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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1861/92

New Delhi: this the 29 April, 1998.

HON'BLE M.R.S.R.ADIGE, VICE CHAIRMAN (A)

HON'BLE DR.A.VEDA VALLI MEMBER (J)

1. Shri R.K.Gupta,
S/o Late Shri G.C.Gupta,
Asstt. Technical Officer,
Intelligence Bureau, MHA
Govt. of India,
New Delhi.

R/o 336, Lakshmi Bai Nagar,
New Delhi - 110023

2. Shri R.C.Sharma,
S/o Late Shri Roshan Lal Sharma,
Asstt. Technical Officer,
IB, MHA,
Govt. of India, New Delhi.

C/o Shri H.K.Gupta,
D-22, Ganesh Nagar Complex,
Pandav Nagar, Delhi- 110092 Applicants.

(By Advocate: Shri M.L.Chawla)

Versus

Union of India
through

The Secretary ,
Govt. of India,
Ministry of Home Affairs,
North Block,
Central Sectt.
New Delhi - 110001

2. The Director,
I.B.
Ministry of Home Affairs,
Govt. of India,
North Block,
Central Sectt.
New Delhi - 110001

..... Respondents.

(By Advocate: Shri N.S.Mehta)

JUDGMENT

BY HON'BLE M.R.S.R.ADIGE VICE CHAIRMAN (A)

Applicants seek quashing of impugned order
dated 1.6.92 (Annexure-A1) and seek promotion as
ACIO-I (W/T) w.e.f. 1970 with all consequential benefits
such as seniority, pay and allowances, further

promotions and arrears.

2. Applicants joined the feeder category of ACIO-II (Tech) subsequently redesignated as ACIO-II (W/T) as direct recruits on 7.6.65 and 29.4.65 respectively. As per 1961 Recruitment Rules (Annexure-A5), the prescribed eligibility criteria for promotion from ACIO-II to ACIO-I is 5 years' service as ACIO-II. Both applicants were called upon to appear for and clear Advanced Maintenance Course which had been made a necessary eligibility qualification for promotion from ACIO-II to ACIO-I by DIB/Executive instructions of 1963 as modified in 1967. Applicants were promoted as ACIO-I only after they had cleared the AMC.

3. The stipulation with regard to passing of AMC for promotion from ACIO-II to ACIO-I introduced by the aforesaid executive instructions was challenged in CW- 500/81 H.S.Verma Vs. UOI renumbered as T-691/85, and connected case before CAT PB which was disposed of by judgment dated 31.5.88. It was held in that judgment that the Recruitment Rules which had Presidential approval could not be restricted or liberalised by executive instructions issued at the level of DIB, and passing of AMC made an eligibility qualification for promotion from ACIO-II to ACIO-I. The operative portion of that judgment reads thus:

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"14. In the facts and circumstances, we set aside the recommendations of the Review DPC of 1972 held in 1980 and the orders issued thereon and direct the respondents to hold a Review DPC of 1972 under the Recruitment Rules of 1961 without taking into account the administrative instructions issued by the DIB in 1963 and 1967, for considering the petitioner and the plaintiff in the aforesaid transferred writ petition and transferred suit for promotion as ACIO- I with respect to the vacancies existing in 1972. If they are selected and come within the zone of appointment, they should be promoted as ACIO-I with retrospective effect from 1972 from the date their juniors were so promoted with all consequential benefits of seniority, pay and allowances, pensionary benefits and considered for further promotion in accordance with law. The writ petition is allowed and the suit is decreed on the above lines. There will be no order as to costs."

4. SLP No.11046-47/88 filed by UOI against that judgment was dismissed by Hon'ble Supreme Court on 23.8.89 after hearing both sides.

5. Thereupon applicant No.1 represented to Dy. Director IB on 5.7.90 (Annexure-A3) for grant of similar benefits to him which was rejected at the level of Asst. Director on 21.8.90 (Annexure-A3Dilly). Similarly applicant No.2 represented on 21.2.91 (Annexure-A4 Dilly) which was rejected at the level of Dy. Director, on 15.4.91(Annexure-A4 Dilly). Thereafter both applicants represented from time to time to higher authorities and each time their representation were rejected, leading them to file this OA.

6. We have heard applicants' counsel Shri Chawla and respondents' counsel Shri N.S.Mehta and have perused the materials on record.

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7. Respondents' counsel has taken the preliminary objection that the O.A. is hopelessly barred by limitation as well as by lack of jurisdiction under Section 21 A.T. Act as the cause of action arose in 1970 much anterior to the three years prior to the Tribunal's inception on 1.11.85.

8. Applicants have joined the feeder category of ACIO-II (Tech.) subsequently redesignated as ACIO-II (W/T) on 7.6. 65 and 29.4.65 respectively as direct recruits. The requisite eligibility criterion for promotion from the aforesaid post to the higher post namely ACIO-I is five years service from the lower post of ACIO-II as per the relevant recruitment rules of 1961 (Ann. A-5). However, applicants were called upon to clear an advance maintenance course (AMC in short) as prescribed under certain executive instructions of DIB of 1963 as modified in 1967. Both the applicants cleared the AMC. Thereafter, applicant No.1 and applicant No.2 were promoted as ACIO-I on regular basis in January, 1976 and May, 1978 respectively. If the applicants felt aggrieved by the aforesaid executive instructions of 1967 they ought to have challenged the same within the prescribed time before the competent forum appropriately. Instead, they appeared for the

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AMC, cleared the same and accepted the promotion as ACIO-I also without any protest. It is, therefore, obvious that the applicants had no grievance against the said executive instructions regarding AMC or their promotion. Even when the said instructions were challenged in CW-500/81 - H.S. Verma Vs. UOI before the Delhi high Court and the connected cases renumbered as T-691/85 before C.A.T., P.B. they did not bother to implead themselves as parties before High Court/CAT, P.B. There is nothing to indicate that any representations were ever submitted by the applicants since their direct recruitment to the lower post in the year 1965 till they woke up in the year 1990-91 (Ann. A-3 Colly. & Ann. A-4 Colly.) and started submitting representations to the respondents for grant of benefits similar to those given to the applicants in the aforesaid case of H.S. Verma (Supra) disposed of by the judgment of this Tribunal on 31.5.88 and the SLP filed against the said judgment by UOI was dismissed by the Hon'ble Apex Court on 23.8.89. The applicants have also not spelt out clearly and specifically as to how they are similarly situated as the applicants in the case of H.S. Verma etc. (Supra). They have not filed any application seeking condonation of delay in filing the present O.A. nor have they given any reasons for not filing the said application except citing two judgments of the Hon'ble Supreme Court in AIR 1979 SC 1144 and AIR 1987 SC 1353. Moreover, the present applicants are ^{not} similarly situated as the applicants in the case of H.S.Verma (Supra) as per the relevant averments in the counter reply filed

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by the respondents, which have not been rebutted specifically and clearly by the applicants in their rejoinder.

9. It is well settled as per the law laid down by the Hon'ble supreme Court in a catena of cases including S.S. Rathore Vs. State of M.P. (AIR 1990 SC 10) and R.C. Samanta Vs. UOI & Ors. (JT 1993 (3) SC 418) that a person who sleeps over his grievances loses his remedy as well as right which may be available to him under the law, and that repeated representations do not extend the period limitation prescribed under the relevant statute. It is also equally well settled that a judgment by itself will not give rise to a cause of action to a non-party. In the case of State of Karnataka Vs. S.M. Kotrayya & Ors. (1996 (6) SCC 267) it has been held by the Hon'ble Supreme Court with reference to the question of condonation of delay under the relevant provisions of Sec. 21 A.T. Act, 1985, that the mere fact that the applicants filed a belated application immediately after coming to know that in similar claims relief had been granted is not a proper explanation to justify condonation of delay. Further, the explanation must relate to failure to avail the remedy within the limitation period. In the recent case of L. Chandra Kumar (JT 1997 (3) SC 589) (Para 16) it was held by a Seven Judge Bench of the Supreme Court that this Tribunal has no power to condone the delay in filing applications under Sec. 21 of the A.T. Act.

That apart, the Tribunal has no power or competency to adjudicate upon the grievances which have arisen during the period of three years immediately preceding the establishment of this Tribunal as per the judgments in a number of decisions including the case of V.K.Mehra Vs. Secretary, Ministry of I & B (ATR 1986 CAT 203).

10. In the facts and circumstances of the case, the preliminary objection taken by respondents is sustained and the O.A. is dismissed. No costs.

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(DR. A. VEDAVALLI)
MEMBER (J)

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(S.R. ADIGE)
VICE CHAIRMAN (A)

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