CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

New Delhi this the 21st day of July, 1997.

(10)

Hon'ble Mr. K. Muthukumar, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

1. OA-561/92

Mittar Sain,

(By Advocate Shri V.C. Sondhi)

-Versus-

The Commissioner of Police,
& Ors.

(By Advocate Shri Rajinder Pandita)

2. OA-971/92

Dilbagh Rai,

(By Advocate Shri V.C. Sondhi)

-Versus-

The Commissioner of Police
& Ors.

(By Advocate Shri Girish Kathpalia)

3. OA-973/92

Dharambir Singh,

(By Advocate Shri V.C. Sondhi)

-Versus-

The Commissioner of Police,
& Ors.

(By Advocate Shri Vijay Pandita)

4. OA-970/92

Anand Saroop,

(By Advocate Shri V.C. Sondhi)

-Versus-

The Commissioner of Police
& Ors.

(By Advocate Shri D. Mukerji, proxy for
Shri Anoop Bagai, Counsel)

5. OA-977/92

Ex. Sub-Inspector Vir Bhan Malhotra,

(11)

(By Advocate Shri V.C. Sondhi)

-Versus-

The Commissioner of Police
& Ors.

(By Advocate Shri Rajinder Pandita)

6. OA-996/92

Dalbir Singh Sandhu,

(By Advocate Shri V.C. Sondhi)

-Versus-

The Union of India & Ors.

(By Advocate Shri Rajinder Pandita)

7. OA-969/92

Ved Prakash Tyagi,

(By Advocate Shri V.C. Sondhi)

-Versus-

The Union of India & Ors.

(By Advocate Shri Arun Bhardwaj)

1. Whether it be referred to the Reporter or not? Yes

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal? No

(Dr. A. Vedavalli)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-561/92
OA-971/92
OA-970/92
OA-973/92
OA-977/92
OA-996/92
OA-969/92

(12)

New Delhi this the 21st day of July, 1997.

Hon'ble Mr. K. Muthukumar, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

1. OA-561/92

Mittar Sain,
S/o Shri Lal Ram Kishan,
R/o DK/53-D, Chawla Colony,
near Gurdwar,
Balhab Garh, Distt. Faridabad
Haryana. ...Applicant

(By Advocate Shri V.C. Sondhi)

-Versus-

1. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.

2. The Delhi Administration,
(through its Chief Secretary),
Old Secretariat,
Delhi. ...Respondents

(By Advocate Shri Rajinder Pandita)

2. OA-971/92

Dilbagh Rai,
S/o late Sh. Jai Chand,
R/o Quarter No.7, Gali No.3,
Block No.5, Getta Colony,
Delhi. ...Applicant

(By Advocate Shri V.C. Sondhi)

-Versus-

1. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.

2. The Delhi Administration,
(through its Chief Secretary),
Old Secretariat,
Delhi. ...Respondents

(By Advocate Shri Girish Kathpalia)

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3. OA-973/92

Dharambir Singh,
S/o Sh. Chander Bhan Singh,
R/o S-94, School Block,
Shakarpur, Delhi. ...Applicant

(By Advocate Shri V.C. Sondhi)

-Versus-

1. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.

2. The Delhi Administration,
(through its Chief Secretary),
Old Secretariat,
Delhi. ...Respondents

(By Advocate Shri Vijay Pandita)

4. OA-970/92

Anand Saroop,
S/o Sh. Ganga Saran,
R/o Vill. & P.O. Mandola,
Distt. Gaziabad (UP). ...Applicant

(By Advocate Shri V.C. Sondhi)

-Versus-

1. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.

2. The Delhi Administration,
(through its Chief Secretary),
Old Secretariat,
Delhi. ...Respondents

(By Advocate Shri D. Mukerji, proxy for
Shri Anoop Bagai, Counsel)

5. OA-977/92

Ex. Sub-Inspector Vir Bhan Malhotra,
S/o Sh. Amir Chand,
Punjabi Bagh,
New Delhi. ...Applicant

(By Advocate Shri V.C. Sondhi)

-Versus-

1. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.

b/

2. The Delhi Administration,
(through its Chief Secretary),
Old Secretariat,
Delhi. ...Respondents

(By Advocate Shri Rajinder Pandita)

6. OA-996/92

Dalbir Singh Sandhu,
S/o Shri Umro Singh,
R/o 137/1826, Tri Nagar,
Delhi. ...Applicant

(By Advocate Shri V.C. Sondhi)

-Versus-

1. The Union of India,
through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.

3. The Delhi Administration,
(through its Chief Secretary),
Old Secretariat,
Delhi. ...Respondents

(By Advocate Shri Rajinder Pandita)

7. OA-969/92

Ved Prakash Tyagi,
C-7, Type-III,
New Police Lines,
Kingsway Camp, Delhi. ...Applicant

(By Advocate Shri V.C. Sondhi)

-Versus-

1. The Union of India,
through Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.

3. The Delhi Administration,
(through its Chief Secretary),
Old Secretariat,
Delhi. ...Respondents

(By Advocate Shri Arun Bhardwaj)

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ORDER
(Hon'ble Dr. A. Vedavalli, Member (J)

As all the seven OAs involve similar question of fact and law, they are being disposed of by this common order.

OA-561/92

2. The applicant in this OA has not impugned any specific order. He seeks only the extension of benefit of a judgment of this Tribunal dated 6.9.91 in OA-1095/87 (Kedar Nath vs. Union of India)(Principal Bench-New Delhi).

3. The facts of this case as given by the applicant in the present OA which have not been specifically denied by the respondents in their counter-affidavit,breiefly stated,are as under.

4. The applicant was enrolled in the Delhi Police on 5.7.51 as a Constable. After the completion of his lower school training in Police Training College he was promoted as Head Constable w.e.f. 1.11.54. He was confirmed in that post on 15.11.62, i.e., after a period of 8 years. After completion of training for intermediary course in 1973 he was promoted as an Assistant Sub Inspector w.e.f. 10.8.73. He was confirmed in that post w.e.f. 25.3.76. Later the applicant was promoted as Sub Inspector w.e.f. 30.5.79 after he completed his Upper School Training in 1977. He was confirmed in

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the said post w.e.f. 26.2.82. He retired from service w.e.f. 31.7.90. He filed the present OA on 28.2.92.

5. The grievance of the applicant in a nut shell is that due to the delay in his confirmation as Constable, Assistant Sub Inspector and Inspector, his juniors namely Attar Singh, Diwan Singh and others were promoted earlier and as a result he was denied his due promotion as per his seniority in time. It was submitted that the action of the respondents is violative of the relevant provisions of the Punjab Police Rules, 1954 as applicable to the Delhi Police. His contention is that he should have been automatically confirmed as Head Constable after completion of his two years of service in that rank w.e.f. 1.11.56 as per rule 13.18 of the aforesaid rules. He further submitted in his OA that the delay in his confirmation as Assistant Sub Inspector and Sub Inspector also is bad in law.

6. Applicant sought the following reliefs in the OA:-

"a) Direction may kindly be issued to the respondent to confirm the applicant as Head Constable w.e.f. 1.11.1956 and his confirmation as ASI and SI and promotion to the rank of Inspector, ACP, DCP etc. in order of his seniority be given strictly from the date of his next junior was promoted.

b) The applicant may also be awarded his pay, allowances and other infringed benefits including pension etc. to the rank he is supposed to have gained otherwsie. All monetary benefits be given after considering applicant as confirmed."

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7. He has not filed any application for condonation of delay. He did not file copy of any representation made before or after the judgement in Kedar Nath's case (supra) alongwith his OA. However, he filed a copy of a representation dated 10.1.91 alongwith MP-1003/92, which he filed on 2.4.92.

OA-971/92

8. Facts of this OA briefly stated indicate that the applcant in this OA also was enrolled in the Delhi Police on 20.7.50 in the rank of Constable. He was promoted to the rank of Head Constable w.e.f. 1.6.55 and was confirmed in that post on 15.11.62. He was promoted to the rank of Assistant Sub Inspector w.e.f 11.5.1972 and was confirmed on 14.10.74. He was promoted as Sub- Inspector w.e.f. 15.11.77 and was confirmed. He retired from service w.e.f. 31.10.86.

9. In this case also the applicant seeks relief, i.e., confirmation as Head Constable w.e.f. 1.6.57 and confirmation as Assistant Sub Inspector and Sub Inspector etc. in order of his seniority from the date his next junior was promoted and also monetary benefits from the said date. The applicant has not filed any application for condonation of delay. No representation appears to have been given if he had any grievance since then. Representation according to his own admission was given on 12.9.91, i.e., after the judgement in Kedar Nath's case (supra). He filed this OA on 6.4.92.

(19)

OA-970/92

10. In this case the applicant was enrolled as Constable in Delhi Police on 11.2.52 and was promoted as Head Constable on 1.8.55. He was confirmed on 15.11.62. He got several promotions thereafter. He retired from service on 31.7.90. He seeks relief regarding confirmation as Head Constable w.e.f. 1.8.57 and the monetary benefits etc. from that date. O.A. was filed on 6.4.92. No application for condonation of delay has been filed by the applicant. He submitted a representation dated 16.9.91 (Page 13 of the Paper Book)to the respondents, i.e., after the judgement in Kedar Nath s case (supra).

OA-973/92

11. The applicant was enrolled in Delhi Police on 8.1.54. He was promoted as Head Constable w.e.f. 16.9.60 and was confirmed on 1.11.68. He got further promotions also and retired from service in 1991. He seeks relief regarding confirmation as Head Constable w.e.f. 23.9.62 and his pay allowances and other infringed benefits including pension etc. to the rank he is supposed to have gained otherwise. He claims all the monetary benefits after considering applciant as confirmed w.e.f. 16.9.62. OA was filed on 6.4.92.

12. No condonation of delay application has been filed by the applicant. He gave a representation to the respondents on 15.9.91, i.e., after the judgement in Kedar Nath's case (supra).

OA-977/92

13. The applicant was enrolled in Delhi Police as Constable on 29.10.47. He was promoted as Head Constable on 1.11.53. He was confirmed as Head Constable on 30.9.59. He got several other promotions also subsequently. He retired on 31.10.86. He claims relief from 1.11.56 regarding confirmation as Head Constable and also confirmation as Assistant Sub Inspector, Sub Inspector, Inspector etc. from the concerned dates and the monetary benefits. He filed this OA on 6.4.92.

14. No delay condonation application has been filed by the applicant. He submitted a representation to the respondents on 9.9.91,(P.14 of the Paper Book)i.e., after the judgement in Kedar Nath's case (supra).

OA-996/92

15. Applicant was appointed as Constable in Delhi Police on 2.8.51. He was promoted as Head Constable w.e.f. 1.11.54. He was confirmed as Head Constable on 15.11.62. He was promoted subsequently to several other posts also and retired on 31.7.1991.

He claims relief regarding confirmation as Head Constable w.e.f. 1.11.56 and other fringe benefits including pension etc. to the rank he is supposed to have gained otherwise. He also seeks monetary benefits after considering applicant as confirmed w.e.f. 1.11.56. He has filed the OA on 6.4. 1992.

16. Applicant has not filed any application for condonation of delay in filing the OA. He gave a representation to the respondents only on 9.9.91 i.e., after the judgement in Kedar Nath's case (supra).

OA-969/92

17. Applicant joined the Delhi Police as a Constable on 18.6.49. He was promoted as Head Constable w.e.f. 12.4.51. He govt several promotions also later on and retired on 30.6.89. He claims relief regarding confirmation as Head Constable w.e.f. 12.4.53, including future promotions, pension and monetary benefits after treating confirmation as Head Constable from the said date. He gave a representation to the respondents on 14.9.91, i.e., after the judgement in Kedar Nath's judgement. He filed the O.A. on 6.4.92.

18. Applicant has not filed any application for condonation of delay.

19. All the seven OAs are contested by the respondents who have filed their counter-affidavit in reply to all the seven cases. The applicants filed

their rejoinders to the counter-affidavits broadly denying the various averments and grounds made by the respondents therein and generally reiterating the grounds which were enumerated in their OAs.

20. Respondents in their counter-affidavits have raised a preliminary objection as to the maintainability of all the OAs. They have submitted that the applicants in all the OAs are claiming seniority, confirmation, promotion etc. and the monetary benefits as relief which date back several decades. While so, the present OAs have been filed in 1992 only, i.e., after the cause of action, if any, in favour of the applcants has accrued to them several decades back. The respondents contended that in the circumstances the OAs are barrewd by limitation and hence are not maintainable and are liable to be dismissed on this preliminary objection alone.

21. We have heard Shri V.C. Sondhi, learned counsel for the applicants in all the OAs and Shri Rajinder Pandita for the respondents in OA-561/92 (Mittar Sain). Counsel for the respondents in other OAs who were present were also heard. They adopted the arguments advanced by Shri Rajinder Pandita. We have also perused the pleadings, material papers and the relevant documents placed on record.

22. Re the preliminary objection raised by the respondents rearding maintainability of the OA on the ground of limitation, learned counsel for the respondents relied heavily on the decision of the

Hon'ble Supreme Court in S.S. Rathore vs. State of M.P. (AIR 1990 SC 10) in support of his arguments on the question of limitation with reference to Section 21 of the Administrative Tribunals Act, 1985.

23. In reply to the arguments of the learned counsel for the respondents, learned counsel for the applicants submitted that the present OAs are not hit by limitation as urged by the respondents in view of the decision of the Hon'ble Supreme Court in Collector, Land Acquisition, Anantnag vs. Katiji & Ors. (AIR 1987 SC 1353 wherein the ambit of Section 5 of the Limitation Act, 1963 regarding condonation of delay under certain circumstances has been discussed and the order of the High Court dismissing the appeal before it as time barred was set asise and the matter was remitted back to the said Court for disposal on merits after affording reasonable opportunity of hearing to both parties. He further submitted that as the prayer in the OA is for extension of the benefit of the judgement of this Tribunal dated 6.9.91 in OA-1095/87 (Kedar Nath vs. U.O.I.) wherein it was directed that the applicant therein should be deemed to be confirmed as Head Constable with effect from the date he completed a period of two years of service in that post, the Original Applications in the present cases are within time and are not barred by limitation.

24. The above arguments were vehemently opposed by the learned counsel for the respondents. It was contended by him that the decision of the

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Hon'ble Supreme Court in Collector of Land Acquisition's case (supra) was not applicable to the present case since it dealt with the provisions and ambit of Section 5 of the Limitation Act in certain circumstances whereas the decision in S.S. Rathore's case (supra) by the Hon'ble Apex Court dealing with Section 21 of the Administrative Tribunals Act, 1985 is the judgement which is applicable to the present cases.

25. We have considered the matter very carefully. On a perusal of the factual situation as stated by the applicants themselves in the present OAs and the reliefs sought by them, it is quite clear that the grievances or the cause of action arose several decades back by their non-confirmation as Head Constable by the respondents with effect from the relevant dates even though they completed two years of service on promotion in the aforesaid post. While so, there is nothing in the present OAs which indicate that applcants had submitted any representations to the respondents regarding their inaction or delay in confirming the applicants as Head Constable if they had felt aggrieved by the non-confirmation as Head Constables within a reasonable period after the grievance had arisen. Neither is there any whisper as to why they had not agitated for the redressal of their grievance before a competent judicial forum in all these decades after the cause of action aorse. It appears that the applicants have not bothered even to implead thesmselves as parties in Kedar Nath's case (supra) or the earlier cases referred to in the said

judgement. The applicants have filed the present applications in 1992 seeking extension of the benefits of a judgement in Kedar Nath's case (supra) whereas their grievance, if any, had arisen several decades back. No application for condonation of delay is also available on record. The applicants have also not given any satisfactory cogent and convincing explanation for the inordinate delay in filing the present OAs after the cause of action, if any, had arisen.

26. Coming to the legal position regarding the issue of limitation involved in all the seven cases we find that in the decision of the Hon'ble Supreme Court in Collector, Land Acquisition, Anant Nag (supra) on which strong reliance was placed by the applicants' counsel, it was an appeal by special leave to the Hon'ble Apex Court and was preferred by the State of Jammu & Kashmir regarding a land acquisition matter when their appliction under Section 5 of the Limitation Act, 1963 for condonation of delay of four days was dismissed by the High Court on the ground that it was barred by time. It was held by the Hon'ble Supreme Court while disposing of the said appeal, inter alia, that a liberal approach should be adopted by Courts regarding condonation of delay and that the "State" as a litigant should be accorded the same treatment on the application of the doctrine of equality before the law and the said delay of four days was condoned on being satisfied that there was sufficient cause for the delay.

27. Later, in S.S. Rathore vs. State of M.P. & Ors. (supra) the Hon'ble Supreme Court while discussing Section 20 of the Administrative Tribunals Act, 1985 regarding cause of action held, inter alia, thus:-

> "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 authroity 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 availd 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."

28. Re the question of limitation under Section 21 of the aforesaid Act it was held by the Hon'ble Apex Court in the said judgement as follows:-

> "21. It is appropriate to notice the provisions 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."

In Ratan Chandra Sammanta & Ors. vs. Union of India & Others (JT 1993 (3) SC 418), it was held by the Apex Court thus:

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"Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well."

29. In the case of Bhoop Singh vs. Union of India & Ors. (1992 (3) SCC 136) a constable in the Delhi Armed Police whose services were terminated in 1967 claimed reinstatement on par with certain other dismissed constables who were reinstated in service after the decision of the Hon'ble Supreme Court in Lt. Governor of Delhi vs. Dharam Pal (1990 (4) SCC 13).

30. It was, however, held by the Hon'ble Supreme Court in the aforesaid case, inter alia, thus:-

"7. 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 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 reamin 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 reinstatment. 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 not 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 case also being decided in 1987. The arguments of discrimination is, therefore, not available to the petitioner.

8. There is another aspect of the matter. 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 filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. 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 nondiscrimination 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. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner. We are further of the view that the circumstances also justify refusal of the relief claimed under Article 136 of the Constitution."

31. On an examination of the fact situation in the present cases as already noted and the aforesaid legal position we are inclined to agree with the arguments putforth by the learned counsel for the respondents that all the present OAs are squarely hit by the bar of limitation under Section 21 of the Administrative Tribunals Act, 1985. Moreover, this Tribunal is precluded from taking cognizance of any grievance which arose prior to 1.11.82, i.e., three

years before the establishment of the Administrative Tribunals Act, 1985, as laid down in V.K. Mehra vs. Secretary, Ministry of Information and Broadcasting, New Delhi (ATR 1986 (1) CAT pb 203). The present OAs, therefore, are not maintainable also since we do not have any jurisdiction to entertain such applications wherein the grievances of the applicants, according to their own admission, have arisen decades prior to the relevant date, i.e., 1.11.82.

32. In view of the foregoing discussion we are of the considered opinion that the present OAs are barred by inordinate delay, laches and limitation under Section 21 of the Administrative Tribunals Act, 1985 as well as by non-maintainability on the ground of jurisdiction as already noticed.

33. In view of the above, it is not necessary for us to deal with the merits of these OAs. All the seven OAs are, therefore, dismissed on the ground of limitation and non-maintainability due to lack of jurisdiction. No costs.

34. A copy of this order should be kept on the record of each OA.

(Dr. A. Vedavalli)
Member (J)

(K. Muthukumar)
Member (A)

'Sanju'

Attested
21/7/97