

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(9)

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O.A. NO. 2008/1992

DATE OF DECISION : 14.08.92

Shri P.S. Arya

...Applicant

Vs.

Union of India & Anr.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri I.P. Gupta, Member (A)

For the Applicant

...Shri B.B. Raval

For the Respondents

...None

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

JUDGEMENT

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

The applicant working as Deputy Central Intelligence Officer (DCIO) in the Intelligence Bureau, MHA posted at Dehradun filed this application under Section 19 of the Administrative Tribunals Act, 1985 with regard to the grievance that he has been promoted as ACIO-I(G) w.e.f. June, 1972 though in fact he should have been promoted from the date his juniors have been promoted on the recommendation of the DPC held in 1968. According to the applicant, he was working as ACIO-II(G) at that time in 1968 and seven officers junior to him

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have been promoted to the next higher post of ACIO-I(G) in 1968 by passing the applicant. The applicant has prayed that the respondents be directed to hold a Review DPC and promote the applicant to the next higher post of ACIO-I(G) from January, 1968, i.e. the date on which his next junior was promoted to that rank. As a consequence to this relief, the respondents be further directed to promote the applicant as DCIO according to the revised seniority of ACIO-1 and also the differences of pay and allowances along with arrears of 18% interest till the realisation followed by all the consequential benefits for promotion to the rank of JAD/AD falling due at proper dates be issued.

2. We heard the learned counsel for the applicant at the admission stage. The learned counsel argued that the applicant's promotion was wrongly withheld by an observation of DPC held in 1968 which is as under :-

"Midiocre Officer, who is yet to show his ability and source of work."

The contention of the learned counsel is that the applicant was not communicated any adverse remark. He was communicated this observation by the DPC. This observation by the DPC has been most uncharitable and contrary to the

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ground reality. The question of limitation comes in the way of admitting this application which has been filed by the applicant on 3.8.1992 at a time when the applicant is about 57 and a half years old. The applicant had already been promoted in 1972 as ACIO Grade-I and he has been further promoted in 1985 as DCIO and in the same capacity, the applicant is working. Section 21 of the Administrative Tribunals Act, 1985 lays down as follows :-

"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 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.

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1988(7) ATC 557 (Dr.Kum K.Padmavally-Vs-11 of 99) I Another) Held S 21(1) and 2 Limitation void and Held cannot be questioned by Tribunal/application is filed beyond limitation period - Further held Section 21 is a complete code - Hence common law as applicable to writ petition does not apply to application under section 19-difference between void or voidable order also explained.

(3) Notwithstanding anything contained in sub-section (1) or subsection (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

Para 21(2) clause (a) and (b) totally bars the entertainment of an application by the Tribunal for the redressal of any grievance which has occurred three years immediately preceding the date on which the jurisdiction power and authority of the Tribunal becomes exercisable under this Act. Here the applicant wants a relief of the period of 1968. The matter has also been considered in the case of S.S.Rathore Vs. State of Madhya Pradesh, reported in AIR 1990 SC p-10 and the relevant paras-20, 21 and 22 of that judgement are reproduced for ready reference :-

"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 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 representation not provided by law are not governed by this principle.

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21. It is appropriate to notice the provision regarding limitation under S.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.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

The above authority clearly lays down that the repeated representation by the applicant would not give him a fresh cause of action. The applicant has stated that he was communicated the observation of the DPC held in 1968 immediately at that time (para 4.4 of the OA). The applicant has made a representation at that time as stated in para 4.7 and he made another representation on 11.10.1969. Thereafter, the applicant appears to have been promoted in June, 1972 and he did not raise the issue of his withheld promotion as alleged by him in 1968. The learned counsel wants to rely on a reply to his representation d. 17.12.1991 wherein a regret note was given to the applicant that nothing can be done at this belated stage. It will not amount to a fresh rejection of

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the representation by the applicant. This letter is dated 12.5.1992 (Annexure B). The learned counsel for the applicant also relied on a D.O. letter written by Shri K.N. Singh, Joint Director on 24.9.1991. This letter discloses that the applicant was not promoted in February, 1969 because the DPC had graded him Mediocre and even some of his seniors, Shri L.N. Dekate and G.P. Huleshwar were also graded in the similar manner. Another DPC in 1970 also did not consider his work commendable enough to recommend for promotion and third DPC held in 1972 thought the applicant fit for promotion and hence he was promoted. even It is further stated that/ if injustice might have been done in denying the due promotion, but the case cannot be reviewed after the lapse of nearly 22 years. Both these letters do not give any benefit to bring the matter within limitation by virtue of Section 21(2) and the authority of S.S. Rathore Vs. State of M.P. (supra).

3. The stale matter now cannot be revived particularly when the applicant was satisfied with the promotion in 1972 as ACIO-I and subsequently in 1985 as DCIO-I and only in 1988 subsequently the applicant made certain representations, but these will not in any way give fresh life or revive the cause of action of a matter of 1968.

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4. After having given a careful consideration even on the principle of natural justice and fair play, we do not find any reason to consider this matter within limitation against the statutory directions laid down in the Administrative Tribunals Act, 1985 referred to above.

5. The application is, therefore, dismissed at the admission stage itself as hopelessly barred by time and is not entertainable.

I.P. Gupta
(I.P. GUPTA)
MEMBER (A) 14/8/92

AKS

J.P. Sharma
(J.P. SHARMA)
MEMBER (J) 14.8.92