

CAT/7/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(27)

O.A. No.
T.A. No.

113/92

199

S-12-97

DATE OF DECISION

Shri C.K. Saxena

Petitioner

Shri G.D. Gupta

Advocate for the Petitioner(s)

Versus
UOI & Ors.

Respondent

Sh. P.H. Ramchandani

Advocate for the Respondent(s)

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri S.P. Biswas, Member (A)

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 113/92

(28)

New Delhi this the 5th day of December, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member (J).
Hon'ble Shri S.P. Biswas, Member (A).

C.K. Saxena,
S/o late Shri Bhagwati Prasad Saxena,
R/o F-22, Ber Sarai,
Near Jawahar Lal Nehru University,
New Delhi. ... Applicant.

By Advocate Shri G.D. Gupta.

Versus

1. The Union of India through
The Secretary,
Ministry of Labour,
Shram Shakti Bhawan, Rafti Marg,
New Delhi.
2. The Welfare Commissioner (Headquarters),
Ministry of Labour, Jaisalmer House,
New Delhi.
3. The Welfare Commissioner,
Mica Mines Labour Welfare Organisation,
(Rajasthan),
Bhilwara.
4. Shri I.N. Gupta,
Welfare Administrator,
Labour Welfare Organisation,
Bhilwara (Raj) ... Respondents.

By Advocate Shri P.H. Ramchandani.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

This application has been filed by the applicant u/s 19 of the Administrative Tribunals Act, 1985 seeking quashing of the impugned order dated 25.2.1991 and for a declaration that ^{the} appointment of Respondent 4 to the post of Junior Assistant Welfare Inspector (JAWI) is against the statutory rules and, hence void and to consider him for appointment to the post of JAWI with effect from the date of appointment of Respondent 4 with consequential

82

(29)

benefits, arrears of pay and allowances and further promotions. By the impugned order dated 25.2.1991 the respondents have stated that they have examined the applicant's representation dated 10.1.1990 and have rejected his claim to the post of JAWI.

2. Respondent 4 in his reply has stated that he was appointed as officiating JAWI w.e.f. 5.8.1966, i.e. well before the applicant joined service as Hostel Warden on temporary basis on 18.8.1966 and was confirmed later w.e.f. 1.3.1972. Respondent 4 has further stated that he was holding the post of Senior Clerk w.e.f. 22.2.1961 when he was appointed as officiating JAWI from 5.8.1966.

3. The applicant has submitted that at the time when he was appointed, there were two posts vacant of JAWI. According to him, since the recruitment rules for the post of JAWI were not finalised, Respondent 4 and another officer Shri S.R. Pandey were appointed de hors the rules to the said posts. The recruitment rules were notified by GSR 904 dated 30.5.1967. According to him, Respondent 4 did not fulfil the eligibility criteria as prescribed under the rules and he has also stated that Shri Pandey has since expired. His grievance is that his application has been ignored by Respondents 1 and 3 who continued the ad hoc arrangement of Respondent 4 in the post of JAWI which, according to him, is violative of his Fundamental Rights under Articles 14 and 16 of the Constitution. Shri G.D. Gupta, learned counsel for the applicant, has strongly urged that the appointment of Respondent 4 to the post of JAWI was irregular which will

19/

(30)

be borne out by the relevant records. He has submitted that the claim is not barred by limitation as the respondents gave him a reply only by the impugned letter dated 25.2.1991 after examination of the records with DP&AR and the O.A. has been filed on 13.1.1992. He has submitted that it is a matter of record that the Department of Personnel in their communication made in 1983 had expressed the view that the appointment of Respondent 4 was irregular which will be found in File No.C 16013/4/82/M3. He has also contended that the decision contained in letter dated 1.7.1972 (Annexure-III of the counter reply of Respondent 4) was not communicated to the applicant. Therefore, he has submitted that non-consideration of the applicant for appointment to the post of JAWI and the appointment of Respondent 4 on this post in contravention of the rules is illegal and the application should, therefore, be allowed.

4. The respondents in their reply have controverted the above allegations. They have also taken a preliminary objection that the application is hopelessly barred by limitation. According to Respondents 1-3, the applicant has already received their decision dated 1.7.1972. They have submitted that the applicant has concealed this fact while submitting a fresh representation in 1980 and 1990 i.e. after 8 years and 18 years respectively and they have, therefore, submitted that this application is highly belated and suffers from delay and laches. They have further submitted that there were no posts of JAWI vacant at the time of appointment of the applicant. Against these two posts, ^{vacant as} Shri S.R. Pandey and Shri I.N. Gupta had already been appointed on

82

(31)

officiating basis on 5.8.1966 i.e. prior to the induction of the applicant on the post of Hostel Warden, which is not in the line of promotion as required under the Recruitment Rules of 1967. They have stated that the Chairman, Mica Mines Labour Welfare Fund, Rajasthan who was the Head of the Department and appointing authority for the post of JAWI, appointed Shri I.N. Gupta on officiating basis, as he was possessing the relevant experience in the field of Social Welfare Officer. Shri P.H. Ramchandani, learned Senior counsel, has referred to the letters annexed to the reply, including the memorandum dated 14.6.1972 in which it has been stated that the promotions of S/Shri S.R. Pandey and I.N. Gupta who were senior clerks in the office of the Mica Mines Labour Welfare Fund, have not been treated as irregular. The applicant was also informed suitably with regard to his representation dated 26.2.1970. Regarding production of the relevant records, the respondents have submitted that the efforts made to locate the records have not been successful as the files have outlived their life of retention and as such they have not been able to produce the relevant records. They have relied on the documents annexed to the reply which show that in 1971-72, the appointment of Shri I.N. Gupta has already been treated as regular with information to the applicant. In the rejoinder to the Misc. Application filed for production of the records pertaining to 1983, the applicant has reiterated his stand that the same should be produced for inspection.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We are of the view that this case is hopelessly

32

barred by limitation and jurisdiction having regard to the provisions of Sections 20 and 21 of the Administrative Tribunals Act, 1985. Even if the argument of Shri G.D. Gupta, learned counsel for the applicant, is accepted that the applicant had never received the letter of the respondents dated 1.7.1972 rejecting his representation and holding that the promotion of S/Shri S.R. Pandey and I.N. Gupta are in order, if the applicant had any grievance against their appointment he ought to have agitated the matter in the appropriate forum in time which he has failed to do.

It is a well settled principle of service law that it is not in public interest to unsettle settled position, especially considering the facts that the applicant has filed this application challenging the appointment of Respondent 4 after 25 years.

6. The other main argument of Shri G.D. Gupta, learned counsel, was that the respondents ought to produce the file of 1983 in which the Department of Personnel had taken a view that the appointment of Respondent 4 was irregular. Even at that stage the applicant had not cared to file any application before the appropriate forum and this fact also cannot assist the applicant to overcome the inordinate delay which he has failed to explain. The respondents have now stated that they are unable to produce the old records as they have been weeded out in accordance with the instructions. However, from perusal of the letters dated 14.6.1972, 1.7.1972 and 5.8.1966 annexed to the reply, there is no doubt that the appointment of Respondent 4 has been ^{throughout} treated as regular. The applicant has stated in this application that he had made a representation in February,

8/

(33)

1970 and other representations without giving the exact dates regarding the appointment of Shri I.N. Gupta, Respondent 4. The memorandum dated 14.6.1972 issued by the Respondents clearly states that this disposes of the representation of the applicant dated 26.2.1970. Therefore, in the facts and circumstances of the case, we have no reason to doubt that the applicant has received the replies in 1972 itself, including the letter dated 1.7.1972 addressed to the applicant and the plea of the learned counsel for the applicant to the contrary is baseless and is rejected. If he had not received any reply to the representations made in 1970-72, he ought to have taken appropriate legal steps for seeking remedy, which also he has failed. The applicant cannot agitate the matter of appointment of Respondent 4 who was appointed to officiate in the post of JAWI w.e.f. 5.8.1966 after a period of more than a quarter of a century of the cause of action having arisen. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to reasonable belief in the mind of others that he is not interested in claiming that relief and ^{also} _{he} ^{looses} his right. (See **Bhoop Singh Vs. Union of India** (JT 1992(3) SC 322), **Union of India Vs. R.C. Samanta** (JT 1993(3) SC 418) and **State of Punjab Vs Gurdev Singh** (1991(4) SCC 1)). For these reasons, we are of the considered view that there is no justification at all to interfere in this application which suffers from laches and delay and is highly belated as well as barred by jurisdiction.

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(34)

7. In the result, the application fails and is dismissed. No order as to costs.

S. P. Biswas
(S.P. Biswas)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'