

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Date of Decision : 18.9.92

OA 950/92 with OA 956/92

Shri Varan Singh

...Applicant

VS.

Union of India & Anr.

...Respondents

CORAM :

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

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

For the Applicant

...Shri G.K. Aggarwal G

For the Respondents

...Shri P.H. Ramchandani

JUDGEMENT

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

Shri Varan Singh, the applicant in both the above noted OAs is aggrieved by non consideration and non promotion from Scientist D to Scientist E in Defence Research Development Service (DRDS). OA 950/92 relates to the non promotion by the Assessment Board of 1988 and OA 956/92 relates to the non promotion of the applicant by the Assessment Board of 1987. Both the OAs were filed before the Registry of the Principal Bench on 23.3.1992. The result of the Assessment Board of 1987 became known to the applicant on 29.2.1988 and the result of the Assessment Board of 1988 became known to the applicant sometimes in May, 1989. In both the OAs., the applicant has claimed the relief that the Board constituted in 1987 (OA No.956/92) and the Board constituted in 1988 (OA No.950/92) be

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declared null and void and the respondents be directed to convene fresh Board for the year 1987(OA 956/92) and for the year 1988 (OA 950/92) to consider the applicant for promotion from Scientist D to Scientist E in DRDS and if assessed fit, to promote him retrospectively w.e.f. 1.7.1987 in the case of 1987 Assessment Board and w.e.f. 1.7.1988 in the case of 1988 Assessment Board. He also prayed for back wages with interest etc. In both the OAs., the applicant has alternatively prayed that the respondents be directed to give the applicant all the benefits enumerated in the above reliefs on the basis of fit assessment as per the Assessment Board 1987/1988 without ACRs' evaluation Committee's report after declaring all reports of the said committee as illegal.

The case after its registration was not admitted and on the point of admission, notices were issued to the respondents, who filed the reply separately in both the OAs. Respondent Nos.1, 2 and 3 filed a short reply and took the plea of limitation. Respondent No.4 did not file any reply. The matter was, therefore, heard on the point of limitation and admission. Since both the OAs. relate to the same issue and between the same parties, so taken together both the counsel for the parties were heard at length and these OAs are being disposed of by a common order.

The grievance of the applicant is for non selection for promotion from Scientist D to the next higher grade of

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Scientist E in DRDS by the Assessment Boards of 1987 as well as of the year 1988 being agitated in the OAs filed in March, 1992, the result of which was known to the applicant in February, 1988 and in May, 1989 respectively. In the pleadings, the applicant has admitted this fact. Under Section 21 of the Administrative Tribunals Act, 1985, the applicant should have come before this Tribunal within one year from the date of the declaration of the result of that selection as the name of the applicant was not included among those Scientist D, who were selected/promoted to the next higher grade of Scientist E in DRDS. Thus for his non selection and for non promotion by the Assessment Board of 1987, the application should have been filed by February, 1989 and for the non promotion and non selection by the Assessment Board of 1988, the application should have been filed by May, 1990. The applicant has also not made any departmental representation as is envisaged under Section 20 of the Administrative Tribunals Act, 1985 and an objection has also been raised by the respondents that the present application is also hit by Section 20 of the Administrative Tribunals Act, 1985 in as much as the applicant has not exhausted the departmental remedies before coming to the Tribunal.

The learned counsel for the applicant argued that Shri U.D.Dwivedi, Scientist 'B' in DRDS challenged the results of the Assessment Board of 1988 before the Principal Bench of the Central Administrative Tribunal in OA 2738/90 and that was

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decided by the Division Bench by its order dt. 17.9.1991. Shri U.D.Dwivedi, the applicant of that case was working as Scientist B in DRDS. He was assessed by the Recruitment and Assessment Centre (RAC), constituted for conducting the assessment and the result of that assessment was declared in May, 1989 and the said Shri Dwivedi did not figure in the list of successful candidates. The point of challenge to the selection in the said OA of Shri Dwivedi was on the ground that the appointment of Professor S.Sampat, the Chairman of RAC was unconstitutional. Other grounds were also taken there which were personal to that applicant. The Division Bench in that case held, "The assessment held under the Chairmanship of Professor S.Sampat would also be null and void and in the facts and circumstances of the case, we set aside the impugned selection held for the assessment year, 1988 declared by Gazette No.1148 dated 31.7.1989." The contention of the learned counsel for the applicant is that the said Shri S.Sampat was also the Chairman of the Assessment Board of 1987 and so the proceedings of the said Board would be deemed to be null and void for that year also in view of the judgement of the Tribunal dt.17.9.1991 in OA 2738/90 (Shri U.D.Dwivedi vs. U.O.I. and Another). Thus according to the applicant, the limitation will run from 17.9.1991 when the Assessment Board of 1988 was rendered void. The contention of the learned counsel is that the present applications were filed within one year from the date of the knowledge of the judgement dt. 17.9.1991 in Dwivedi's case(supra). The plea taken by the

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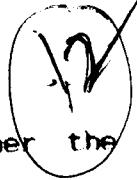
learned counsel is that since the applicant was considered by a Board that had no title to consider him, so he was not considered at all by the Assessment Boards of 1987/1988. The learned counsel for the applicant has relied on the law laid down in the case of Mahavir Kishore and others Vs. State of M.P., 1989 (4) SCC p-1. On the basis of this reported case, the learned counsel for the applicant argued that the limitation starts from the date when a particular statute is declared void. The learned counsel for the applicant also placed reliance on the judgement in the case of Sri Chamundi Mopeds Limited Vs. Church of South India Trust Association CSI, CInod Secretariat, Madras, reported in 1992 (3) SCC page-1. The learned counsel for the respondents argued that the operation of the judgement in Shri U.D. Dwivedi's case has been stayed by the Hon'ble Supreme Court in SLP 1470/92 by the order dt. 3.3.1992. A copy of the said order has also been annexed to the counter. The applicant in the rejoinder did not rebut this contention of the respondents and only mentioned in para 1 of the rejoinder that paras 1 to 9 of the short reply are wrong and denied. The operation of the judgement of the Central Administrative Tribunal dt. 17.9.1991 in Shri U.D.Dwivedi's case by which the applicant wants to gain limitation is stayed by the Hon'ble Supreme Court and the judgement is not final. By this argument, the the learned counsel wants to gain limitation by a judgement in personam passed in the case of Shri Dwivedi for his non promotion from Scientist B to the grade of the next

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promotional post of Scientist C. The reliance on the decision of the Hon'ble Supreme Court in the case of Mahavir Kishore and Others vs. State of M.P. (supra) is misplaced as the facts of this case are totally different. It has been observed by the Lordship that in a suit for refund of money paid by mistake of law, the period of limitation is three years as prescribed under Article 113 of the Schedule to the Indian Limitation Act, 1963 and the provisions of Section 17(1)(c) of that Act will be applicable so that the period will begin to run from the date of the knowledge of a particular law whereunder the money was paid, being declared void; and this could be the date of the judgement of a competent court declaring that law void. In the case of Shri Dwivedi-OA 2738/90 (supra), the issue for non selection of Shri Dwivedi in the Assessment Board of 1988 on a number of grounds and one of the grounds taken therein was also that the assessment held under the Chairmanship of Shri S.Sampat of RAC is null and void. The issue was decided in favour of Shri Dwivedi. That issue is pending final adjudication in SLP before the Hon'ble Supreme Court and the stay of that judgement has been granted. The notice has been issued and ex parte stay of the operation of the impugned judgement has been stayed. Shri Dwivedi has filed the application within the period of limitation challenging the result of the assessment year 1988, published in the gazette dt. 31.7.1989. Shri Dwivedi also made a representation on 7.9.1989 to which there was no response and so he filed the application in 1990. The finding of the

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judgement has not become final on the issue whether the assessment held under the Chairmanship of Professor S.Sampat is null and void. In the case cited by the learned counsel of Mahavir Kishore (supra), a particular law was declared ultra-vires the constitution and as such the refund of certain amount was due to the appellant of that case which was paid under a mistake of fact as well as that of law and Section 72 of the Indian Contract Act provides that money paid under mistake of law is refundable under the said provision.

In the present case, the applicant has not made any representation, though he has reached superannuation on 31.7.1992 and only a few months before his superannuation he has filed this application in the month of April, 1992. He has not also challenged his earlier non selection by the Assessment Board of 1987 and he has challenged the same in another OA 956/92. A judgement in personam binds the parties to the case. The persons similarly situated or are in perimateria with the party of a decided case may very well rely on such a judgement as a precedent, but that judgement ^{by} ^{limitation} specifically laid down under Section 21 of the Administrative Tribunals Act, 1985. The Hon'ble Supreme Court has considered the matter of limitation in the case of service matters and examined the scope of Section 21 of the Administrative Tribunals Act, 1985 in the case of S.S. Rathore Vs. State of M.P., reported in AIR 1990 SC p-10. Any persn aggrieved by an order passed against him or having a grievance must come after

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making a representation and if no reply is received within six months, then within one year thereafter in case where there is a specific order, he should come before the Tribunal within one year. In the present case, the applicant has learnt about his non selection and promotion to the grade of Scientist E for the assessment year 1987 in February, 1988 and for the assessment year 1988 in May, 1989. He could have, therefore, challenged his omission of name from the Select List within one year from that date, i.e., for the assessment year 1987 by February, 1989 and for the assessment year 1988 in May, 1990. The applicant has not given any reason as to why the application was not filed within the time nor there is any prayer for condonation of delay. The learned counsel for the applicant wants to gain limitation by virtue of the judgement of Shri Dwivedi's case decided on 17.9.1991. As already referred to above, that judgement will not in any way enlarge the limitation which is provided under the Administrative Tribunals Act, 1985.

The Hon'ble Supreme Court has considered the matter also in the case of State of Punjab Vs. ^{Gurdev} ~~Bhudev~~ Singh, reported in 1991 (4) SCC p-1. In that case also, the Hon'ble Supreme Court while deciding the appeal from Punjab and Haryana High Court of a service matter laid down that even in the service matters, the matter should be filed within the prescribed period of limitation irrespective of the fact whether the order under challenge is abinitio void. The Hon'ble Supreme Court in that case has also referred to an earlier judgement in the case of State of M.P. Vs. Syed Qammer Ali, 1967(1) SLR p-228 SC.

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Thus the argument of the learned counsel that the judgement in Shri Dwivedi's case dt. 17.9.1991 has given a fresh cause of action for filing this application cannot be accepted. The cause of action originally arose when the applicant was not recommended by the Assessment Board of 1987 and 1988 for selection.

The learned counsel for the applicant has also argued that there is a difference between staying of a judgement by the Appellate Court and quashing of that judgement. There is no dispute about this fact. But in order to get the benefit of that judgement, a judgement must be final. That judgement does not help the applicant at all, but still since the point has been argued, so the contention of the learned counsel cannot be accepted that though the operation of the judgement is stayed, yet the benefit of the same should be given to him. The learned counsel has referred to a decision of the Hon'ble Supreme Court in the case of Sri Chamundi Mopeds Limited vs. Church of South India Trust Association, CSI, Cincod Secretariat, Madras, reported in 1992(3) SCC p-1. That case relates to Sick Industrial Company (Special Provisions) Act, 1985. In that judgement, there Lordships have discussed the phrase 'stay' and have held that while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the

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date of the passing of the order which has been quashed. The stay of the operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the said order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which has been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.

Thus the cited authority of Sri Chamundi Mopeds Limited does not have any application to the present case. In the case of Bhoop Singh Vs. Union of India, 1992(2) SLJ 103, the Hon'ble Supreme Court rejected the SLP against the judgement of the Principal Bench of the Central Administrative Tribunal where the relief was of an earlier judgement/^{was denied} decided because the matter was barred by limitation and the benefit was sought for extension of limitation.

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Having considered the whole matter, we are of the view that the present applications are hopelessly barred by time and are dismissed as not maintainable because of limitation at the admission stage itself leaving the parties to bear their own costs.

(J.P. SHARMA) 18.9.92
MEMBER (J)

(P.C. JAIN) ") ' ' "
MEMBER (A)

