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

C.A. NO.560/92

Date of Decision : 24.02.93

Shri Bachan Singh

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM

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

Hon'ble Shri S.R. Adige, Member (A)

For the Applicant

...Shri S.P. Sharma

For the Respondents

...Shri Anoop Bagai

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

JUDGEMENT

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

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by non extension of the judgement in OA 1095/87 in favour of the applicant. The said judgement was passed in an Original Application filed by Shri Kedar Nath. In this application, the applicant has prayed for the grant of the relief that a direction be issued to the respondents to confirm the applicant as Head Constable w.e.f. 4.4.1960 and his confirmation as Assistant Sub Inspector and Sub Inspector and Inspector and ACP, DCP etc. in order of seniority be given strictly from the date his next junior was promoted. He has also prayed for the award of his pay and allowances and other benefits including pension etc. to the rank he is supposed to have gained otherwise.

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2. We have heard the learned counsel for the applicant on the point of admission. The applicant was enrolled as Constable in Delhi Police on 28.7.1952 and he was promoted to the rank of Head Constable w.e.f. 4.4.1958. He was subsequently promoted to the rank of ASI w.e.f. 6.5.1970 and Sub Inspector w.e.f. 5.5.1974. The applicant has now retired w.e.f. 31.3.1991. The learned counsel for the applicant argued that since the applicant has been superseded by his juniors in promotion of ASI and SI against the rules as the same should have been strictly done according to the seniority, so the applicant be given the benefit of the judgement in the case of Kedar Nath Vs. Union of India (supra). The present application has been filed on 28.2.1992. The matter was taken up on 4.3.1992 when after hearing the arguments of the learned counsel for the applicant, he was asked to file the representation of the applicant made to the respondents. The applicant has filed a copy of the representation dt. 16.4.1991. That too was filed by the applicant after his retirement on 31.3.1991. The respondents filed their reply taking the plea that the present application is hopelessly barred by time. The case of the respondents is that the applicant was enrolled as Constable on 28.7.1952 and promoted as Head Constable on 4.4.1958 and confirmed as such w.e.f. 21.6.1967 on availability of permanent post as per provisions of the rules/instructions prevalent at that time.

3. The contention of the learned counsel for the applicant that he should be given the benefit of the judgement in the case of

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Kedar Nath, a copy of which has been filed as Annexure to the OA. In fact the judgement in Kedar Nath's case was inter partes and the benefit of the judgement can be given only to the person in whose favour the relief has been granted. The facts of each employee differ from place to place. The point of limitation was not discussed in the judgement of Kedar Nath. The finding has been given by the Bench in para-5 in which the point of limitation raised in the present case has not been discussed at all. Shri Anoop Bagai, learned counsel for the respondents has rightly pointed that the applicant cannot come for enforcement of a claim when the period of limitation has already expired. The applicant is raising his stale issue because on his own showing, he was promoted as Head Constable w.e.f. 4.4.1958, as ASI w.e.f. 6.5.1970, as SI w.e.f. 5.5.1974 and he wants that these promotions be antedated because of certain judgements given in other cases and the applicants of those cases have got the relief. However, the court helps only those who are vigilant and not indolent.

4. The provision of Sub Sections (1) and (2) of Section 21 of the Administrative Tribunals Act, 1985 which are relevant are extracted below :-

"(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;

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(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 has 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."

There is no application for condonation of delay also nor any verbal request was made at the time of hearing. In the reply filed by the respondents, they have clearly stated that the applicant is raising the old issue. The applicant is praying for a direction that he should be confirmed as Head Constable u.e.f. 4.4.1960 and the application has been filed in February, 1992 after about 35 years. This statement of fact is not disputed by the applicant in the rejoinder. The applicant during this period has never represented and the judgement given in a particular case in no case can be said to extent the cause of action. The fact remains that the applicant has approached the Tribunal after retirement and even much after the decision in the case of Kedar Nath (supra).

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5. We may also refer to paras-20, 21 and 22 of the judgement of the 7-Judges Bench of the Hon'ble Supreme Court in the case of S.S.Rathore Vs. State of M.P., reported in AIR 1990 SC p-10, which are reproduced below :-

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

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 applications 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 shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the appeal or representation 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 authority cited by the applicant of M.G. Rajushankar Vs. Chief Workshop Manager, Central Rly., Matunga, Bombay, reported in SLJ 1990(3) CAT, Bangalore does not apply to the facts of the present case.

6. In view of our finding on the preliminary objection of limitation raised by the respondents, we do not consider necessary to go into the other objections raised by the respondents or enter into the merits of the rival contentions of the parties. Accordingly, the OA is dismissed as barred by limitation leaving the parties to bear their own costs.

(Signature)
(S. R. ADIGE)
MEMBER (A)

(Signature)
(J.P. SHARMA)
MEMBER (J)