

- 18 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

RA 172/89 in

O.A. No. 12/1985

198

TA-No:

DATE OF DECISION 5-12-1989

N.V. Swamy

Applicant (s)

-

Advocate for the Applicant (s)

Versus

Secretary, Min. of Water
Resources & another

Respondent (s)

-

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT (by circulation).

(per Hon'ble Mr. B.C. Mathur, VC)

5.12.89 O.A 12/1985

Review Application No. 172/89 has been filed by Shri N.V. Swamy, against the order dated 29.9.1989 passed by this Tribunal in O.A. No. 12/85, under the provisions of Section 22 (3) (c) of the Administrative Tribunals Act, 1935 (hereinafter referred to as 'the Act'), read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules.

2. In the judgment dated 29.9.1989, the Tribunal had concluded that "we would have allowed the application on merits, but we cannot ignore the fact that the cause of action took place more than 10 years ago and having waited for nearly 10 years, the applicant cannot be given any relief under the Administrative Tribunals Act, 1935, under which no cause of action can be taken note of by the Tribunal if it was more than three years prior to the establishment of the Tribunal. In view of this, we are not inclined to

allow this application, but would observe that Government may pass appropriate order after reconsidering the matter in the light of their policy concerning promotions of Scheduled Caste/Scheduled tribe officers. We leave this matter entirely to the Government."

3. The Review applicant has stated that he did not wait for 10 years before filing the application but when he came to know of the wrong fixation of seniority, he took up the matter with the appropriate authorities and the question of limitation was taken up when the application was admitted. The applicant had been vigilant and had submitted various representations in 1975 itself, to the Chairman, Central Water Commission, the Secretary, Department of Irrigation and ^{to} the Secretary, Department of Personnel & A.R. He states that the seniority list of the Deputy Directors/Executive Engineers was first published in 1978 but the same was not properly circulated. In 1979, the applicant had proceeded on deputation to the Delhi Administration and came back to the parent Department only in 1983 and, therefore, what happened during this period was not known to him. He again sent representations to the Department in 1984 and later, but the authorities did not rectify their mistake. He filed the Original Application before the Tribunal soon after the Tribunal was established.

4. The Review applicant has also emphasised the fact that having accepted the merits of the case, not to allow the application would be bad in law. He cited the case of R.P. Manchanda Vs. UOI & Ors. (O.A. No. 624/87) where this Tribunal on 9th May, 1989, held that although the cause of action in that case took place in 1965, the case could be taken up for the purpose of computing the pension payable to him in the future. He has cited

R


20


some other cases also where condonation of delay has been allowed under Section 22 of the Act. He has also cited the judgment of the Supreme Court in Municipal Board, Pratapgarh & Anr. Vs. Mahendra Singh Chawla & Ors. (1983 (1) SLR 440) where the Court has held that "while administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, this Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction."

5. The Tribunal, in its judgment dated 29.9.1989, had examined the case from all angles and after being satisfied that there was ^{some} merit in the application, observed that the Government may pass appropriate order after considering the matter in the light of their policy concerning promotions of Scheduled Caste/Scheduled Tribe officers. The Government themselves are keen that the interests of the Scheduled Caste/Scheduled Tribe officers are protected under their policies and there is no reason to feel that Government would not examine this case on merits. We are, however, not in a position to give any relief to the applicant as the cause of action took place more than 10 years ago ^{long} before the application was filed. Section 21 of the Act clearly lays down that the Tribunal shall not admit any application where the cause of action took place prior to three years of the establishment of the Tribunal. This Tribunal does take cognizance of cases where the cause of action is a continuing one as in the case of R.P. Manchanda Vs. UOI, cited by the applicant, where computation of pension is a continuing grievance. We are aware that

R

administration of law should be tempered with equity but since the Tribunal is governed by the Act, it is not within its powers to go against the provisions of the Act under any circumstances. The Legislature, in its wisdom, has deliberately fixed a limitation under the Act and we have to follow the same. Such limitation had not been made applicable in the case of the High Courts and they had discretion to entertain writ petitions at any time. In the case of G.C. Gupta Vs. N.K. Pandey - AIR 1983 SC 268 where the seniority was challenged before a High Court after 17 years, the Supreme Court held that the same could not be allowed after a long period of lapse of 17 years. It has been held by this Tribunal in many cases that the Tribunal cannot entertain an application in which cause of action arose more than three years prior to the establishment of the Tribunal. It has also been held that filing of repeated representations does not confer any legal right against the bar of limitation provided under the Act. The various points raised in the Review Application have already been discussed in the judgment in the O.A. and no new points, which could not have been brought out earlier, have been mentioned in the R.A. or in MP No. 2538/89. We see no grounds to allow the R.A., which is rejected.


(B.C. Mathur) 5.12.89
Vice-Chairman


(Amitav Banerji)
Chairman.