

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Review Petition No. 89/II/94

In

Original Application No. 1329 of 1994

THIS THE DAY OF JANUARY, 1995

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. K. MUTHUKUMAR, MEMBER(A)

P.K. Roy, s/o late Shri H.P. Roy, r/o
109 Alopibagh, Allahabad.

BY ADVOCATE SHERI A.N. SINHA

.... Applicant

Versus

1. The Comptroller and Auditor General of India, 10 Bahadur Shah Zafar Marg New Delhi.
2. The Union of India through the Secretary, Ministry of Finance, Department of Expenditure, New Delhi
3. The Union of India through the Secretary Department of Personnel, Public Grievances Pensions, Ministry of Home Affairs, New Delhi.
4. The Principal Accountant General, Office of the A.G(A&E) U.P. Allahabad.

.... Respondents

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

This review petition was listed in court. We have heard the learned counsel for the applicant. The review is directed against our order passed on 23.9.94 deciding O.A. No. 1329/94 at the admission stage. The review petition was directed to be listed in court and not decided by circulation. Since certain averments had been made in the review petition ~~and~~ it was considered appropriate by us to hear the learned counsels. However, at the hearing Shri A.N. Sinha, learned counsel for the applicant pressed

the plea raised in paragraph 18. The learned counsel submitted that under the provisions of Section 21 of the A.T. Act the O.A is to be filed against the final order. The submission was that the order dated 19.6.94 was a final order which was passed on a representation dated 15.4.93 filed by the applicant and thus the O.A cannot be said to have been barred by limitation.

2. ~~for as~~ As ^{for as} ~~as~~ this aspect of the matter is concerned, a perusal of our order passed in the order would show that we have considered the grounds raised to challenge the said order dated 19.6.94 and dealt with the pleas and grounds raised against the said order. By the said order dated 19.6.94 the applicants ^{prayed} in their representation dated 15.4.93 to be given benefit of the order passed by this Tribunal in its order dated 31.8.93 in T.A. No. 241/87 had rejected. In our order passed in the O.A after finalising the pleadings and the factual position we have taken the view that the said order dated 19.6.94 did not suffer from any illegality. We further held that the said order rightly holds that the applicant is not entitled to extension of the benefit of the order passed by this Tribunal in T.A. Therefore, we do not find any error apparent on the face of the record in the view taken by us, upholding the validity of the order dated 19.6.94.

3. The learned counsel for the applicant made a further submission that in the light of the various decisions copies of which have been annexed to the review petition, the view taken by us that the applicant is not entitled to the benefit of the decision in T.A on the ground of delay, laches and acquiescence needs to be reviewed.

4. The decisions relied upon are as follows:

(1) R. Sambandam and Ors Vs. Comptroller and Auditor General of India, New Delhi and Ors reported in (1990) 13 Administrative Tribunals Cases 666 which is a decision of the Madras Bench of the Central Administrative Tribunal.

(2) Gopal Krishna Sharma and Ors Vs. State of Rajasthan and Ors, reported in (1993) SCC(L&S) 544

(3) P.K. Rangachari Vs. Union of India and another reported in (1993) 24 A.T.C 884 which is a decision of the Madras Bench of the C.A.T.

5. These decisions no doubt, laid down that benefit of the decision of a court has to be extended to all even to those who did not join as parties before the court. This proposition has been laid down as emerging from the provisions of Art. 14 & 16 of the Constitution of India. In our order passed in the O.A we have referred ^a two Supreme Court decisions. ^{of the Constitution}

(i) A.T.R 1992(2) S.C. 278 and;

(ii) a decision of the P.B. of the C.A.T reported in ATR 1992 (2) page 31.

6. The Hon'ble Supreme Court in the first decision had considered the plea ^{Based} ~~raised~~ on Art. 14 & 16 and for ^{of the Constitution} extension of the benefit of the judgment rendered by the Hon'ble Supreme court in an earlier case to persons similarly placed as the petitioners whose case was decided by the aforesaid judgment reported in ATR 1992(2) SCC 278. The Apex court had dismissed the petitions on the ground of inordinate and unexplained delay and it was held that this can itself ^{be} a ground to refuse the relief.

7. At this stage, we may also indicate that another identical petition as the present petition was decided

by a Division Bench of which one of us (the Vice Chairman) was a Member. The said decision was rendered on 8.12.94 in O.A. 1765/94 Rama Shanker Tiwari Vs. Union of India through the Comptroller and Auditor General of India, New Delhi and ors. In that decision we have analysed the provisions of Section 21 of the Administrative Tribunals Act. We have also referred to another recent Supreme Court decision in 'Ratan Chandra Samant and Ors Vs. Union of India and Ors' as also the decision of the Supreme Court in 'Bhoop Singh Vs. Union of India and Ors' reported in (1992) 21 A.T.C pg675. In Bhoop Singh's case (Supra) the Hon'ble Supreme court considered the plea ~~rebased~~ ^{based} on Art. 14 & 16 of the Constitution of India and specifically the plea that the benefit of a decision should be extended to all those who are similarly placed as the petitioners in the earlier decision. The Hon'ble Supreme court while dealing with this aspect in Bhoop Singh's case (Supra) had made the following observation.

" It is expected that a Govt. 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

" there is another aspect of the matter. In ordinary and unexplained delay ~~of~~ ⁺ laches is by itself a ground to refuse the relief to the petitioner irrespective of the merit of his claim..... Art. 14 of the principle of non-discrimination is equitable principle and therefore any relief claimed on that basis must itself be founded on equity and not

be alien to that concept".

8. The decision cited by the learned counsel for the applicant placed reliance on the Supreme court's decision in 'Indra Pal Yadav Vs. Union of India. In Ratan Chandra Samant and Ors Vs. Union of India and Ors (Supra), the benefit of the decision of the Indrapal Yadav's case was in fact invoked and dealing with the plea of Art. 14 and 16 the Hon'ble Supreme court made the following relevant observation;

" 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".

In our order passed in a similar petition viz O.A. 1765/94 Rama Shanker Tiwari Vs. Union of India (Supra), we had also an occasion to note that a decision of the Madras Bench of the C.A.T (1994) 28 ATC pg-20 'Tamil Nadu Divisional Accountant Association and Ors Vs. Union of India and Ors. In the said case, the Division Bench had taken the ~~in~~ view with which we expressed our agreement that the judgment of a Tribunal or a court would not give rise to a cause of action. It is the orders of the authority concerned which had given rise to the grievance that effects a cause of action and the limitation has to be computed under section 21 of the Administrative Tribunals Act. The Madras Bench had taken the view that this proposition is clearly affirmed in the judgment of the Supreme court in Bhoop Singh Vs. Union of India.

9. The Division Bench considered a delay of more than 5 years which was not satisfactorily explained and

rejected the application on the ground of limitation alone. In our order rendered in O.A. 1765/94 Rama Shanker Tiwari Vs. Union of India and Ors (Supra) we have also adverted to a Full Bench decision of the Ernakulam Bench of the Tribunal in a decision reported in (1994) 28 ATC F.B. 177. The said Full Bench also took the view that decision in similar cases cannot give a fresh cause of action and the period of limitation must be counted from the date the claim relates to. The Full Bench also considered the decision of the Hon'ble Supreme Court in Bhoop Singh's case.

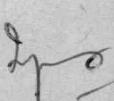
10. In the light of these decisions we are not impressed that the view taken by us that the cause of action to the claim of promotion with retrospective effect from 1.1.84 would be the starting point for limitation and since the petition had not been filed within one year of the said date, on the contrary it has been filed on 24.8.94 after almost a decade the same was highly belated can be said to be erroneous and calling for a review.

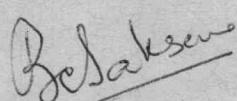
11. The order dated 19.6.94 only rejected the claim for extension of the benefit of the decision in TA 241/87. In our order we have noted that the applicant has for the first time made his representation dated 21.4.93 claiming for promotion with retrospective effect from 1.8.84. The period of limitation has therefore to be computed from the date from which the claim for promotion is made.

12. The learned counsel for the applicant did not raise any other plea during the hearing of the review petition. This aspect of the matter, we are indicating since various other pleas have no doubt been taken in the review but since they were not pressed at the hearing of the review, those

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pleas clearly have been given up and to have been raised frivolously. The truth of the matter is that the O.A was listed for admission. A counsel who is a junior in the chamber of Shri A.N. Sinha had appeared when the case was called out. His first submission was that a large number of petitions involving similar facts and grounds have been entertained and the O.A may also be entertained and notices be issued to the respondents. On being pointed out that an ex parte order of admission even does not decide anything and therefore cannot constitute a precedent. The said junior counsel proceeded to make his submission on merits of the case. After hearing him a detailed order was dictated. However, after quite sometime Shri A.N. Sinha, the senior counsel appeared and he also initially made the submission which the junior counsel had made viz that other petitions have been entertained. Shri A.N. Sinha was heard. A detailed order was dictated in court, covering all pleas raised by him. Allegations to the contrary in the review petition therefore were not pressed at the time of hearing of the review petition. The plea of propriety in deciding the O.A. by a D.B which of ^{Hon'} Shri K. Muthukumar was there has also not been pressed at the hearing of the review and the said plea clearly has been given up and has been raised in the review petition with ^{out} any seriousness. No objection of this nature had been indicated even when the O.A was taken up for hearing. Thus the plea of lack of propriety is baseless and untenable. The review petition is dismissed summarily.


Member (A)


Vice Chairman

Dated: January 18, 1995

Uv/