

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

OA No.3275/92

Date of decision:- *January 21, 1993*

Shri Khushi Ram ... Applicant

versus

Union of India through  
Secretary,  
Ministry of Home Affairs &ors... Respondents

CORAM:- THE HON'BLE MR.P.C.JAIN, MEMBER(A)  
THE HON'BLE MR.J.P.SHARMA, MEMBER(J)

For the Applicant ... Sh.V.C.Sondhi,  
Counsel.

JUDGEMENT

Hon'ble Shri P.C.Jain, Member(A):-

In this OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant was enrolled as Constable in Delhi Police on 27.12.1947. He was promoted to the rank of Head Constable with effect from 31.5.1953 and confirmed as Head Constable on 15.9.1958. He was promoted to the rank of Assistant Sub-Inspector with effect from 11.5.72 and confirmed on that post with effect from 10.11.1975. He was promoted as Sub-Inspector with effect from 5.7.1977 and also subsequently confirmed as such. He retired on 31.12.1981. His grievance in this application is that he should have been confirmed as Head Constable with effect from 31.5.1955 after completion of two years of service as such, and that

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his juniors were allowed to supersede him in the matter of promotion to the rank of Head Constable, Assistant Sub -Inspector and Sub Inspector of Police against the rules. He has prayed for a direction to the respondents to confirm him as Head Constable with effect from 31.5.55 and for confirmation as Assistant Sub-Inspector and Sub-Inspector and consequent promotion to the rank of Inspector, Assistant Commissioner of Police, Deputy Commissioner of Police etc. from the date his next junior was promoted. He has also prayed that he be paid pay and allowances and other benefits including pension etc. to the rank he is supposed to have gained otherwise after considering the applicant as confirmed with effect from 31.5.1955. This OA was filed on 15.12.92.

3. We have heard the learned counsel for the applicant on admission and limitation.

4. It is clear from the application, as briefly stated in para 1 above, that primarily he is claiming confirmation in the rank of Head Constable with effect from 31.5.1955 instead of 15.9.58 and all other reliefs are consequential to the above main relief. Thus, the applicant has approached

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the Tribunal after a period of nearly 37 years from the date, the cause of action accrued to him. He should have approached the appropriate civil court at the relevant time within the limitation prescribed under the Limitation Act. Having failed to do so, he is not entitled either under law or equity to claim the reliefs prayed for in the OA after sitting quiet for such a long period. This OA is barred not only by limitation but the Tribunal has also no jurisdiction in the matter as the cause of action accrued to the applicant three years prior to the coming into force of the Administrative Tribunals Act with effect from 1.11.1985. In such a case, the Tribunal has no jurisdiction as held in a number of judgements; (i) V.K.Mehra Vs. Secretary, Ministry of Information and Broadcasting, New Delhi (ATR 1986(1) CAT 203; (ii) Sukumar Dey Vs. Union of India (1987) 3 ATC 427 (CAT)(Calcutta); and (iii) V.S. Raghavan Vs. Secretary, Ministry of Defence (1987 (3) ATC 602(CAT)(Madras).

5. The applicant has based his claim on the judgement of the Principal Bench of the Tribunal delivered on 6.9.1991 in OA No.1095/87(Shri Kedar Nath Vs. Union of India)

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and he has stated in para 3 of the OA that" the applicant has now come to know about the judgement of this Hon'ble Tribunal recently and immediately moving this Hon'ble Tribunal with request to extend the judgement of the case of Shri Kedar Nath Vs.U.O.I(OA No.1095/87 and others decided by this Hon'ble Tribunal...". First of all it may be stated that the judgement in another case does not give a fresh cause of action for computing limitation. Secondly, the question of limitation has not been discussed in the judgement dated 6.9.1991(supra) as can be seen from the judgement, a copy of which has been annexed by the applicant with his OA. Further, this judgement itself is based on the judgement of the Tribunal dated 25.2.1987 in the case of Dal Chand & ors.Vs. Union of India(T-206/85). Thus even if it is assumed for the sake of argument that the judgement in this respect gave any fresh cause of action to the applicant, the judgement on this issue was available on 25.2.1987 in T-206/85 but the applicant has approached the Tribunal after more than 5 years from the date of that judgement. The mere averment that he came to know of the judgement recently is not a good explanation

for not approaching the Tribunal within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. The applicant has not filed even a petition for condonation of delay. In any case, neither any worthwhile explanation nor any cogent reason has been <sup>given</sup> /for the delay.

5. In the case of Bhoop Singh Vs. Union of India & Ors. ( ATR 1992(2) S.C.278), a Full Bench of the Supreme Court dealt with more or less a similar situation. In that case, the petitioner was appointed in 1964, his services were terminated in 1967 and he approached the Tribunal in 1989 against the termination of his services. The Tribunal had dismissed his OA and he thereafter approached the Supreme Court. The SLP was dismissed by the Supreme Court. The question considered by the Supreme Court in Bhoop Singh's case was: 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  
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the fact that he made the claim after the lapse of twenty-two years in 1989; and 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. The judgement in the case of Lt. Governor of Delhi & ors. Vs. Dharampal & Ors (ATR 1990(2) SC 649) was also considered by the Supreme Court in this case, and it was held that in Dharampal's case there was no consideration/ or discussion of this question and in that case the Supreme Court had refused to interfere with the relief granted by the Tribunal, but in Bhoop Singh's case, the question was of interfering with the Tribunal's order since the Tribunal had refused relief on this ground. The Supreme Court then observed as below:-

" 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

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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 the Tribunal has stated that the same has not been explained. Dharampal does not, therefore, help the petitioner to circumvent this obstacle".

We have already stated that in the judgement relied upon by the applicant, the question of limitation has not been discussed. We have also observed above that there is really no explanation whatsoever for the delay of 37 years or 5 years after the judgement was delivered in T-206/85.

6. Their Lordships of the Supreme Court in Bhoop Singh's case(supra) also observed as below:-

" If the petitioner's contention is upheld that lapse of any length of time is of no consequence in the present case, it would mean that any such police constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground. That would be a startling proposition. In our opinion, this cannot be the true import of Article 14 or the requirement of the principle of non-discrimination embodied therein, which is the foundation of petitioner's case.

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

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the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to /classify him with the other dismissed constables who approached the Court earlier and got reinstatement. It was clear to the petitioner latest in 1978 when the second batch of petitions were filed that the petitioner also will have to file a petition for getting reinstatement. Even then he chose to wait till 1989, Dharampal's case also being decided in 1987. The argument of discrimination is, therefore, not available to the petitioner".

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In the case before us though the question of reinstatement is not involved yet certainly the question of seniority in the rank of Head Constable , Assistant Sub-Inspector,

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Sub-Inspector of Police vis a vis others who became senior to him is involved and the above observations of the Supreme Court equally apply in this case. In the case of Bhoop Singh, in approaching the Tribunal there was a gap of about 2 years from the date of judgement in the case of Dharampal on which he relied. In the case before us, there is a delay of more than 5½ years from the judgement dated 25.2.1987..

7. The Supreme Court also observed in Bhoop Singh's case(supra) as below:-

" 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 belief. This is more so in service matters where vacancies are required to be filed promptly..... 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. Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept..."

8. In view of the foregoing discussion, we have no hesitation in holding that this OA is not only barred by limitation but is

also barred by jurisdiction and there is no ground whatsoever for entertaining this OA for adjudication. Accordingly, the OA is rejected at the admission stage itself.

No costs.

*J. P. Sharma*

(J.P.SHARMA)  
MEMBER(J)

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*P. C. Jain* 21/1/93

(P.C.JAIN)  
MEMBER(A)

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