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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. No.489/92

11.12.1992

Shri V.K. Vohra

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM :

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

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

For the Applicant

...Shri T.C. Aggarwal

For the Respondents

...None

JUDGEMENT

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

Shri V.K. Vohra, Programmer, UPSC in this application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter the Act) assailed the OM dt.11.10.1991 (Annexure A1), revised seniority and the Memo dt. 10.1.1992 (Annexure A2) rejecting the representation observing that the judgement delivered in the case of D.R. Anand by the Principal Bench of the Central Administrative Tribunal in OA 1642/88 decided on 23.11.1990 cannot be applied in his case.

The applicant claimed the relief that a direction be issued to the respondents to grant the seniority from the date of adhoc appointment and counting of adhoc service in the grade of Programmer with consequential benefits. The applicant was promoted on adhoc basis for a short period of three months w.e.f. 13.7.1983 from the post of Assistant Programmer to the post of Programmer, UPSC. He was

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specifically told that his appointment will not confer any entitlement for his seniority. He was regularised in his appointment as Programmer w.e.f. 21.11.1985. The seniority list of Programmer was circulated vide OM dt. 17.10.1988 (Annexure R1) and his seniority was reckoned in the grade w.e.f. 21.11.1985 showing him below D.R. Anand and the direct recruit Vijay Kumar and Phool Singh. The applicant at that time made a representation on 26.10.1988 (Annexure R2), but the same was rejected by the order dt. 11.4.1989 (Annexure R3). Shri D.R. Anand, who was also promoted from the post of Assistant Programmer on adhoc basis filed an OA 1642/89 against the seniority list circulated by OM dt. 17.10.1988 in which he claimed the benefit of adhoc service as Programmer and his contention was accepted in the decision in that OA delivered on 23.11.1990. His seniority was upgraded with effect from the date of adhoc promotion of Programmer from the feeder post of Programmer Assistant. After the decision of the case of D.R. Anand aforesaid and its implementation by the respondents in the seniority list dt. 11.10.1991, the applicant made another representation to the respondents for the grant of similar benefit to him. The respondents rejected the same and hence this application for the above mentioned reliefs.

The respondents contested this application and in the reply took the preliminary objections that the application is

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barred by Section 21(1) of the Administrative Tribunals Act, 1985, having been filed beyond the limitation provided in the said provision and secondly that the application is not maintainable for non impleadment of the necessary parties likely to be affected in the event of grant of the reliefs, prayed for in this application.

The counsel of the parties have been heard and with the consent of the parties, the arguments have been concluded for the final disposal of the application. Regarding the preliminary objection taken by the respondents that the application is barred by limitation, it has been argued that the applicant had made a representation against the seniority list circulated on 17.10.1988 and the applicant on 26.10.1988 made a representation against the same which was rejected by the order dt. 11.4.1989. If he was aggrieved by that order, he should have filed the application under Section 19 within one year, i.e., by 11.4.1990. The judgement in the case of D.R.Anand is confined only to the seniority matter vis-a-vis direct recruits inducted to the service after the promotion of said Shri D.R. Anand. The judgement in that OA is judgement in personam and the respective position in the seniority list has never been the subject matter of consideration in that OA. In the revised seniority list dt.11.10.1991, which is assailed in the present application, the position remains as it is in the seniority list of 11.10.1988 except that the judgement given in favour of D.R.Anand has been implemented. This does not give a fresh

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cause of action to the applicant as the cause of action in his case arose by rejection of his representation by the order dt.11.4.1989 (Annexure R3). The learned counsel for the applicant could not show nor he has made any application for condonation of delay under Section 21(3) of the Act. In view of this fact, the preliminary objection taken by the respondents prevails and it is held that the present application is barred by limitation and as such not maintainable.

Regarding the second preliminary objection, it is not disputed that direct recruit^{ment} has taken place for the post of Programmer and in the seniority list of 17.10.1988 as well as the revised seniority list of 11.10.1991, Shri Vijay Kumar and Shri Phool Singh are shown above the applicant. In the reliefs, claimed by the applicant, he has prayed that he should be given seniority above said Shri Vijay Kumar, who was a direct entrant on 30.5.1984, but the case of the applicant is that he has been given adhoc promotion as Programmer w.e.f.13.7.1983. Shri Vijay Kumar and Shri Phool Singh have not been impleaded as necessary parties and as such, the present application is bad for non joinder of necessary parties. In the event, if the application was to be allowed, both Shri Vijay Kumar and Shri Phool Singh are likely to be affected by the ultimate decision. In view of this, the application is also bad for non joinder of necessary parties and as such, not maintainable.

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In the Constitution Bench judgement of the Direct Recruits Class II Engineers Officers' Association and Others Vs. State of Maharashtra and Others, Judgement Today 1990 (2) SC 264, it has been held in para 47 in the last sub para that the matters which are settled should not be unsettled after long time.

In view of the above discussion, the present application is barred by time and as such, not maintainable also because of non joinder of necessary parties. The application is, therefore, dismissed at the admission stage itself leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)
11.12.92

P. C. Jain
(P.C. JAIN)
MEMBER (J)