

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1618/1992
T.A. No.

199

DATE OF DECISION 13-7-93

Shri S.K.Sharma

Petitioner

Shri Anil Kumar Pathak

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Shri M.L.Verma

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V.Krishnan, Vice Chairman (A)

The Hon'ble Mr. B.J.Hegde, Member (J)

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. Whether it needs to be circulated to other Benches of the Tribunal? ✗

JUDGEMENT

(Hon'ble Shri N.V.Krishnan, Vice Chairman(A))

The applicant, a retired officer of the Indian Forest Service is aggrieved by the letter dated 12-12-91 of the respondent rejecting his representation dated 27-9-91 for promotion w.e.f. 10-12-87 as Principal Chief Conservator of Forests.

2. The brief facts of the case giving rise to this application are as follows:-

2.1 The applicant belonged to the Arunachal Pradesh Goa, Mizoram Union Territories (AGMU) joint cadre of the Indian Forest Service- IFS for short- from which he superannuated on 30-9-90.

2.2 The 4rth Pay Commission recommended the creation of a post of Principal Chief Conservator of Forests in each State. This recommendation was accepted by the Govt. of India and it informed the State Governments in

this regard vide letter dated 10-12-87 (An.2) and communicated the decision to create a post of Principal Chief Conservator of Forests-PCCF, for short- in all the States on a fixed pay of Rs.7600/- in bigger States and on a scale of Rs.7300-7600 in smaller States. The States where the post of PCCF would be on Rs.7600/-(fixed) included only Arunachal Pradesh, out of the States included in the AGMU cadre.

2.3 Accordingly, the State of Mizoram decided to create a post of PCCF in its IFS cadre. Consequently, this post was added to the cadre of the State w.e.f. 4-5-1988 by the Govt. of India's notification dated 4th May 1988 under Rule 4 of the I.F.S. cadre Rules 1954 and by another notification of the same date, particulars of the post of PCCF in the pay scale of Rs.7300-7600 were added in Sec.III to the I.F.S(Pay) Rules, 1968 (An.3 collectively).

2.4 By notification dated 27-6-88 (An.IV), the Govt. of Mizoram appointed to this post Shri UN Kaul IFS Chief Conservator of Forests Mizoram with retrospective effect from 10-12-87, which is the date of the An.A-1 letter of the Govt. of India.

2.5 In the joint cadre, the applicant and SS Chana are immediately senior to the said UN Kaul as is evident from the An.1 Civil List of the Indian Forest Service of the Union Territories as on 1-1-1987 wherein their places are at S.No. 2,3 & 4, respectively.

2.6 The applicant and SS Chana were subsequently appointed to a similar cadre post of PCCF w.e.f. 1-2-89.

2.7 Aggrieved by the promotion of UN Kaul from an earlier date, the applicant submitted a representation to the Govt. of India. In this connection, he states as follows in para (4.viii) of the O.A.

"The applicant aggrieved by illegal, arbitrary and malafide action of the Respondent made representations to the Respondent through proper channel whereby requested the respondent to promote the

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applicant to Principal Chief Conservator of Forests with retrospective effect i.e. from 10-12-87. But no reply was received from the Respondent. Thereafter the applicant sent reminders on various dates but to no effect. Besides making written representations, applicant was personally meeting with the officials of the respondent to look into the matter and expedite the orders thereby giving benefits to the applicant and on all meeting he was specifically assured that the matter is under consideration and there is likelihood of his getting the benefits on the post of Principal Chief Conservator of Forests w.e.f. 10-12-87 but to no effect."

2.8 In the meanwhile, SS Chana who is immediately junior to the applicant in joint cadre, but immediately senior to UN Kaul and was aggrieved by the promotion given to UN Kaul, ^{when a representation to the respondents} filed OA 1274/90 before this Tribunal ^u that he should also be promoted from 10-12-87 ~~and that~~ was rejected by the respondent. As the respondents did not file any reply, the Tribunal allowed the OA on merits, by its order dated 19-4-91 holding that Shri Chana is entitled to notional promotion from 10-12-87 as PCCF on the ground that he being senior to Shri UN Kaul, the post of PCCF should have been offered to him.

2.9 After this judgement was rendered, the applicant sent a d.c. letter to the Secretary to the Govt. of India, Ministry of Environments and Forests, the respondent (An.VI) and requested that he should also be given promotion as PCCF from 10-12-87 i.e. the date from which both Shri UN Kaul and Shri SS Chana were promoted, because he is senior to both of them. This representation ~~was~~ rejected by the (An.VII) letter dated 12-12-91 of the respondent because the appointment of Shri UN Kaul was purely on an ad hoc basis and the next below rule benefit is not admissible on such ad hoc appointments to officers holding the posts outside the cadre.

2.10 It is on the receipt of this reply that the applicant has filed this OA impugning the aforesaid order and praying for a direction to the respondent to appoint the applicant as PCCF w.e.f. 10-12-87 in the scale Rs.7300-7600 and grant

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him all consequential benefits, including arrears of pay and revision of pay.

3. The respondents have filed a reply. It is stated that the applicant represented on 6-4-89 to the respondent to appoint him as PCCF from 10-12-87 but this was rejected by the reply dated 26-2-90. It is, therefore, contended that this O.A. is barred by limitation. No fresh cause of action has arisen after 26-2-90 and the applicant cannot be permitted to get over the issue of limitation by impugning the An.VII letter dated 10-12-91 of the respondents. It is contended that the judgement in the case of SS Chana (An.5) did not give the applicant any fresh cause of action, because, like Shri SS Chana, the applicant too could have approached the Tribunal for the relief now sought by him, when his earlier representation was rejected on 26-2-90.

4. We decided to hear and dispose of this preliminary issue before considering the O.A. on merits.

5. Before we proceed to do so, we should refer to a serious flaw in the O.A. which should normally have persuaded us to reject it in limine. We have reproduced in para 2.7 supra extracts from para 4.viii of the OA, wherein the applicant has averred that he did not receive any reply to his representation and reminders. This stands completely contradicted by what he has stated in his subsequent representation dated 27-9-91 wherein he states that he sent the representation on 6-4-89 which was rejected on 26-2-90. The applicant could not have forgotten this very important fact. This serious discrepancy- to put it mildly- was not noticed at the time of argument. The conclusion seems to be irresistible that an attempt has been made to mislead the Tribunal by failing to furnish the date of representation and averring, contrary to admitted facts, that it remained

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unanswered so as to skirt the issue of limitation. Nevertheless, we do not intend to dismiss the O.A. on the ground that the applicant has not approached us with clean hands and give him the benefit of doubt.

6. Shri ML Verma, the learned counsel for the respondents contended that the cause of action for seeking the reliefs now claimed arose on 26-2-90 when the first representation was rejected. The applicant was satisfied with the reply, unlike Shri SS Chana, who was not so satisfied by the similar reply given to him. He filed OA 1274/90 challenging that reply and his OA was allowed on 19-4-91. This does not give the applicant any fresh cause of action, for it was open to him to assail the respondents' reply dated 26-2-90 in similar proceedings. Likewise, the An.VII reply dated 12-12-91 too does not give him any cause of action for these cannot hide the fact that the cause of action arose on 26-2-90. In this connection, Shri ML Verma has drawn our attention to the short note in respect of the judgement delivered by the Calcutta Bench of this Tribunal in OA No.300/88 (Rattanjit Krishna Bhattacharya Vs. UOI) reported in 1989 3 SLJ 446 short notes. The head note reported reads as follows:-

"Laches- Applicant claims benefit on the basis of circular of 1967 and mentions he came to know of it only through judgement of CAT Calcutta and also wants limitation to run from the said judgement- Held it cannot be said that a circular issued in 1967 was not known to him- In any case the other party's case can't save limitation for the applicant."

He, however, primarily relies on the Full Bench judgement of the Supreme Court in Bhoop Singh Vs. UOI AIR 1992 SC 1414 in support of his contention.

7. In support of his contention that the OA is not barred by limitation, Shri A.K.Pathak, the learned counsel of the applicant relies on the following decisions:-

- (i) AK Khanna and Urs. Vs. UOI (AIR 1988(2) CAT 518). That is a case where the applicant claimed the benefit of the pay scale as senior computers on the basis of the judgement

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rendered by the Tribunal in an earlier case TA No. 335/85 B.S. Saini & another Vs. UOI & Ors. The respondents denied the claim by contending that the benefit cannot be extended to persons other than the petitioners in TA 335/85. Disposing of this contention, the Tribunal held as follows:-

"It is true that the applicants were not parties to the Civil Writ Petition which was allowed by the Tribunal. But there is no valid reason not to extend the benefit of that judgement to the applicant when they are similarly placed as the petitioners in T-335/85. In fact, instead of driving each of the Senior Computers to seek redressal of grievance before the Tribunal, each judgement in T-335/85 had become final. The respondent should have extended the benefit of that judgement to the entire class of Senior Computers similarly placed. Hence there shall be an identical direction as was issued in T-335/85 namely "the order revising the pay scales attached to the post of Senior Computers to Rs. 330-560 is accordingly quashed and the applicants are declared entitled to the post of Senior Computers in the revised pay scale of Rs. 425-700."

2. (ii) AIR 1990 SC 2059 Lt. Governor Delhi Vs. Dharampal.

The learned counsel heavily relies on this decision. The brief facts of this case were that there was a strike by the constables of Delhi Police and hence their services were terminated in April 1967. Though the Government relented and withdrew the prosecution against them and reinducted them into service, some of the dismissed constables had earlier filed Civil Writ Petitions 26/69 and 106/70 in the High Court of Delhi, which were allowed. The orders of dismissal were quashed and the petitioners were declared to continue in service. Subsequently, some other constables, similarly situated, but who were not reinstated in service even as fresh entrants- filed writ petitions 270/1978 and 937/1978. These writ petitions were also allowed by the High Court after rejecting the plea of the respondents that the writ petitions should be dismissed on account of delay and laches. Subsequently, a third batch of constables Dharampal & Ors. filed similar

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writ petitions in the High Court of Delhi to grant them the same relief as was granted to their colleagues in writ petitions 278/1978 and 937/1978. These writ petitions were received on transfer by this Bench of the Tribunal. The plea of the respondents that the writ petition should be dismissed because of delay and laches was not accepted by the Tribunal and it allowed the writ petitions by holding that the writ petitioners (respondents before the Supreme Court) were entitled to the same relief as the petitioners in CWP 278/78 and 937/78. The Lt. Governor moved the Supreme Court after obtaining Special Leave. However, that appeal was rejected by the above decision.

The learned counsel for the applicant, therefore, contends that notwithstanding delay, it is open to a party like the applicant to approach the court for granting the applicant relief which it has given in a similar case earlier.

8. We have considered these rival contentions. In so far as the decision of the Tribunal in AK Khanna's case is concerned, an important difference has to be noticed. The adjudication in the earlier proceeding, T.A.335/85 B.S.Saini & Ors., was for obtaining a declaration about the pay scale applicable to a particular post namely Sr. Computer. The order revising the pay scale attached to this post to Rs.350-560 was quashed and it was declared that the applicants are entitled pay scale of Rs.425-700 for holding the post of Senior Computers. That was a judgement in rem applicable to a class of people holding that post. Hence, in Khanna's case the Tribunal held that the applicant therein was also entitled to same relief. The grievance of the applicant here is a personal grievance. The decision of the Tribunal in the An.V judgement also dealt with an issue which was personal to the applicant therein. Hence, this decision has no application to the

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present case.

9. We are fortified in this view by a recent decision of the Principal Bench in Ram Lal & Ors. Vs. UOI (1992) 21 ATC 154. In that case the applicants who were police constables were suspended in 1967 due to participation in an agitation. The criminal cases against the police personnel were withdrawn in 1971 and they were reinstated. However, the pay of the applicants for the period of suspension was restricted to the subsistence allowance only. In a similar case earlier decided by the Delhi High Court (Kartar Singh Vs. UOI (1983) 1 1LR 466 (Delhi High Court) it was held that the police personnel were entitled to full pay and allowances for the period of suspension also. Ram Lal & Ors. filed an O.A. seeking the same benefit in regard to pay for the period of suspension, as was given by the Delhi High Court to Kartar Singh. Examining this plea the Hon'ble Chairman of the Tribunal, who delivered the judgement of the Bench, pointed out that there is delay and laches on the part of the petitioners in approaching the Court. Their grievances arose in 1971 when they were reinstated, but not given full pay for the period of suspension. They should, therefore, have approached the High Court within a reasonable time, as was done by Kartar Singh who moved the Delhi High Court in 1973. As against this, the applicants moved the High Court only on 7-3-84 i.e. 13 years after the cause of action arose. The Bench also found it difficult to accept the contention of the petitioners that the cause of action accrued when ^{it was} the judgement rendered by the Delhi High Court in another case. and observed that obviously, the petitioners were sleeping over their rights for 13 years. It is, however, to be noted that the judgement of the Supreme Court in Dharampal's

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case (supra) was not considered in that judgement.

10. We have seen the judgements of the Supreme Court in Dharampal's case and Bhoop Singh's case. We notice that the judgement of the Apex Court in Bhoop Singh's case has been rendered by a Full Bench which distinguished the earlier judgement of the Division Bench in Dharampal's case. The grievance in Bhoop Singh is the same as that of Dharampal & Ors whose petition was disposed of by the Principal Bench. The main difference lies in the fact that Bhoop Singh approached the Tribunal in 1989 by filing OA 753/89 for quashing his dismissal in 1967 and seeking reinstatement. On behalf of the petitioner, strong reliance was placed on the decision of the Supreme Court in Dharampal's case for ignoring laches and delay. This plea was rejected by this Tribunal and hence the matter was taken to the Supreme Court in appeal.

11. This issue was considered by the Apex Court which dismissed Bhoop Singh's appeal. Paras 3,4,5 of that judgement are as follows:-

"3. - Shri Gobinda Mukhoty, learned counsel for the petitioner strenuously urged that the petitioner is entitled to the relief of reinstatement like the others dismissed with him and then reinstated and the question of delay or laches does not arise. Learned counsel contended that the Delhi Administration was duty bound to reinstate the petitioner also with the others in not doing so, it has discriminated the petitioner. On this basis, it was urged, the question of laches or delay does not arise. Shri Mukhoty places strong reliance on the decision in Dharampal (AIR 1990 SC 2059) (supra) to support his submission.

4. - The real question is: whether, the mere fact that termination of petitioner's service as a police constable in 1967 is alleged to be similar to that of the other police constables so dismissed in 1967 and then reinstated in the above manner is sufficient to grant him the relief of reinstatement, ignoring the fact that he made the claim after the lapse of twenty two years in 1989? It has, therefore, to be seen whether this fact alone is sufficient to classify the petitioner with the earlier reinstated police constables for granting the relief of reinstatement claimed in 1989 when those reinstated had made their claim several years earlier.

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5. - In Dharampal (AIR 1990 SC 2059) (supra) there is no consideration or discussion of this question and in that case this Court had refused to interfere with the relief granted by the Tribunal. The question here is of interfering with the Tribunal's order since the Tribunal has refused relief on this ground. Unless it can be held that delay of several years in claiming the relief of reinstatement must be ignored, simply because some others similarly dismissed had been reinstated as a result of their success in the petitions filed many years earlier, the Tribunal's order cannot be reversed in the present case. Dharampal is of no assistance for this purpose. Whether, the delay in making the claim has been explained satisfactorily to negative the objection of laches is a question of fact in each case. In Dharampal, the Tribunal had apparently been satisfied with the explanation for the delay and this Court declined interference with the Tribunal's view. In the present case, there has been a much longer delay and Tribunal has stated that the same has not been explained. Dharampal does not, therefore, help the petitioner to circumvent this obstacle."

Thus the decision in Dharampal's case was distinguished. Proceeding further, the Apex Court laid down the rule in this regard as follows:-

"It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years." (Para 7.)

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"There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf." (Para 8)

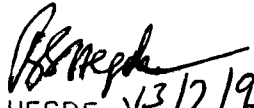
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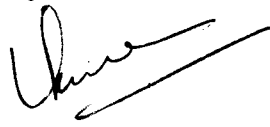
"A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal in the manner suggested by the petitioner. Art.14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself

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be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner." (para 8)

12. In the present case, the applicant was clearly informed in February 1990 that his representation to be appointed as PCCF from the same date as Shri ON Kaul has been rejected. If he was aggrieved by it, he should have filed an application in the Tribunal as Shri Chandra filed such an application on that ground. The learned counsel of the applicant argued for the position that there was no delay at all. He did not even pray that he be permitted to file an M.P. to seek condonation of delay and, therefore, he cannot be shown any indulgence in this regard. In the circumstances, we find that this application is barred by limitation and hence it is dismissed.


(B.S. HEGDE) 13/7/93
Member (J).


(N.V. KRISHNAN)
Vice Chairman (A)