

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NO.1658 OF 2004

ALLAHABAD THIS THE 14th DAY OF Feb, 2006

HON'BLE MR. K. B. S RAJAN, MEMBER-J
HON'BLE MR. A. K. SINGH, MEMBER-A

Rajeev Mohan,
Aged about 39 years,
Son of Late Madan Mohan Lal Srivastava,
Resident of, Flat No.5, Income Tax Colony,
7/44, Tilak Nagar, Kanpur.
Presently posted as Income Tax Officer at Kanpur.

..... Applicant

(By Advocate Shri Shyamal Narain)

Versus

1. The Union of India,
Through the Secretary,
Ministry of Finance and Revenue,
Government of India, New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi.
3. The Chief Commissioner of Income Tax,
(Cadre Controlling Authority),
(Kanpur (U.P.), (West Region), Kanpur.
Aaykar Bhawan, 16/69, Civil Lines,
Kanpur (U.P.).
4. The Chief Commissioner of Income Tax,
Mumbai (Cadre Controlling Authority),
(Maharashtra Region),
Aaykar Bhawan, Maharshi Karve Road,
Mumbai.
5. The Regional Director,
Staff Selection Commission,
(Western Region), Mumbai,
(Maharashtra)

..... Respondents.

(By Advocate Shri S. Singh)



ORDER**HON'BLE MR. K. B. S. RAJAN, MEMBER-J**


The applicant, a topper in the Maharashtra etc., Region in the Income-tax Inspector examination conducted by the Staff Selection Commission in 1988 and allotted to and joined the Goa Region of the Income tax Department in 1989, through this OA claims his posting to Maharashtra Region with the ante dated seniority from the date he joined the Goa Office and promotion to the post of Income Tax Officer and further up from the date his juniors were promoted. Earlier when such a relief was sought in OA No. 917/2003, the Tribunal had directed the respondents to dispose of the representation by a reasoned and speaking order and on the rejection of the case of the applicant by the Respondents, the applicant has moved this O.A.

2 A thumbnail sketch of the facts of the case is as under: -

- (a) The Staff Selection Commission had conducted a competitive examination for various categories of posts in the Central Excise, Income tax etc., and published the results thereof on the basis of merit and preference to the category of post. Accordingly, the applicant was declared qualified for income tax inspector post and his roll number was found reflected under the Maharashtra etc., Region and he stood first in the said list. The applicant who seems to have been expecting a posting order from the Mumbai Commissionerate, got an offer from Karnataka Commissionerate and was asked to join the



Goa Office, vide order dated 22-09-1988 where he had joined. (Though not reflected in the O.A. the applicant seems to have raised a question before Staff Selection Commission as to his not having been allotted the Maharashtra Region, for which the Commission replied that after the appointment, the Commission becomes functus officio and advised the applicant to take up the matter with the Income tax Department itself.) The applicant had joined the Income Tax Department at Panaji, GOA as per the offer of appointment.

- (b) In 1989, the applicant had applied for his posting to Mumbai and the Commissioner, Karnataka had rejected the application on the basis of a CBDT order to the effect that such inter-regional transfer could be considered on completion of three years service in the post. The applicant had accordingly waited for three years and later, by another representation, he had sought for an Inter-Regional Transfer and this time it is for Kanpur, which was approved after duly processed at the Board level and the applicant had joined the Kanpur Office in January, 1992. For over a decade, there was no communication from the applicant about his grievance whatsoever and it was in June, 2002 that the applicant had resurrected his claim for his posting at Maharashtra Region by penning an elaborate representation dated 10-06-2002 and the same was further expedited by periodical reminders of bi-monthly period and having
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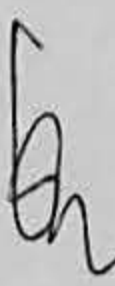
found in the absence of any communication, no joy, he had moved OA No. 917/03 and the Tribunal had disposed of the same with the following order: -

"By this OA u/s 19 of A.T. Act 1985 applicant has come with the grievance about his seniority and also wrong allocation of the region. The contention of the applicant is that he was selected by Staff Selection Commission Maharashtra, he should have been posted in Maharashtra but he was posted in Goa which was under Control of Chief Income Tax Commissioner of Karnataka. Facing great difficulty, he sought transfer from Goa to Kanpur which has been allowed and applicant is presently serving as Income Tax Inspector at Kanpur. It is submitted that applicant has suffered loss in seniority on account of the lapse on the part of respondents in allocating wrong region and it requires rectification. The counsel for applicant has placed before us the copy of the representation which applicant has addressed to respondent no.2 for redressal of his aforesaid grievances. Since applicant has already approached the Competent Authority in our opinion, it shall not be appropriate for this Tribunal to interfere at this stage except for a direction to respondents to consider and decide the representation of the applicant by a reasoned order.

For the reason stated above this OA is disposed of finally with the direction to respondent no.2 Chairman Central Board of Direct Taxes, New Delhi to decide the representation of the applicant dated 10.6.2002 by a reasoned order within three months from the date a copy of this order is filed. In order to avoid delay it shall be open to the applicant to file a fresh copy of the representation along with copy of this order. No order as to costs."

(c) The respondents have rejected the representation of the applicant by a detailed order dated 19-11-2003 and feeling aggrieved against the same the applicant has moved this OA on the following amongst other grounds: -

- i. The applicant wrongly posted to Panaji, Under CCIT (Karnataka, Kerala , Goa), Bangalore, (CCA), despite the fact that he had been selected for the Maharashtra Zone of SSC, and, therefore, was liable to have been posted within Maharashtra region.
- ii. The applicant's request for transfer to Mumbai from Panaji was illegally turned down.



- iii. The loss of seniority and its adverse impact upon the applicant's career, and promotion impact upon the applicant's career, and promotion were inflicted upon him due to the respondents' mistakes.
- iv. The applicant's representation dated 10.6.2002 has been rejected on wholly irrelevant and illegal considerations and without addressing the basic issues and points raised therein.
- v. The impugned order is conspicuously silent. On the crucial question as to how the applicant's dossier was wrongly sent by SSC to CCIT, Karnataka region, and why did the CCIT Karnataka region proceed to process the wrongly sent dossier in respect of a candidate (i.e. the applicant) who was selected not for Karnataka Region but Mumbai Region.
- vi. The impugned order dated 19.11.2003 has been passed mechanically and without any application of Judicial mind.

- (d) In addition, the contention of the applicant included that one Shri Kapil Aggarwal, an individual whose merit position in the Competitive Exam was less than that of the applicant was not only posted at Mumbai but also, within three years got transfer on request to Kanpur and his seniority at Kanpur was above the applicant. This being illegal and irrational, the applicant claimed the following relief(s):-



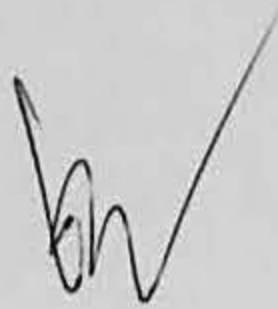
- (i) This Tribunal be pleased to quash the impugned order dated 19.11.2003, passed by the Central Board of Direct Taxes, and communicated to the applicant on 20.1.2004, vide covering letter dated 15/17.12.2003.
 - (ii). This Tribunal be pleased to command the respondents to restore the applicant's posting as Inspector of Income Tax in Maharashtra Region w.e.f. the date of his joining the department and, thereafter, promote him to the post of Income Tax Officer, retrospectively, w.e.f. the date his next junior in service in the Mumbai Region was so promoted, and grant him all consequential benefits accordingly, including seniority, promotion and arrears of pay and other allowances etc.
 - (iii). This Tribunal be pleased to grant such other and further reliefs as the applicant might be found entitled to in the facts and circumstances of the present case.
 - (iv). This Tribunal be pleased to award the costs of this application."
 - (e) The Staff Selection Commission was also arrayed as one of the Respondents.
3. Respondents have contested the O.A. (The counter, though indicated as 'on behalf of respondents', had been signed by an Income tax Authority and the Staff Selection Commission had not filed any separate counter.)

4. The respondents have given full narration as to the procedure in filling up the post of Inspectors of Income Tax. According to them, their jurisdiction consists of various Commissionerates and indents are placed before the Staff Selection Commission for conducting necessary examination and recommending the candidates for offer of appointment. In so far as Goa is concerned the same comes under the Commissionerate of Karnataka. As far as Staff Selection Commission is concerned, they follow their own jurisdiction and they have divided their jurisdiction into various regions and in so far as Goa is concerned, it has been associated with Maharashtra Region. The result published by the Staff Selection Commission on the basis of merit contained the roll No. of the applicant under Maharashtra etc., Region and he was topping the list. The name of the applicant was not found in the allotment of Maharashtra Region and the Staff Selection Commission had allotted Goa Region for the applicant and accordingly, his dossiers were forwarded to the Commissionerate of Karnataka, under which, the Goa Region falls. That was how the Commissioner, Income Tax Karnataka had issued the offer of appointment and the applicant without radiating any resentment did accept the offer and continued there. Of course, he had asked for a transfer to Mumbai but the same was to be rejected as he had not put in three years service, which was a pre-requisite for inter-regional transfer. It was later, when he fulfilled the condition and when he applied for Kanpur, the same was considered and he was posted to

Kanpur and assigned the seniority in accordance with the relevant rules. As regards Kapil Aggarwal, the respondents have contended that the same was from a different Commissionerate and hence may not be comparable.


5. Rejoinder having been filed, the respondents have also filed a supplementary counter.

6. Arguments were heard and the documents perused. We have given our anxious consideration to the entire gamut of the case. The counsel for the applicant submitted that the Staff Selection Commission has divided the jurisdictions on the basis of various regions, according to which certain states fell under Western Region and they comprised of Maharashtra, Gujarat, Goa and other places. Similarly, for Kerala and Karnataka there was another region. When, therefore, the applicant had topped the list in the Maharashtra Region, there was no rationale in the Maharashtra Region of the Staff Selection Commission sending the dossiers of the applicant to Karnataka, as Karnataka has its own Regional Office of the Staff Selection Commission. Secondly, the applicant's representation made to the Staff Selection Commission was not properly considered. His request for transfer from Goa to Mumbai was rejected on the ground of he not having put in three years service, while Shri Kapil Aggarwal's case was favourably considered, though he had also not put in three years' service in Mumbai Region. Thus, successively, the legitimate claim of the applicant had been torpedoed whereby, the applicant lost his seniority in the



post of Income tax Inspectors. Had he been posted to Mumbai Region, he having topped in the examination, he would have been promoted like certain others who were allotted Maharashtra Region, as early as in 1994-95. While that is one aspect, he was assigned seniority at Kanpur at a place lower than the said Kapil Aggarwal, whose merit position is not comparable with that of the applicant. Thus, here again, the applicant had lost his promotion chances. The counsel for the applicant also submitted that the conflicting contentions of the respondents relating to the regions allocated were self-defeating.

7. Per contra, the counsel for the respondents has highlighted that the OA is pathetically time barred as the relief sought would relate to the period of 1988-89 whereas the applicant had approached the Tribunal for the first time in 2003 and the lever given by the decision in that OA for disposal of representation cannot ipso-facto elongate the time limit provided for under the Administrative Tribunals Act, 1985. He has also stated that there was no irregularity in the allocation made by the Staff Selection Commission and the applicant having silently accepted the Goa Region he cannot raise any objection against the same at this distance of time. (It is a matter of record that in reply to para 3 of the O.A. the respondents have only stated as "need no comments". As regards the transfer of and higher seniority assigned to Shri Kapil Aggarwal, whatever the respondents have stated in the counter has been reiterated.



8. The questions to be decided in this case are as under:-

- (a) Whether the Staff Selection Commission erred in allocating the applicant to Goa Region when admittedly he topped the list of Maharashtra Etc., Region.
- (b) Whether the applicant had been subjected to invidious discrimination in respect of his transfer to Mumbai
- (c) Whether the claim of the applicant is barred by limitation?
- (d) Whether the applicant is entitled to the relief claimed.

9. First as to the aspect of limitation. The general principle in this regard is, as spelt out in the case of **Hameed Joharan v. Abdul Salam, (2001) 7 SCC 573** "*Law courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim vigilantibus et non dormientibus jura subveniunt (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right.*"

In the instant case, the applicant seeks a relief, which dates back to his original appointment of 1989. He wants his posting should be in the Maharashtra Region; that his seniority should be on the basis of his merit in the competitive examination; his promotion should be at par with his juniors at Maharashtra Region; he should be given all the consequential benefits, including seniority and other benefits. Action towards this has been taken from June, 2002, i.e. thirteen years of his initial appointment. The question is whether the general principle of limitation applies to this case.

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10. It would be appropriate to consider certain cases, almost similar to the case of the applicant. The same are discussed in the subsequent paragraphs:-

(a) In *Administrator of Union Territory of Daman and Diu v. R.D. Valand*, 1995 Supp (4) SCC 593 : The respondent was initially reverted from the post of Section Officer and later on his reversion was cancelled by the Administration in 1972. It was as late as in 1985 that the respondent filed a representation requesting the Administration to consider him for promotion to the higher post w.e.f. 1977 when some persons junior to him were promoted. This representation was rejected in October, 1986. Subsequently also certain other representations were filed by the respondent and finally in March, 1990 he moved the Tribunal, which had allowed the O.A. However, on the matter being taken up with the Apex Court, the following observations are made by the Apex Court:-

4. We are of the view that the Tribunal was not justified in interfering with the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28-9-1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8-10-1986. Thereafter for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March 1990. In the facts and circumstances of this case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way."

(b) In *Secy. to Govt. of India v. Shivram Mahadu Gaikwad*, 1995 Supp (3) SCC 231, The respondent, Shivram Mahadu Gaikwad, was employed as a Daily Wager (casual employee) and his last appointment was of 24-3-1986. He reported for work till 22-9-1986 and thereafter he did not turn up for work altogether. He was, therefore, discharged from service w.e.f. 7-10-1986. He produced a medical certificate on 25-10-1986 purporting to state that he was suffering from schizophrenia. However, nothing further happened thereafter till 1990 when he filed a petition in the Central Administrative Tribunal. The Tribunal directed that he be reinstated in service with full back wages. Aggrieved by this decision, the Union of India has approached the Apex Court by way of special leave.

*"The Apex Court has observed: When we turn to the judgment of the Tribunal we find that **there is no mention about the question of limitation even though it stared in the face.** It would immediately occur to anyone that since the order of discharge was of 7-10-1986 and the application was filed in 1990, it was clearly barred by limitation unless an application for condoning the delay was made under Section 21(3) of the Administrative Tribunals Act. No such application was in fact made.Even the employee made no effort to explain the delay and seek condonation. In the circumstances, there is no doubt that the application was clearly barred by limitation. since application itself is barred by limitation under Section 21 of the Administrative Tribunals Act, it deserves to be dismissed."*

(c) In the case of *Y. Ramamohan v. Govt. of India*, (2001) 10 SCC 537 the Tribunal rejected the claim of the appellants solely on the ground of delay and laches on the part of the appellants in approaching the Tribunal. The appellants are promotee officers to the Indian Forest

Service, and on promotion they have been allotted 1976 as the year of allotment. Their seniority has been determined by treating them to be 1976 allottees, and the common gradation list was prepared as early as on 3-5-1983. The year of allotment in favour of the appellants in the year 1976 was assailed before the Tribunal by the direct recruits in OA No. 611 of 1986. That application was dismissed by the Tribunal on the ground that the direct recruits have approached the Tribunal after a long lapse of time. There is a positive finding in the earlier order of the Tribunal that the Principal Chief Conservator of Forests has, in fact, communicated the common gradation list in his proceedings dated 3-5-1983. Subsequent to the order of the Tribunal in the earlier case, the appellants appear to have filed a representation before the Central Government seeking allotment year of 1974, and that representation having been rejected, they approached the Tribunal in 1990. The Tribunal in the impugned order came to the conclusion that the applicants having approached the Tribunal after a long lapse of time, there has been gross laches and as such, the same should not be entertained. It is this order of the Tribunal, which is being assailed in the appeal before the Apex Court. The Apex Court has held as under:-

"Even if they have come to know of the gradation list during the course of the proceedings in 1986, we see no justification for them not approaching the appropriate authority within a reasonable time, and having waited for more than 3 years they have approached only in the year 1990. We, therefore, do not see any illegality with the order of the Tribunal dismissing the claim of the appellants on the ground of laches. In the case in hand, when the Tribunal itself has recorded a finding in the

earlier case that the gradation list had been duly communicated in the year 1983, we must assume that the applicants knew of the gradation list assigning them the year of allotment as 1976, in 1983, and therefore **the so-called representation filed by the appellants to the Central Government** after disposal of the earlier application filed by the direct recruits is nothing but a subterfuge to get a period of fresh limitation. This method adopted by the appellants disentitles them to any relief. That apart, the gradation list of the year 1983 allotting 1976 as the year of allotment to the appellants has almost settled the seniority list, which need not be disturbed after this length of time. We, therefore, see no infirmity with the impugned order of the Tribunal requiring our interference in the matter. The appeal is accordingly dismissed."(Emphasis supplied)"

11. While the above are the latest cases, in an earlier case, **Dwarka Nath Sharma v. Union of India, 1989 Supp (2) SCC 225**, of course, the Apex Court has held, *"The appellant was entitled to make a representation against the seniority list and rejection of the representation actually would have given him the cause of action. In these circumstances, non-suiting him on the plea of limitation would not at all be justified."*


12. Hence, it should be seen whether the applicant has made out a case to have the limitation part eclipsed.

13. The applicant was an aspirant to the post of Income tax Inspector and he topped the merit list in so far as Maharashtra and Goa area. His appointment was not recommended to the Maharashtra region whereas, he was allotted Goa region. Goa Region comes under the Commissionerate of Karnataka. The applicant had accepted his offer without any grudge. He applied for his posting to Mumbai but the same was rejected on the ground that for inter regional transfer, there must be a period of three years in the previous region. The applicant

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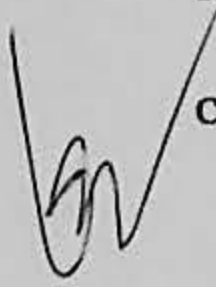
waited for completion of three years and thereafter applied and got and this time to Kanpur. Here in Kanpur, the applicant had found one Shri Kapil Aggarwal who had less merit in the competitive exam but was allotted Maharashtra Region, and in whose case, relaxing the provisions of the three years requirement, the authorities had accommodated him at Kanpur and he gained the seniority at Kanpur as of 1989. The applicant did not bother to question the same. It was only when he could find that those who did not join Kanpur Region even as on the date of his transfer figured in the seniority list much higher to the applicant, he suddenly woke up and while questioning the act of the respondents in regard to the grant of seniority to such Inspectors, he had tried to clean the carpet from beneath and brought out all his grievances which had arisen as early as in 1988 (his appointment at Goa, instead of Maharashtra as he claims now), in 1989 (when he applied for transfer but could not get the same because of the rule coming in his way), in 1991 when he joined Kanpur where his junior (in merit) was accommodated without insisting upon the requisite three years service.

14. The applicant's claim is that he had topped the list and hence he ought to have been placed within Maharashtra region. The Staff Selection Commission had placed him in the Goa Region, which also comes under the same Heading Maharashtra etc., thus, no irregularity could be deciphered from the same. The contention of the applicant that Karnataka Commissionerate cannot issue offer of appointment does not



stand judicial scrutiny, since, as per the respondents, Goa Region comes under Karnataka Commissionerate. In regard to seniority, the counsel for the applicant enabled us to have a look at the seniority list, which was combined one for Kerala, Karnataka and Goa. This combined seniority has not been questioned by the applicant.

15. The applicant has contended that he had been met with hostile discrimination inasmuch as Shri Kapil Aggarwal had been given relaxation of the three year service, while he was refused and had he been also given the same relaxation, he would have got Mumbai posting and he would have by now been Assistant Commissioner along with his juniors. The applicant has not however, chosen to annex copy of his representation made initially for his posting to Mumbai. The authorities, which dealt with the two cases, were not one and the same. The Maharashtra Region, which considered the case of Kapil Aggarwal, had approached the CBDT for its final approval and on receipt of the same, Shri Kapil Aggarwal had been transferred. The counsel for the respondent at one stage submitted that the circumstances under which Shri Kapil Aggarwal was allowed transfer outside the region in relaxation of the stipulated condition of three years of service are not available in the records. The counsel for respondents has a point in this regard. Hostile discrimination could have been alleged had there been one and the same Commissioner who had approved one case and rejected the other. Such is not the case here. In all expectation, there should have been sufficient



grounds for the authorities at Maharashtra Region to recommend the case of Kapil Aggarwal and the same would have been approved by the CBDT. Without documents in the pleadings, we cannot come to the conclusion that there has been an invidious discrimination.

16. In case the OA is allowed, the same would also adversely affect the seniority of some of the Inspectors in Maharashtra Region right from 1989. By the words of the counsel for the applicant himself, some of these persons had already been promoted to the level of Assistant Commissioners. In that case, allowing the OA would entail revision of the seniority of all such individuals (who are not before us also) and it would amount to unsettling the settled affair. The Apex Court has held so in a number of cases where the challenge was direct and not collateral. Here the challenge is collateral. Those whose seniority would be affected in Maharashtra region are not parties. No specific law is stated to have been violated by the respondents. And as such, the exemption from impleading affected individuals as respondents, in a representational capacity, as held in the case of *A. Janardhana vs U.O.I.* (1983(3) SCC 601) is not available to the applicant. The Apex Court in the case of *Nilofar Insaaf (Dr Ku) v. State of M.P., (1991) 4 SCC 279* has held as under:-

"To permit a collateral attack on them in other proceedings, as here, will be beset with problems and complications of a far-reaching magnitude. For obvious reasons, limitations have to be imposed on the grounds available for such challenge. The need for such circumspection will be better appreciated if another situation of a similar nature is considered. Suppose the competition between the two present contestants had arisen, not, as it has, just two years after the MBBS degree, but, say, fifteen years later, when they both apply for a post in a hospital or government open to MBBS graduates. If, in that situation,

it should be contended for Dr Jain that the appellant cannot be considered for the post because her transfer to the Bhopal medical college was bad and, consequently, that the MBBS degree obtained by her was not valid, we think the answer to the contention must patently be in the negative. The need to avoid disturbing settled issues which affect the life and career of an individual after a lapse of time or after the interposition of further events, as a result of which he has rightly developed a sense of security, has been emphasized by this Court in K.R. Mudgal v. R.P. Singh relying on the earlier decisions in R.S. Makashi v. I.M. Menon and Malcom Lawrence Cecil D'Souza v. Union of India"

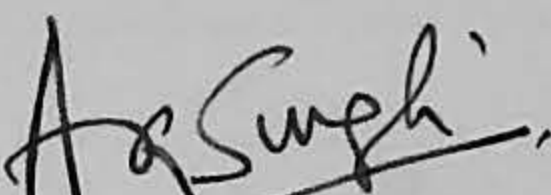
In the case of **Govt. of A.P. v. M.A. Kareem, 1991 Supp**


(2) SCC 183, the Apex Court has held as under:-

"The courts and tribunals should be slow in disturbing the settled affairs in a service for such a long period. Besides, the respondents, in the application before the Tribunal, did not implead their colleagues who have been prejudicially affected by the impugned judgment."

17. Thus viewed from the point of merit also, the applicant has not made out any case.

18. In view of the above, the OA fails, both on merit and on limitation. The same is accordingly dismissed. No cost.


Member (A)


Member (J)

/ns/