

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

C.A. No. 1753/93
T.A. No.

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DATE OF DECISION 2-01-98

Smt. Smit Rekha Vishnoi Applicant(s)
(By Advocate Shri R.K. Sharma)
Versus

Union of India Respondent(s)
(By Advocate Shri V.R. Upbal)
(For Instructions)

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 or not? NO

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(Dr. A. Vedavalli)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1753/93
MP No.2354/93

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New Delhi this the 2nd day of January, 1998.

HON'BLE DR. A. VEDAVALLI, MEMBER (J)
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

Smt. Smit Rekha Vishnoi,
32, New Mohanpuri Colony,
Meerut.

...Applicant

(By Advocate Shri R.K. Sharma)

-Versus-

Union of India through
the Secretary,
Department of Revenue,
North Block,
Central Secretariat,
New Delhi.

...Respondents

(By Advocate Shri V.P. Uppal)

ORDER

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

The applicant, Smt. Smit Rekha Vishnoi's grievance in the present OA is against the Civil List of the Indian Revenue Service, 1991 as on 1.1.1992 (extract at Annexure IX) relating to Deputy Commissioners/Deputy Directors of Income Tax published by the respondents - Union of India, wherein, her seniority is stated to have been shown with the 1979 batch instead of her original batch of 1977 as a consequence of which her name now figures at Sl. No.550 instead of at Sl. No.432(A) in the said list. She has filed this OA for restoration of seniority vis-a-vis her batchmates of 1977 batch.

2. Facts of the case, shortly stated, are as under;

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2.1 The applicant joined as an Income Tax Officer (Group A) on 6.8.77 on the basis of a Combined Competitive Examination held by the U.P.S.C. Her seniority was placed at Sl. No.21-A in the said group. On 26.12.86, a promotion order was issued promoting the Income Tax Group A (Senior Scale) officers to the post of Assistant Commissioner of Income Tax on officiating basis w.e.f. the date(s) they take over charge until further orders (Annexure 1). However, as the applicant's name was not included in the said list, she submitted a representation dated 27.1.87 (Annexure II) seeking a review of the decision of the Departmental Promotion Committee and praying for promotion to the said post with her seniority intact. That representation was rejected on 3.3.87 (Annexure III) stating that the applicant's case was considered by the Departmental Promotion Committee and her name could not be included in the select panel on an overall assessment of her record and that decision is final and nothing more can be done in this regard. Aggrieved by that rejection order, the applicant filed an OA before this Tribunal earlier (OA No.1797/87) claiming that as per her seniority, her rightful place is in between Sl. Nos.21 and 22 in the said promotion list. The said OA was withdrawn by the applicant on 9.12.91. Subsequently, the aforesaid Civil List of 1991, which is now impugned in the present OA, has been published by the respondents.

3. The grounds raised by the applicant in support of this OA, shortly stated, are as follows:

- i) The Annual Confidential Report (ACR) of the applicant for the year 1981-82 was recorded in total contravention of the official memorandum

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of the Department of Personnel and Training dated 22.5.75 since the then reviewing officer Shri M.S. Yagnik, Director of Inspection (Special Investigation) who allegedly reviewed the ACR was not competent to do so and any such review is contrary to the instructions issued and without any jurisdiction and is also bad since no opportunity of being heard was given to the applicant before turning out the report of the initiating officer.

- ii) The ACR of the applicant for the year 1983-84 is violative of the administrative instructions aforementioned since the adverse remarks entered in the said report were not at all communicated to the applicant. The adverse remarks recorded in the said report are without jurisdiction, arbitrary, whimsical and illegal.
- iii) The subsequent Departmental Promotion Committees held are vitiated as untrue record was placed before them and was considered by those Committees thus depriving the applicant of her rightful claim for promotion to the next higher grade.
- iv) As a consequence of the above, the applicant is now considered for promotion with 1979 batch while her rightful claim would be the 1977 batch, of which, she originally belongs for the reasons set out in the OA.

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4. The reliefs sought by the applicant in the present OA are as follows:

- "(a) Order and direct the respondents to place the petitioner at Serial No.21A of the order dated 26.12.86 and they be further ordered and directed to consider the petitioner for grant of selection grade in the post of Deputy Commissioner Income Tax along with 1977 batch officers to be considered in January 1993 in accordance with rules and they be further ordered and restrained from giving selection grade to the officers junior to the petitioner on the basis of the list of December, 1991, without considering the petitioner in the first place;
- (b) It is also further prayed that this Hon'ble Tribunal may be pleased to order and direct that the entry in the confidential report of the petitioner for the year 1981-82 made by the Director be deleted and the petitioner be considered with the entry made in the confidential record by the Deputy Director Income-Tax;
- (c) Further the Hon'ble Tribunal may be pleased to order and direct that any adverse entry/entries specially the entry 'not as yet' against the column fitness for promotion in the year 1983-84 be deleted and the petitioner be considered and given her seniority.
- (d) Any other or further orders/directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may also be passed."

5. The OA has been contested by the respondents - Union of India. They have filed their counter and have prayed for dismissal of the OA. The applicant has filed her rejoinder to the counter denying the contents and broadly reiterating the averments made in the OA.

6. The learned counsel for the parties have been heard. We have gone through the relevant papers and materials placed on record.



7. Before we consider the OA on merits, it would be necessary, in the first instance, to deal with the preliminary objection raised by the respondents regarding the limitation involved in the present case.

8. The respondents have stated in their counter statement to the OA read with the reply to MP No.2334/93 that the applicant had earlier filed an OA-1797/87 before this Tribunal challenging her supersession in the matter of promotion, which she subsequently withdrew by filing MP No.2665/91 on the ground that she wanted to implead some more parties as respondents. The prayer of the applicant was granted by this Tribunal by an order dated 9.12.91 (Annexure R-4). Thereafter, she filed another MP No.1765/92 which was dismissed on merits on 10.8.92 (Annexure R-5). They have contended that the original OA-1797/87 was barred by limitation and its subsequent withdrawal and thereafter filing a fresh OA, does not extend the period of limitation if the original cause of action itself was barred by limitation. Even in the present OA, although the applicant has challenged the Civil List of 1991 whereby her seniority has been shown with the 1979 batch instead of her original batch of 1977, the relief sought for by her is that she may be placed at serial No.21-A of the order dated 26.12.86 and she may be considered for grant of selection grade in the post of DCIT along with 1977 batch officers. She has further sought relief that entry in her ACR for the year 1981-82 as well as the entry in the year 1983-84 may be deleted. The applicant has been raising issues which are more than a decade old in the garb of attacking the Civil List of 1991. It was further submitted that in the seniority list of 1988 (Annexure R1), her name was shown below Dhri O.G. Rao and above Shri R.P. Srivastava.



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i.e., at the same place where it has been shown in the Civil List of 1991. Her name was at the same position in the Civil List as on 1.5.90 (Annexure R-2) also. Hence, she should have challenged the Civil List published in 1988. There is no fresh cause of action by virtue of the publication of the Civil List of 1991 (Annexure R-3). The respondents have contended that in view of the above submissions, the OA is barred by limitation and deserves to be summarily dismissed.

9. The applicant has also filed a MP No.2534/93 seeking condonation of delay in removing the objections and refiling the present OA under Rule 8 (4) of the C.A.T. (Procedure) Rules, 1987 read with Section 5 of the Limitation Act and Section 151 of the Code of Civil Procedure.

10. The applicant has submitted in the said MP that the OA was filed in the Registry on 8.12.92 and the same was returned to her counsel on 10.12.92 with some office objections. It was further submitted that the petition was filed several times but was returned to the applicant with objections by the Registry. It was ultimately filed on 23.8.93 after removing the objections. The applicant has attributed the delay to the error stated to be made bonafide on the part of the clerk and the briefing advocate in the office of the counsel for the applicant and prayed for condonation of the said delay in the interest of justice.

11. We have considered the matter carefully. It is seen that the applicant had filed the earlier OA-1797/87 before the Tribunal challenging her supersession in the matter of promotion by the respondents in their letter dated 26.12.86 (Annexure-1). It was later withdrawn by her by filing MP

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No.2665/91 on the ground that she wanted to implead some more parties as respondents. This Tribunal's order dated 9.12.91 (Annexure R-4) runs thus:-

"Ld. counsel for the applicant prays for the withdrawal of the O.A. as well as the M.P. with the permission to file fresh one because he wants to implead more parties in the O.A. Prayer allowed. This O.A. is dismissed as withdrawn with the liberty to file fresh one, if so advised. A copy of this order may be supplied to the Ld. counsel for the applicant."

12. No fresh OA impleading some more parties has been filed with reference to the said cause of action which arose in 1986 nor is there any indication as to any OA being filed by the applicant challenging the Civil List of Deputy Commissioner of Income Tax as on 1.10.88 (Annexure R-1) nor the Civil List of the said officers dated 1.5.90 (Annexure R-2). The applicant in the present OA has impugned only the Civil List of 1991 (extract at Annexure IX). There is nothing to show that the aforesaid Civil Lists of 1988 and 1990 have ever been impugned even in the earlier OA by amending the same. The liberty given to the applicant to file fresh OA does not extend the period of limitation indefinitely. The applicant ought to have filed a fresh OA, if she so desired, within the period of limitation prescribed under the Administrative Tribunals Act, 1985. That has not been done and instead the present OA impugning the Civil List of 1991 alone has been filed by the applicant in 1993. The stand of the applicant regarding the question of limitation involved in this OA is itself strange and is also vague. In the present OA, the plea taken by her is that the same is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act of 1985. While stating so, the

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aforesaid MP No.2354/93 for condonation of delay under Rule 8 (4) of the Central Administrative Tribunal (Procedure) Rules, 1987 and Section 5 of the Limitation Act etc. is also filed seeking condonation of delay in refiling the OA after removing the objections for the reasons stated therein. While so, the stand taken in the rejoinder to the counter affidavit filed by the respondents is that the OA is not barred by time as the cause of action is a recurring cause of action which arise on every subsequent selection, promotion or issuance of a seniority list. It was further submitted by the applicant that an application filed by her on 16.4.92 against the aforesaid order of this Tribunal dated 9.12.91 in the earlier OA was dismissed on 10.8.82 (sic 10.8.92) and the present OA filed on 5.8.93 is, therefore, within the period of limitation of one year.

13. The plea of continuous cause of action has not been supported by any authorities or material by the applicant and is, therefore, not valid and tenable in the eye of law. The MP for condonation of delay in removing the objections and refiling the present OA is also not accompanied by any affidavit by the counsel, briefing counsel or the counsel's clerk who are stated to be responsible for the delay regarding the reasons for the same. The applicant has not filed any application for condonation of delay under Section 21 of the Administrative Tribunals Act, 1985.

14. Though the applicant has relied upon a number of cases regarding limitation, they are not applicable in the present case since the provisions as to limitation under the Administrative Tribunals Act, 1985 is a special

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statutory limitation. Moreover, it has been held by the Hon'ble Supreme Court in State of Madhya Pradesh vs. S.S. Rathore (AIR 1990 SC 10), 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 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 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."

15. In a catena of cases including Ratam Chandra Samanta & Ors. vs. Union of India & Ors. (JT 1993 (3) SC 418) it has been held by the Hon'ble Supreme Court that if an aggrieved person sleeps over his rights without moving the appropriate judicial forum within the prescribed time he loses his remedy as well as his rights under the law.

16. In the recent case of L. Chandra Kumar vs. Union of India & Ors (JT 1997 (3) SC 589) it has been held by the Hon'ble Supreme Court (at para 16) thus:

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"16. Chapter IV ("Procedure") comprises Sections 19 to 27. Section 21 specifies strict limitation periods and does not vest the Tribunals under the Act with the power to condone delay."

17. In view of the foregoing discussion and the well settled legal position we are of the opinion that the aforesaid MP No.2354/93 for condonation of delay in removing the objections and refiling the present OA is absolutely devoid of any merit or jurisdiction as per the decisions of the Apex Court in Rathore's case (supra) and other cases, and deserves to be dismissed. We find that the present OA is clearly barred by limitation and can be dismissed on this ground itself.

18. However, learned counsel for both the parties requested the OA may be heard and disposed of on merits also as this is an old case. In view of the above request and the order dated 8.4.97 passed by another Bench of this Tribunal in this OA case was heard on merits also.

19. Coming to the merits of the case, we find that the first crucial ground raised by the applicant relates to the competency of the reviewing officer to alter her 'very good' ACR for the year 1981-82. The respondents - Union of India in this regard have submitted that the period under the review was mentioned as 86 days and the 4 to 5 days period could have been regularised for the purpose of completing the ACR since the period of 90 days is not mandatory. Moreover, the reviewing officer had given an overall grading 'good' which is not adverse. He is competent to record his own independent assessment and can express clearly his disagreement or agreement with the assessment done by the reporting officer.

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20. We have noted the aforesaid submissions of the parties and have also perused the concerned OM No.51/3/74-Estt(A), dated the 22nd May, 1975 of the Department of Personnel and Training, Government of India (Annexure IV). The relevant provisions contained in para-4 of that OM are extracted below:-

- "(i) Reporting, reviewing and endorsing officers should have been acquainted with the work of the official reported upon for atleast three months during the period covered by the Confidential Reports.
- (ii) With a view to enabling the reviewing authority to discharge his responsibility in ensuring the objectivity of the Confidential Report, it has been decided that where he is not sufficiently familiar with the work of the officer reported upon, so as to be able to arrive at a proper and independent judgement of his own, it should be his responsibility to verify the correctness of the remarks of the reporting officer after making such enquiries as he may consider necessary. Where necessary, he should also give a hearing to the person reported upon before recording his remarks."

21. On a careful consideration of the matter, we are of the view that the said instructions under para 4 (i) above, no doubt specify a minimum period of three months acquaintance with the work of the official reported upon. However, on an overall view of the matter, we are of the opinion that the tenor of those instructions do not indicate that they are absolutely mandatory. The reason, perhaps, could be that if too technical a view is taken, even a few days short fall in the aforesaid minimum period for reporting/reviewing/endorsing would result in the actual period of work done by the official being ignored for assessment. For instance, in the present case itself, if the period of 86 days of work under the reviewing officer is to be

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ignored, the concerned officer reported upon will have the assessment of the reporting officer alone without any review by the reviewing officer which would not be desirable either from the official's point of view or from the angle of administrative efficiency in the Government or for the purpose of consideration by the Departmental Promotion Committee.

22. The instructions in para 4 (ii) of the aforesaid O.M. also provides that whenever the reviewing authority is not sufficiently familiar with the working of an officer reported upon, it is his responsibility to verify the correctness of the remarks of the reporting officer after making such inquiries or give a hearing to the person reported upon where he considers it necessary before recording his remarks. It is obvious from the above that the matter rests on the discretion of the reviewing authority and no mandatory obligation has been cast upon to give a hearing. In that view of the matter, we find that the aforesaid first ground raised by the applicant is not valid and ~~tenable~~ in the eye of law.

23. Re the 2nd ground namely non-communication of adverse remarks in the applicant's ACR for the year 1983-84, the applicant has contended that in the said ACR, a remark to the effect 'not yet fit' was made against the column 'fitness of officer for promotion' and that the entire observations of the reviewing officer are adverse and are to be expunged. The non-communication of such remarks according to the applicant is violative of the administrative instructions as contained in the aforementioned OM dated 22.5.75 and is arbitrary, illegal and without jurisdiction.

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24. Re the above ground, the respondents have submitted that the aforesaid remarks were not considered as adverse and hence their communication is not required. They have contended that the remark reported to have been written by reviewing officer cannot be taken to be an adverse entry. The remark did not rule the applicant as 'unfit' which would have been adverse. They have also stated that the aforesaid column in the ACR form itself was deleted in the subsequent instructions dated 24.9.89. Moreover, the Departmental Promotion Committee assesses the fitness of officer for promotion by taking into account various other qualitative aspects of performance because of other columns.

25. We notice that the relevant instructions regarding communication of adverse remarks to the officer reported upon are contained in para 4 (iv) of the OM mentioned supra which is extracted below:-

"It is reiterated that all adverse remarks should be communicated in writing irrespective of whether they are considered remediable or not. While doing so, the substance of the favourable entries may also be communicated. Care should, however, be taken to ensure that the remarks are communicated in such a form that the identity of the Officer making particular remarks is not disclosed."

26. No doubt, the above provisions indicate that any 'adverse' remarks have to be communicated. However, with reference to the respondents contention as noted above regarding the remark in question not being adverse, the applicant has not been able to refute the same with any supporting material. She has also not produced any model form of ACR for the officers of her grade at the relevant time, i.e, 1983-84. This would have been relevant since it appears

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that there is no column relating to 'fitness for promotion' in the model form of ACR for officers of the level of Section Officer and above upto the level of Director (vide Department of Personnel and Administrative Reforms OM No.35014/2/83-Estt(A) dated the 16th of May, 1985) as mentioned in Swamy's compilation regarding Confidential Reports of Central Government Employees - 1995 (IVth Edition) at page 31.

27. In the circumstances, we find that the above ground also is not supported by any relevant material and is, therefore, unsustainable in law.

28. Re the third ground namely the deprivation of the applicant's rightful claim for promotion due to untrue record being placed before the subsequent Departmental Promotion Committee, the respondents have denied the same. They have submitted that the non-promotion of the applicant is due to her performance alone when compared to that of her juniors. Moreover, the Departmental Promotion Committee is a high level independent body which gives its own grading to the officers in the zone of consideration after considering their ACRs in its entirety without going just by the overall grading given by the reportee or the review officers. In this connection, they have relied upon Department of Personnel and Training's OM No.22011/1/75-Estt(D) dated 30.12.76.

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29. On a careful consideration of the matter, we are of the view that the applicant has not been able to substantiate the aforesaid ground on the basis of any cogent reasons or supporting material and hence, the said ground also fails.

30. Re the 4th ground namely consideration of the applicant for promotion with 1979 batch i.e. her juniors whereas her rightful claim would be with the 1977 batch to which she originally belongs, the respondents have submitted that the applicant was promoted as Deputy Commissioner of Income Tax (DCIT) w.e.f. 9.5.88 on the basis of the recommendations of the Departmental Promotion Committee held in March, 1988. They have contended that it would be clear from the above that there was no discrimination regarding her promotion and it was given without any delay.

31. The respondents have further submitted that the post of DCIT is a selection post and the officer with a better grading do supersede their seniors who have inferior gradings. The junior officer who was promoted shall be placed higher to the senior officers in the select list panel and shall continue to be so henceforth. They have also stated that the representations of the applicant in this regard have been rejected after being duly considered and that the Civil List of 1991 (i.e. impugned order) correctly shows the seniority of the persons who have been placed with officers alongwith whom she was promoted. Further, she will be considered for the selection grade in the due course if eligible and no junior has been granted selection grade till now.

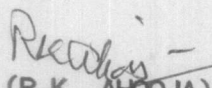
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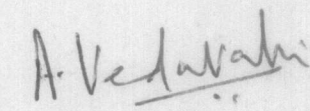
32. In the above facts and circumstances, we find that the 4th ground also fails as it is not substantiated by any tenable reasons or material.

33. The learned counsel for the applicant has cited a number of decisions during the course of his arguments regarding the ground of limitation and also with regard to the merits of the O.A. Those decisions include 1989 (1) SLR 89; ATR 1989 (2) SC 335; 1994 (4) SCC 1; 1987 (1) SCC 5.

34. We have considered the above decisions carefully. However, we find that those decisions are distinguishable on facts from the present case and they do not help the applicant in any way.

35. In view of the foregoing discussion and on the facts and circumstances of the case, we find that the applicant has failed to prove and establish her case on any valid and tenable ground with reference to limitation as well as merits and the impugned Civil List of 1991 does not warrant any interference by this Tribunal. The O.A. is dismissed on the ground of limitation as well as on merits. MP No.2354/93 is also dismissed for the reasons stated supra.No costs.


(R.K. AHOOJA)
MEMBER (A)


(DR. A. VEDAVALLI)
MEMBER (J)

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