DELHI.

(By Advocates: Shri M.K. Gupta & Shri M.M.Sudan) .... RESPONDENTS

2) O.A. No. 432/91

Shri J.K. Gautam,
S/o Late Shri Dwarka Prasad,
R/o H.No. 2159, Masjid Khazoorpura,
Delhi-110001.
(By Advocate Ms. Nitya Ramakrishna) ..... APPLICANTS

VERSUS

1. Union of India through the
Secretary, Ministry of Communication,
Sanchar Bhawan, New Delhi.

2. Post Master General,
Delhi Circle, New Delhi-110001.

3. Senior Superintendent,
Delhi Sorting Division, Kotla Road,
New Delhi.

(By Advocates: Shri M.K.Gupta & Shri M.M. Sudan) ..... RESPONDENTS

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As these two O.A.s involve common points of law and fact, they are being disposed of by this common judgement.

2. The applicants in these two O.As have prayed for a direction to the respondents to treat them as having been promoted to the Lower Selection Grade w.e.f. 1.10.68. as was done in the case of their junior with all consequential benefits.

3. Shortly stated, the applicants were appointed as Sorters on different dates. There was a general strike in the RMS Wing of the Postal Deptt. in Sept. 1968 where all these applicants were working as Sorters. A large number of the employees remained absent from duties unathorisedly 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 wage 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

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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 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 repondents 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 stituated persons made representations to the authorities, and getting no satisfactory response, they filed O.A.s in the Tribunal which were disposed of by judgment dated 28.8.90 in O.A. No. 2345/86

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 LSG, 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 respondents, 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 Yas Pal Kumar & Ors. Vs. UOI & Ors. (O.A. No.1746/88 and 4 connected O.As); Madan Mohan & Ors. Vs. UOI & another (O.A. No. 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

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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 applicant had similarly sought promotion to LSG with effect from the date their juniors were granted 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. straight-way. 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 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 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.

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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 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 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 LSG cadre w.e.f. 1.10.68. Again in O.A. No. 1163/93 Smt. Lajwanti Vs. UOI & Ors., 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 furthermore, 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 dmissed 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 Nov. 85, 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.

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11. An identical prayer was considered recently by a Division Bench of this Tribunal consisting of Hon'ble Mr. Justice B.C. Saksena, Vice-Chairman and one of us (Hon'ble Mr. S.R. Adige, Member (A)) in O.A. No. 1368/92 Shri Kure Ram Vs. UOI & Ors. and connected cases, and by judgment dated 10.5.95 these O.As were dismissed on grounds of delay and laches and lack of jurisdiction as well as on merits. We see no reason to take a different view.

12. During arguments applicants' counsel Ms. Nitya Ramakrishna has urged that these O.As cannot be hit by limitation because in th matter of exercise of Fundamental Rights, limitation is of no account and furthermore there is no specific order from which dates/period of limitation 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 Tribunals judgment in Om Prakash Satija Vs. UOI 1995 (29) ATC 1 which is also by a Div. Bench and is later in point of time that 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.

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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.L. Tiwari's case (Supra) it has been held that the specifi specific orders are those of 1968 and 1985 under the circumstances this argument fails.

13. 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 Recrutiment's Rules which have statutory force, but argues that the judgment in P.L.Tiwari P.L. Tiwari's case (Supra) and similar cases, where the relief prayed fo 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 either O.A. that the applicants themselves fulfil the minimum eligibility conditions, or that the grant of the relief prayed for by the applicants would not derange the ratio of prescribed in the Indian Posts & Telegraphs (Selection Grade Post) Recruitment Rules 1962 whereby the vacancies are to be filled by selection and by seniority subject to rejection of the unfit in the ratio of 1:3. These Recruitment Rules have been framed under Artcle 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".

14. We are justified 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.

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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".

14. 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 Article 226 of the Constitution, the extracts reproduced above would be equally applicable in the cases before us.

15. For the above reasons both these OAs fail and are dismissed. No costs.

(P. SURYAPRAKASAM)
Member (J)

(S.R. ADIGE)
Member (A)

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