

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 591/1991

DATE OF DECISION : 14.01.1992

SHRI VIJAY KUMAR NANDA

...APPLICANT

VS.

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM

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

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI G.K. AGGARWAL

FOR THE RESPONDENTS

...MRS. RAJ KUMARI CHOPRA

1. Whether Reporters of local papers may be Y allowed to see the Judgement?

2. To be referred to the Reporter or not? Y

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, Executive Engineer, CPWD has filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order dt. 8.11.1990 (Annexure A1) by which the promotion has been granted to Executive Engineer (Civil) to the grade of Superintending Engineer (Civil) in the pay scale of Rs.3700-5000 belonging to the

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Central Civil Service Group-A on purely ad hoc basis from the date they assumed charge. The name of the applicant does not figure in the list. The applicant has prayed the following reliefs :-

- (i) Declare and order that the applicant is entitled to be Assistant Executive Engineer (Civil) in Central Engineering Service Group-A at the 1973-Combined Engineering Services Examination conducted by Union Public Service Commission, with all consequential and consequential benefits in the grades of AEE(C), EE(C), SE(C), etc., and
- (ii) Order that, if eligible on the basis of his being AEE(C) at 1973-Exam aforesaid, the applicant be promoted as Superintending Engineer (Civil) in Office Order 243 of 1990 vide No.28/2/90-ECI/Vol II/104 dt.8.11.90 A/1) or subsequently whenever due, effective 8.11.90 or later, as the case be, with arrears with interest at 23% per annum, and
- (iii) Order that applicant's seniority as Executive Engineer (Civil) shall be notified and shall conform to his placement as AEE(C) in CES-A at the 1973-Examination, and
- (iv) Grant any other relief, award costs.

2. The brief facts of the case are that the applicant joined as Junior Engineer in the CPWD in September, 1961. He was appointed as Assistant Engineer on 16.10.1967. He was further promoted to the post of Executive Engineer (Civil) in March, 1981. After the applicant was promoted to Group-B service of Assistant Engineer, the applicant took Combined Engineering Service Examination (CESE) conducted by the Union Public Service Commission for recruitment to the various Engineering services in Government of India, Group-A & B services.

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Civil Engineering Services Group-B consist of the post of Assistant Engineers, while in Civil Engineering Services, Group-A, initial recruitment is at the level of Assistant Executive Engineers against vacancies of Executive Engineers. The Assistant Executive Engineers (AEE) are promoted to Senior time scale of Executive Engineers, Group-A on time scale of seniority-cum-fitness after 3 to 5 years. CES-B consist of the post of Assistant Engineers (temporary) and Assistant Engineers (permanent). According to the scheme of examination and Central Engineering Service-A Recruitment Rules, a candidate opting for CES would get AEE or AE depending upon the number of vacancies to be notified through that year's examination and the position of the candidate in merit list. The applicant took 1969 examination as departmental candidate as above, limited to CES-A and CES-B. He again took the examination in the year 1973 for CES-A. For those opting for CES-A, his rank in the order of merit was 41 in the merit list. In the year 1973 examination in CES-A, the vacancies notified were 21-General and 4 reserved. The applicant has filed the list in order of merit of the candidates, who were recommended for appointment to the services noted against each on the result of Engineering Service Examination held in the year 1973 (Annexure A3). The name of the applicant appears at p-38 of the paper book against

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Roll No.3773 (Vijay Kumar Nanda). The case of the applicant is that under Recruitment Rules, the vacancies which were existing for the 1973 examination in Group-A CES in CPWD were 31, but the U.P.S.C. has notified only 25 vacancies. In view of this, since the applicant comes within the range of 31 vacancies, he should have been offered CES-A service on the basis of merit in the 1973 CES-A examination in the Civil Service Examination of 1973. However, during the course of the argument, the applicant has given up this plea. The applicant has taken an alternative plea that Shri V.K. Aggarwal, who is two numbers above the applicant in the said merit list-Roll No.2505 was offered appointment on 2.12.1974 and he joined on 2.1.1975, but he later on resigned on 26.11.1975 and since a vacancy was caused, the applicant should have been given a posting in his place in CES-A. The other point taken by the applicant is that another person above him, Shri Om Prakash Purohit (Roll No.4700) was given an offer of appointment, but his offer of appointment expired and was revived subsequently to accommodate him. But during the course of the arguments, this point has also not been pressed. Thus the only point pressed by the learned counsel for the applicant

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is restricted to his not being considered for appointment in CES-A on the resignation of Shri V.K. Aggarwal in November, 1975 and as a result, the applicant has claimed the relief that the applicant is entitled to be Executive Engineer (Civil) in Central Engineering Service Group-A in 1973 Combined Engineering Service Examination conducted by U.P.S.C. with all consequential and consequential benefits in the grade of AEE(C), EE(C), SE(C), etc. As a result, the applicant now seeks promotion to the post of Superintendent Engineer (Civil) by the order, which is impugned in this case or subsequently whenever due, effective from 8.11.1990 or later, as the case may be, with arrears of pay and interest and he also claims the seniority in the grade of Executive Engineer (Civil) which should confirm to his placement as AEE(C) in CES-A in the 1973 examination.

3. Along with this application, the applicant has also moved CMP No.724/1991 for condonation of delay.

The applicant had not pressed ^{seniority} ~~seniority~~ during the course of the arguments as it ~~is~~ is a fresh cause of action by the impugned order dt. 8.11.1990. In any case, the applicant has prayed for condonation of delay beyond 4.8.90.

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The present application has been filed in March, 1991 by the applicant. The respondents contested the application mainly on the ground of limitation. The case of the respondents is that the applicant was appointed as Assistant Engineer (Civil) on 16.10.1967 as a result of 1966 examination conducted by the U.P.S.C. He again appeared as a departmental candidate under age relaxation in 1971, but he could not make mark for CES-A. He again took the examination as a departmental candidate under age relaxation for CES-A examination conducted by the U.P.S.C. in 1973. However, in the final merit list, candidates at serial Nos.45 to 47 were departmental candidates and the applicant was placed at serial No.45. The candidate upto Serial No.44 was the last general candidate offered and appointed as AEE (Civil). Since the applicant knew that he was eligible for appointment to CES in CPWD only, his mentioning about other departments and other persons lower than him in the merit list being appointed in the other departments is not at all relevant. He was promoted from AE (C) to the post of Executive Engineer (C) on ad hoc basis on 30.3.1981. The applicant along with another candidate represented on 22.11.1975 to the department in order to induct them

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into CES-I by increasing the vacancy, which after due consideration at higher level was turned down on 20.12.1975. Thus according to respondents, the matter ended on 20.12.1975. In this application, the applicant is simply trying to raise the issue at a belated stage to create confusion. It is stated by the respondents that the main objective of the applicant is only to claim his appointment to the post of AEE (C) on the basis of 1973 Engineering Service Examination conducted by U.P.S.C. with all consequential and subsequent benefits in grades of EE(C) etc. It is, therefore, stated that the claim of the applicant is stale and barred by limitation.

4. We have heard the learned counsel on the point of limitation. Administrative Tribunals Act, 1985 is a self contained act and the provisions for coming before the Tribunal for a grievance are specifically laid down under Section 21 of the Act. Section 21 is reproduced below :-

"21. Limitation-(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

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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 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.

It is evident, therefore, that the representation of the applicant was disposed of on 22.12.1975. The applicant has not denied the fact in the rejoinder that his representation was rejected on 22.12.1975. The applicant, therefore, should have sought the redress of his grievance of not being appointed to CES-A at that time in the competent court. The applicant cannot ask for the redress of that grievance after sitting idle for a number of years. That shall be awfully barred by limitation.

5. Secondly, in para-5 of the CMP for condonation of delay, the applicant stated, "Cause of action arose also

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on 4.8.1989 when respondent Nos.1 and 2 published seniority list of Executive Engineers(Civil) omitting applicant's name." The applicant has not stated that he was unaware of the seniority list and the applicant very well knew that he is not in the seniority list and so a right accrued to him to challenge that seniority list, if at all, any cause of action survived to him at that stage. Again in para-6 of the CMP, the applicant has also stated that the cause of action existed ever since 1974-75 when the applicant was not appointed AEE(C) through 1973-Examination. The applicant, therefore, irrespective of merits of his contentions was sleeping on his rights, if any, and did not come at proper time for redress of that grievance or for entitlement of that right of being appointed to the post of AEE(C). The Hon'ble Supreme Court has also considered the point of limitation in the case of Dr. S.S. Rathore Vs. U.O.I., reported in AIR 1990 SC 10. Paras 20&21 of the said judgement are material, which are reproduced below :-

20. "We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of a six months' period from the date of preferring of the

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appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

21. "It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act, Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits, outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

6. The Hon'ble Supreme Court in a latest decision in State of Punjab & Others Vs. Gurdev Singh, 1991 (4) SCC page-1 observed in para 10 as follows :-

"It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time expires the court cannot give the declaration sought for."

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7. In this judgement, the Hon'ble Supreme Court also considered the decision in the State of M.P. Vs. Syed Qamar Ali, reported in 1967(1) SLR 228 SC. That case has been distinguished in this latest judgement of the Hon'ble Supreme Court as Syed Qamar Ali brought the suit within the period of limitation. He was dismissed on 22nd December, 1945. His appeal against the order of dismissal was rejected by the Provincial Government on 9.4.1947. He brought the suit which has given rise to appeal before the Hon'ble Supreme Court on 8th December, 1952 and the suit was brought within six years from that date as prescribed under Article 120 of the Limitation Act, 1908. The Hon'ble Supreme Court in the aforesaid judgement of State of Punjab & Ors. Vs. Gurdev Singh has also referred to with approval the judgements of the Allahabad High Court in the case of Jagdish Prasad Mathur Vs. United Provincial Government, AIR 1956 Allahabad 114 and of the Avadh Chief Court in the case of Abdul Wakil Vs. Secretary of State, AIR 1943 Avadh 368.

8. The learned counsel for the applicant has referred to the case of P.S. Mahal Vs. UOI, reported in 1984(4) SCC 545. The point stressed by the learned counsel for the applicant is that one CMP in the said case was filed in

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1988 before the Hon'ble Supreme Court seeking modification/clarification in its judgement dt. 23.5.1984. That CMP was dismissed on 12.2.1990. That by any stretch of argument, it will not give a fresh cause of action. If this preposition of law is accepted, then years after same application is moved in an already decided matter before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismisses that subsequent petition before it, then there will be no end and the law of limitation will stand repealed. Moreover, the said case of P.S. Mahal & Ors. refers to the seniority matter between direct recruits and promotees and the observations referred to by the learned counsel for the applicant for calculation of vacancies cannot have any bearing on the facts and merits of this case. The learned counsel for the applicant has also tried to distinguish between ground of action and cause of action and referred to the decision of the Hon'ble Supreme Court in Keval Singh Vs. Lajwanti, AIR 1980 SC 681 and Mohammed Khalil Vs. Mahboob Ali Miya, 1948 (75) Indian Appeals 121 Privy Council (PC). By citing the aforesaid law, the learned counsel for the applicant urged that the applicant's right and its infringement took place for

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the first time when the name was not included in the promotion list dt. 8.11.1991. However, the facts of the present case are totally different.

In the present case, the applicant claims the post of AEE (C) by virtue of 1973 CSE Examination on the vacancy caused by the resignation of duly appointed candidate, Shri V.K. Aggarwal, who resigned on 26.11.1975 and claims that he should have been appointed in the vacancy so caused by Shri V.K. Aggarwal. Besides going to the merits of this contention, the respondents have clearly stated at p-1 of their counter in second para that the applicant along with another candidate represented on 26.11.1975 to the department to induct them into CES-I by increasing the vacancies and that representation was rejected on 20.12.1975.

9. The applicant has no explanation to furnish as to why he did not challenge the seniority list of EE (C) of 4.8.1989, which was duly circulated. The nature of the reliefs claimed by the applicant refer to the year 1974-75. It amply goes to show that the applicant has not asserted his claim, if any, for appointment to AEE (Civil) at the relevant time. If such stale matters are considered at this stage, then it will create

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confusion and worse date and those who have been selected in the subsequent date as departmental candidates for the post of CES-1 will naturally be affected. The examination, according to the applicant himself, is held every year or so and there is a provision for allowing departmental candidates even by relaxation of age and the applicant has also been benefitted by that thrice after his appointment as Assistant Engineer in 1967. None of such affected persons has been impleaded in this case. Even the Constitution Bench in the case of the Direct Recruit Class II Engineering Officers' Association & Ors. Vs. State of Maharashtra & Ors., reported in JT 1990 (2) SC 264, held that stale matters should not be reopened and the matters of seniority and alike, if reopened, will unsettle the matters which have become effective and final as held in para 47(J) that "The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position."

10. We have considered the CMP for condonation of delay. Firstly, the applicant had come with the specific plea that his application is within limitation. However, the applicant only as an abundant caution moved the CMP No.724/1991, but this CMP does not by itself give

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any reason or explain the period from 1975 onwards which prevented the applicant to assert his claim, if any, at proper time since 1975. Contrary to this, the application for condonation of delay, itself states that the cause of action arose in that elapse since 1974-75 and so when the period L then has not been explained, there is no reasonable and sufficient cause to come to a finding that the applicant was prevented in not getting his grievance redressed at the proper time. The CMP, therefore, has no force.

11. In view of the above discussion, we find that the present application is hopelessly barred by time and the same is dismissed along with CMP No. 724/1991 with cost on the parties. The oral order of rejection of OA has been announced in the presence of the parties earlier ^{today}.

AKS
(J.P. SHARMA)
MEMBER(J) 14.1.92

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