(9)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 31st January of 1995.

ORIGINAL APPLICATION NO. 543 OF 1993.

D.B. Kaiser,

S/o Late Sri Jagat Narain Saksena,

R/o 104 Dilkusha, New Katra, Allahabad,

serving as Assistant Audit Officer (Commercial)

in the office of the Accountant General (Audit)-II

U.P., Allahabad.

..... Applicant.

(Applicant in person)

Versus

1, Comptroller & Auditor General of India,

10, Bahadur Shah Zafar Marg,

New Delhi-110 002.

2. Secretary, Government of India,

Department of Personnel & Training,

New Delhi-110 001.

3. Principal Accountant General (A&E)-I, U.P.

Sarojini Naidu Marg,

Allahabad-211 001.

4. Sri Saheb Deen,

Audit Officer (Retired)

C/o Office of the Accountant General (Audit)-I

Uttar Pradesh, Sarojini Naidu Marg,

Allahabad-211 001.

..... Respondents.

By Advocate Sri

2. ORIGINAL APPLICATION NO. 1560 OF 1994.

Smt. Shanti Devi, Widow of Late Basant Kumar Srivastava,
Retired Senior Auditor, Office of the Accountant General
(Audit) II, U.P. Allahabad,
S/o Late Badri Prasad Srivastava,
R/o 207-A Bahadurganj, Lakhpat Rai Lane,
Allahabad.

..... Applicant.

By Advocate Sri P.N. Khare.

Versus

1. The Comptroller and Auditor General of India,
10-8, Bahadur Shah Zafar Marg,
New Delhi.

2. The Union Government of India,
through the Secretary,
Department of Personnel Public Grievances and Pensions,
Ministry of Home Affairs, New Delhi.

3. The Principal Accountant General,
Office of the Accountant General (A&E)I, U.P.
Allahabad.

4. The Accountant General (Audit)I,
U.P. Allahabad.

..... Respondents.

By Advocate Sri

✓ 3. ORIGINAL APPLICATION No. 1395 OF 1994.

Harendra Pratap Singh , Retired Senior Auditor,
Office of the Accountant General (Audit) I, U.P.,
Allahabad, S/o Late S.P. Singh,
R/o 146/2, Hewett Road,
Allahabad.

..... Applicant.

By Advocate Sri P.N. Khare.

Versus

1. The Comptroller and Auditor General of India,
10 Bahadurshah Zafar Marg,
New Delhi.

2. The Union Government of India,
Through the Secretary,
Department of Personal Public Grievances and Pensions,
Ministry of Home Affairs,
New Delhi.

3. The Principal Accountant General,
Office of the Accountant General (A&E) I,
U.P. Allahabad.

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4. The Accountant General (Audit) I,
U.P. Allahabad.

..... Respondents.

By Advocate Sri

✓ 4. ORIGINAL APPLICATION NO. 1394 OF 1994.

Krishna Pratap Singh,

Retired Senior Auditor, Office of the Accountant General

(Audit) II, U.P. Allahabad,

S/o Late Manak Saran Singh,

R/o "Nanak Sadan", 1770/1021-A, Dariyabad,

Allahabad.

By Advocate Sri P.N. Khare. ..... Applicant.

Versus

1. The Comptroller and Auditor General of India,

10, Bahadur Shah Zafar Marg,

New Delhi.

2. The Union Government of India,

Through the Secretary,

Department of Personal Public Grievances and Pensions,

Ministry of Home Affairs,

New Delhi.

3. The Principal Accountant General,

Office of the Accountant General (A&E) I,

U.P. Allahabad.

4. The Accountant General (Audit) I,

U.P. Allahabad.

..... Respondents.

By Advocate Sri

Bch

5. ORIGINAL APPLICATION NO. 663 OF 1993.

V.N. Ojha, S/o Sri Ram Sumiran Sharma,

R/o 402, Shahganj, Retired Audit Officer,

Office of the A.G.(Audit) II,

Allahabad.

.....Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. Union of India,

through the Comptroller and Auditor General of India,

10, Bahadur Shah Zafar Marg,

New Delhi.

2. The Principal Accountant General,

Office of the A.G. (A&E) I,

Allahabad.

3. The A.G.(Audit) II,

Office of the Accountant General (Audit) II,

Allahabad.

..... Respondents.

By Advocate Sri N. B. Singh.

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6. ORIGINAL APPLICATION NO. 1741 OF 1994.

Tirath Raj Rai,

Assistt. ~~Audit~~ Officer (Retired),

Office of the A.G.(Audit) I,

Allahabad, S/o Late Sri Hira Lal Rai,

R/o 172/88 Baghambari Housing Scheme, Allahpur,

Allahabad.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller and Auditor General of India,
   10, Bahadurshah Zafar Marg,
   New Delhi.

2. The Principal Accountant General,
   Office of the A.G.(A&E) I,
   U.P. Allahabad.

3. The Accountant General (Audit) I,
   Office of the A.G.(Audit) I,
   U.P. Allahabad.

..... Respondents.

By Advocate Sri.....

7. ORIGINAL APPLICATION NO. 1615 OF 1994

Krishna Behari Srivastava,

Assitt. Audit Officer (Retired),

~~Office of the~~ A.G. (Audit) I, Allahabad,

S/o Late Sri Jagannath Prasad,

R/o Mch. Ramaipati, District- Mirzapur.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller and Auditor General of India,
   10, Bahadurshah Zafar Marg,
   New Delhi.

2. The Principal Accountant General,
   Office of the A.G.(A & E), U.P.
   Allahabad.

3. The Accountant General (Audit) I,
   Office of the A.G.(Audit) I,
   U.P. Allahabad.

..... Respondents.

By Advocate Sri.....

8. ORIGINAL APPLICATION NO. 1552 OF 1994.

M.P. Verma, Retired Senior Auditor,
Office of the A.G(Audit) I,
S/o Late S. Lal,
R/o 95/11, Allahapur,
Allahabed.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller & Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi.

2. The Principal Accountant General,
Office of the A.G. (A&E) I, U.P.
Allahabad.

3. The Accountant General (Audit) I,
Office of the A.G.(Audit) I, U.P.
Allahabad.

..... Respondents.

By Advocate Sri

9. ORIGINAL APPLICATION NO. 1426 OF 1994.

Krishna Chander Rai,

S/o Late Babu Mahadev Prasad Srivastava,

Retired Audit Officer,

Office of the A.G.(Audit) I, U.P. Allahabad,

R/o 111-Rani Mandi, Allahabad- 211003.

..... Applicant.

By Advocate Sri

Versus

1. The Comptroller & Auditor General of India,
   10, Bahadur Shah Zafar Marg,
   New Delhi.

2. The Principal Accountant General,
   Office of the A.G. (A&E) I, U.P.
   Allahabad.

3. The Accountant General (Audit) I,
   Office of the A.G. (Audit) I, U.P.
   Allahabad.

..... Respondents.

By Advocate Sri.....

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10. ORIGINAL APPLICATION NO. 1424 OF 1994.

Smt. Sneh Lata, W/o Late Sri Surendra Kumar,
Retired Audit Officer of the A.G.(Audit) I,
U.P. Allahabad,
R/o 76/B-1 Sohbatia Bagh,
Allahabad.

..... Applicant.

By Advocate Sri

Versus

1. The Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi.

2. The Principal Accountant General,
Office of the A.G.(A&E) I, U.P.
Allahabad.

3. The Accountant General (Audit) I,
Office of the A.G. (Audit) I,
U.P. Allahabad.

..... Respondents.

By Advocate Sri

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✓ 11. ORIGINAL APPLICATION NO . 1413 OF 1994.

R.K. Misra,

Retired Senior Audit Officer,

Office of the A.G.(Audit) I,

S/o Late Sri Pt. Sheo Adher Misra,

R/o 22, Mahatma Gandhi Marg,

Allahabad.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller and Auditor General of India,
   10, Bahadur Shah Zafar Marg,
   New Delhi.

2. The Principal Accountant General,
   Office of the A.G.(A&E) I, U.P.
   Allahabad.

3. The Accountant General (Audit) I,
   Office of the A.G.(Audit) I, U.P.
   Allahabad.

..... Respondents.

By Advocate Sri N.B. Singh.

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12. ORIGINAL APPLICATION NO. 1412 OF 1994.

Udai Shankar Bose,

Retired Supervisor,

Office of the A.G.(Audit), I,

S/o Late Shri Subodh Kumar Bose,

R/o 169 Lukerganj,

Allahabad.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller & Auditor General of India,

10, Bahadur Shah Zafar Marg,

New Delhi.

2. The Principal Accountant General,

Office of the A.G.(A&E) I, U.P.

Allahabad.

3. The Accountant General (Audit) I,

Office of the A.G.(Audit) I, U.P.

Allahabad.

.....Respondents.

By Advocate Sri N.B. Singh.

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13. ORIGINAL APPLICATION NO. 1270 OF 1994.

R.G. Sinha,

Retired Asstt. Audit Officer,

Office of the A.G.(Audit) I,

S/o Sri M.G. Sinha,

R/o 73/1 Tagore Town,

Allahabad.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller and Auditor General of India,
   10, Bahadur Shah Zafar Marg,
   New Delhi.

2. The Principal Accountant General,
   Office of the A.G.(A&E) I, U.P.
   Allahabad.

3. The Accountant General (Audit) I,
   Office of the A.G.(Audit) I, U.P
   Allahabad.

..... Respondents.

By Advocate Sri N.B. Singh.

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14. ORIGINAL APPLICATION NO. 1296 OF 1994.

Satish Chandra Khare,

Retired Accounts Officer,

Office of the A.G. (A&E) II,

S/o Sri Late Bishambhar Prasad Khare,

R/o 1020, Malviya Nagar, Allahabad.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller and Auditor General of India,
   10, Bahadur Shah Zafar Marg,
   New Delhi.

2. The Principal Accountant General,
   Office of the A.G. (A&E) , U.P.
   Allahabad..

3. The Accountant General (A&E) II,
   Office of the A.G.(A&E) II, U.P.
   Allahabad.

..... Respondents.

By Advocate Sri

15. ORIGINAL APPLICATION NO. 1237 OF 1994.

Dinesh Singh Jayaswal,

Retired Senior Auditor,

Office of the Accountant General (Audit) I,

S/o Sri G.P. Jaiswal,

R/o C-116/88 Hatthi Mai Road,

Maya Bazar, Gorakhpur.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller and Auditor General of India,

10, Bahadur Shah Zafar Marg,

New Delhi.

2. The Principal Accountant General,

Office of the A.G.(A&E) I, U.P.

Allahabad.

3. The Accountant General (Audit) I,

Office of the A.G.(Audit) I, U.P.

Allahabad.

..... Respondents.

By Advocate Sri N.B. Singh

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16. ORIGINAL APPLICATION NO. 1097 OF 1994.

B.P. Srivastava,

Retired Accounts Officer,

Office of the A.G. (A&E), II,

S/o Late Sri Mata Prasad,

R/o 720/609-A, Colonelganj,

Allahabad.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller and Auditor General of India,

10, Bahadur Shah Zafar Marg,

New Delhi.

2. The Union of India through the Secretary,

Department of Personnel, Public Grievances and Pensions,

New Delhi.

3. The Principal Accountant General,

Office of the A.G.(A&E) I, U.P.

Allahabad.

..... Respondents.

By Advocate Sri.....

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17. ORIGINAL APPLICATION NO. 1094 OF 1994.

Sunil Chandra Srivastava,
Retired Assistant Audit Officer,
Office of the A.G. (Audit) I,
S/o Late Sri Kali Prasad,
R/o Khushal Parbat, Allahabad.

..... Applicant.

By Advocate Sri A.N. Sinha.

Versus

1. The Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi.

2. The Principal Accountant General,
Office of theA.G. (Audit) I, U.P.
Allahabad.

3. The Accountant General (Audit) I,
Office of the A.G. (Audit) I, U.P.
Allahabad.

..... Respondents.

By Advocate Sri N.B. Singh.

18. ORIGINAL APPLICATION NO. 1894 OF 1994.

Jagat Bhushan Srivastava,

Retired Senior Auditor, (P.No. 2163),

Office of the Accountant General Audit-II,

U.P., Allahabad,

S/o Late Sri Anandi Prasad Srivastava,

R/o 33, Mahabiran Lane, Muthiganj,

Allahabad.

..... Applicant.

By Advocate Sri K.P. Sinha

Versus

1. The Comptroller and Auditor General of India,
   10, Bahadur Shah Zafar Marg,
   New Delhi.

2. The Union of India,
   Through Secretary,
   Department of personnel,
   Public Grievances and Pensions,
   Ministry of Home Affairs,
   New Delhi.

3. The Principal Accountant General (A&E) I,
   U.P., Allahabad.

4. The Accountant General (Audit) II,
   U.P., Allahabad.

..... Respondents.

By Advocate Sri

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

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

O R D E R(Reserved)

JUSTICE B.C. SAKSENA, V.C.

We have heard the applicant Shri D.B. Kausar who ~~was~~ appeared in person. The learned counsel for the applicants in other connected O.As have indicated that the said O.As involve identical questions of facts and laws as in O.A No.543 of 1993. The learned counsel also stated that in terms of the order that may be passed in O.A. 543/93, the other O.As may also be decided and disposed of.

2. In O.A 543/93 the applicant was appointed in temporary capacity on 14.10.1958 as UDC and was redesignated as Auditor w.e.f.01.04.1973 in the office of the Accountant General, Uttar Pradesh, Allahabad. The applicant's case further is that he was qualified to be promoted on and after 14.10.1968 to the Selection Grade Auditor in the pay scale of Rs.210-380 after putting in 10 years continuous service as Auditor. He further states that he has been denied the Selection Grade by reason of correct seniority not being assigned to him. His further case is that the provisions of O.M. dated 22.12.1959 were taken into consideration erroneously while fixing his seniority. The error, it is pointed out is that the said O.M applied only to Personnel Recruited on or after 22.12.1959. and since the applicant had been recruited earlier the same was wrongly applied to him. The applicant after passing the Section Officer's Grade Examination is shown to have been promoted to the next higher post of Section Officer(Commercial) w.e.f. 31.10.1988 and later on promoted

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as Assistant Audit Officer (Commercial) w.e.f. 4.2.1992.

3. The applicant in various paragraphs of his O.A has tried to indicate his own interpretation of O.M. dated 22.12.1959 and has alleged that on a mis-~~representation~~ interpretation and mis-application of the said O.M. the respondent no.3 has wrongly been assigned a higher seniority position than him. He has also tried to raise the plea that the Comptroller and Auditor General (hereinafter referred to as CAG) ~~has usurped~~ the Constitutional authority of the President of India in issuing Office Memorandum. The applicant has also alleged mis-statement of facts on the part of the official respondents in their pleadings in special leave to appeal (civil) No. 3540/92 filed in OA 117/88 O.P. Khare Vs C.A.G. On the basis of the allegations in the O.A, the applicant has prayed for the quashing of C.AG's circular dated 17.3.1969. He has also prayed for a direction in the nature of mandamus commanding the respondents to deem the applicant as senior to respondent no.4 Sahabdeen on the basis of length of service principle contained in Ministry Of Home Affairs O.M. dated 22.6.1949. He has also prayed for an order in the nature of mandamus directing the official respondents to give him the benefit of notional promotion to the Selection Grade with retrospective effect from 16.5.1970 the date when his junior Sahabdeen was promoted. He has also prayed for consequential benefit in the matter of fixation of pay in the scale of Rs.210-380 w.e.f. 16.5.1970 and withdrawal of increments in the Selection Grade (pre-revised scale of Rs.210-380 (upto 31.12.72) and revised scale Rs.425-640 w.e.f. (1.1.73 to 14.9.79). He has

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also prayed for arrears arising out of notional promotion/ fixation of pay w.e.f. 16.05.1970 and increments accruing thereafter right upto 30.8.1988 with interest.

4. A detailed counter affidavit on behalf of the respondents has been filed ~~and~~ to which the applicant has filed the rejoinder affidavit. In the counter affidavit it has been stated that respondent no.4 was appointed as UDC on 14.10.1958 and was appointed on the permanent post in that cadre against a post reserved for Scheduled caste in accordance with the Roster w.e.f. 18.5.1961 and was declared permanent in the cadre of UDC earlier than the petitioner by reason of his ~~being~~ belonging to the reserve category. It has been pleaded that the applicant has raised stale issues of re-fixation of seniority etc. thus seeks to unsettling the matters which had been settled about three decades earlier. It has also been pleaded that the Office of the C.A.G was bifurcated in the year 1984 into(1) Audit Office(2) Accounts and Entitlement Office and as such any change in seniority retrospectively after 30 years will have wide ranging adverse effect. The responoents pleaded that principle of quietus will also apply and for that purpose reliance has been placed on a decision of Supreme Court in ' Malcom Lawrence Cicil D'zousa Vs. Union of India and Ors(1975 SLJ 629(SC).

5. The respondents also state that the respondent no.1 by letter dated 17.3.1960 had cancelled his circular dated 14.5.1950 by which a copy of the O.M. dated 22.6.1949 was forwarded. It is therefore pleaded that the seniority under challenge has to be determined on the basis of the basic principle, provided in para 3 of the Memorandum dated 17.3.60.

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It may be noted that O.Ms dated 22.6.1949 and 22.12.1959, as also the CA.G's circular dated 17.3.1960 were considered in O.A. 117/88 filed by one Shri O.P. Khare. Shri O.P. Khare through the said petition sought a direction to be issued to the Principal Accountant General U.P. for re-determination/ re-fixation of his seniority with reference to Executive Instructions contained in O.M. dated 22.6.1949 in the gradation list w.e.f. 1.3.1963 and further direction to place him in the scale of Rs.425- 690 with retrospective effect from 16.5.1970, the date from which Sahab Deen who was impleaded as Respondent no.3 and was alleged to his immediate junior was moved to the Selection Grade. The said O.A 117/88 was decided by an order dated 13.9.91. The operative part of the order reads as under:-

> " The applicant will be entitled to the relief that the previous seniority is to be counted from the date when he entered into the service and he will be granted the notional seniority as well as the pay scale as has been mentioned in O.M. of 1978 instructed above. But in case the seniority matter has become a close chapter after inviting objections to it. The applicant may be given notional benefit of pay scale. So far as his seniority is concerned, the list will not be disturbed by placing him above those whose placement has already been become final by decision or action on the part of the applicant."

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6. On an SLP against the said order which was numbered as SLP(Civil) 3540/92 the Hon'ble Supreme Court passed the following order on 18.2.94:

" Delay condoned, confining the decision of the Tribunal to the facts and circumstances of the case we dismiss this SLP."

This order passed by the Hon'ble Supreme Court, therefore clearly shows that the decision in O.A. 117/88 was confined to the parties in the said case and would not be available to others.

7. The applicant, D.B. Kausar submitted that this Tribunal exercises the same jurisdiction in respect of matters covered by Section 19 of the Administrative Tribunals Act as the High Court, if the said matters had continued to be cognizable by the High court. He urged that Section 21 of the Administrative Tribunals Act and the provisions of the Limitation Act 1963 are incapable of being invoked in proceedings filed under section 19 of the Administrative Tribunals Act. This plea is clearly ~~untenable~~ untenable. The provisions of the Limitation Act are not applicable since Section 21 of the A.T.Act itself provides for limitation which will govern the petitions filed under Section 19 of the A.T.Act before the Tribunal. The applicant further submitted that the Division Bench in O.A. 117/88 O.P. Khare Vs. CAG in a decision dated 13.9.91 had spurned the plea of limitation and laches raised in various paras of the counter affidavit. From a perusal of the order passed in the said O.A we only find that reference to the pleas raised by the respondents in the counter affidavit including of delay and laches were merely noted, since no discussion on that aspect or the said plea is to be found, it cannot be accepted that the said plea had been rejected. It was also urged that in the SLP against

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the said order, the plea of limitation had been raised in the context of the provisions of Section 21 of the Administrative Tribunals Act. It was submitted that the aforesaid plea nor the law points raised therein weighed with the Hon'ble Supreme court. We have already extracted the order passed by the Hon'ble Supreme court in the SLP and therefore it cannot be accepted that the order passed in the SLP rejected the plea of limitation.

8. The applicant next submited that the proposition of law laid down by this Bench in 'O.P. Khare's case should be taken to have been affirmed by the Hon'ble Supreme Court and therefore the benefit of the above judgment of the Tribunal would be available to the present applicant. The precise submission is that the Office Memorandum on the basis of which the applicant claims his seniority had not been brought to his notice earlier in effect the decision in O.P. Khare's case affords him with the cause of action for the claim in the present O.A.

9. In many recent decisions such a plea that the decision of a court or Tribunal affords a fresh cause of action to others who claim to be similarly circumstanced as the applicants whose O.As had been decided was the subject matter for decision. No doubt, in some earlier decisions the view taken was that the benefit of a decision should be extended to others similarly circumstanced and this was a principle flowing from the positions of Article 14 & 16 of the Constitution of India. The question of delay, laches and acquiscence were being ignored. However, after recent 2 decision of the Supreme court:

(i) Bhoop Singh Vs. Union of India and Ors (1992) 21 ATC pg 675 (S.C) and

Bench

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(ii) Ratan Chandra Samant and Ors. Vs. Union of India and Ors 1994 S.C.C(L&S) pg 182

Various Benches of the Tribunal have taken the view that the judgment of a court or a Tribunal does not give rise to a cause of action. The cause of action for purposes of the provisions of Section 21 of the Administrative Tribunals Act will have to be computed from the date of the order from which the relief is sought for and also the date of the order which stand in the way for the grant of the said releif and in effect their quashing would be involved. We will advert to the relevant decisions in due course.

10. The power and jurisdiction of this Tribunal is governed by the provisions of the Administrative Tribunals Act 1985. Section 21 of the Act provides for limitation. The said provision reads as under:-

> Sec. 21 LIMITATION-(1) A Tribunal shall not admit an application,-
>
> (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
>
> (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section(2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

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(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such orderx relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause(a), or, as the case may be, clause (b), of sub-section(1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section(2), an application may be admitted after the period of one year specified in clause (a) or clause(b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfied the Tribunal that he had sifficient cause for not making the application within such period.

10. The C.A.T started functioning from 1.11.1985 After the Constitution of this Tribunal the jurisdiction of the High Court and other courts(Excluding the Supreme Court) relating to the service matters of the Central Govt. employees was taken away and the same is vested

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in this Tribunal. While entertaining and deciding the disputes Petitions filed under Art. 226 of the Constitution of India, the High Court is not bound by the provisions of the Limitation Act. The subordinate courts are, however, bound by the provisions of the Limitation Act. An application before the Tribunal Under Section 19 of the Act will be governed by the provisions of Section 21 of the Act regarding limitation. The applications before us are neither writ petition under Art. 226 of the Constitution of India nor a suit filed in a civil court. The provisions of Section 21 of the Act are complete in themselves and these provisions shall have to be taken into consideration while deciding whether the application is within limitation or not. A perusal of the sub-section (3) of Section 21 reproduced hereinabove would show that it contains a provision for condonation of delay if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within the prescribed period.

11. In the present O.As ~~except for indicating~~ it has been indicated that full text of the O.Ms in question, interpretation of which is sought for, was not circulated and were notavailable. This explanation is wholly unsatisfactory. The assignment of seniority was done as back as in 1960 and several seniority lists, as can be gathered from the pleadings have been issued from time to time. The first seniority list which shows the applicant junior to Sahab Deen, respondent no.4 must have been issued ~~alongwith~~ near about the date when Sahab Deen was confirmed on the post of UDC, that date is 28.3.1963 with retrospective effect from 6.6.1961.

12. We have also noted the releifs which the applicant has sought for. The circular of the CAG quashing of which is

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sought for is dated 17.3.1960. He has sought for his notional promotion with retrospective effect from 16.5.1970 and such other reliefs, the O.A was filed on 7.3.1993 i.e. to say after a lapse of more than 20 years.

13. The Hon'ble Supreme Court in 'Bhoop Singh Vs. Union of India and Ors(Supra) made the following observation:

" It is expected of a Govt. servant who has a legitimate claim to approach the court for the relief he seeks within the 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 certain basis for years. During the interregnum those who have been working gain more experience and acquired rights which cannot be defeated casually by colateral entry of a person at a higher point without the benefit of the actual experience during the period of his absence when he chose to remain silent for years before us making the claim. Apart from the consequential benefits ofthe reinstatement without actually working, the impact on the administrative set up and 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.....

There is another good reason of the

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matter. Inordinate and unexplained delay for laches is by itself a good reason to refuse relief to the petitioner, irrespective of the merit of the claim.....

Art. 14 of the principle of non-discrimination is an equitable principle therefore any relief claimed on that basis must itself be founded on equity and not be alien to that concept. "

14. In the other decision of the Hon'ble Supreme Court in Ratan Chandra Samant's case (Supra) the petitioner before the Supreme Court were casual labourers of South Eastern Railway. They were alleged to have been appointed between the year 1964-69 and retrenched between 1975-78. They, through their writ petition filed before the Hon'ble Supreme court sought a direction to be issued to the opp. parties to include their names in the Live Casual Labourers Register after due screening and give them due employment according to their seniority. The basis for the claim amongst others were the judgments rendered in 1985 and 1987 directing the opp. parties to prepare a scheme and absorb the casual labourers in accordance with their seniority. The petitioners made a representation in 1990 to the authorities in which it was alleged that the Railway Authorities are not following the orders of the Supreme Court, High court of Calcutta and the Calcutta Bench of the C.A.T.

15. In the facts of the said case, the Hon'ble Supreme Court in the absence of an explanation having been given

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as to why the petitioners did not approach till 1990 held that two questions arise:

(i) Whether the petitioners were entitled as a matter of law to re-employment and;

(ii) Whether they have lost their right if any due to delay.

While dealing with the said questions the following observations were made:-

" Delay itself deprives of 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 looses his right as well. "

16. We may also usefully refer to a decision of the Madras Bench of the C.A.T reported in (1994) 28 ATC-20 'Tamil Nadu Divisional Accountant Association and Ors Vs. Union of India and Ors. The Madras Bench held in the said case that the judgmentof a Tribunal or for that matter any Bench of the Tribunal would not give rise to a cause of action. It is the orders of the authority concerned which had given rise to the grievance and the cause of action based upon them the limitation has to be computed Under Section 21 of the A.T. Act. The Bench held that this position of law have been clearly affirmed in the judgment of the Hon'ble Supreme court in 'Bhoop Singh's case(Supra). The Division Bench considered a delay of more than 5 years as not having been satisfactorily explained and rejected the application on the ground of limitation alone. In that case an order adverse to the applicant was passed on 14.10.86. A decision on the said order was rendered by the Chandigarh

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Bench of the Tribunal on 1.5.1991. Thereafter the applicants Association moved in the matter and made representation. 5 Years delay was held as fatal.

17. We may further take note of a Full Bench decision of the Ernakulam Bench of the Tribunal in a decision reported in (1994) 28 ATC- FB- 177. The Full Bench has also taken the view that decisions in similar cases cannot give a fresh cause of action and the period must be counted from the date the claim relates to. For this proposition reliance was placed on the Supreme Court decision in Bhoop Singh's case (Supra).

18. In a recent decision the Hon'ble Supreme Court which is reported in (1994) 28 ATC 240 'A. Hamsaveni and Ors Vs. State of Tamil Nadu and another connected with various other petitions had observed:

" Sleeping over the rights, if there were any with eyes open does not cure laches."

It was also observed that stale litigation is harmful to the society and should be put to an end with strong hand.

19. We have no reason to believe the averment made in para 21 of the counter affidavit and a few of the paragraphs that the text of the O.M. dated 22nd December, 1959 received on 17.3.1960 of respondent no.1 was widely circulated vide letter dated 23.4.1960 to all Officers/ Sections and recognised associations of the office of the respondent no.3. It has further been stated that the said O.M. was received again from the respondents no.1 which is

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letter dated 15.8.86 and again circulated widely on 29.9.86.

20. The applicant D.B. Kausar during the course of his submission before us stated that he was the author and think-tank for filing of the O.A. No 117/88 O.P. Khare Vs. CAG and Ors. His plea in his O.A that the O.Ms of the year 1949, 1959 and 1960 the interpretation of which according to him would be involved were not brought to his notice earlier is palpably erroneous and as such there is no good ground to condone the inordinate delay and laches.

21. The applicant had filed this O.A. only on 16.4.93 while as per his statement he retired from service on superannuation on 30.6.93. This petition was filed at the fag end of his service. In our opinion, we can usefully ~~refer~~ call to aid to fortify our conclusion that stale and belated claim should not be entertained, a decision of the Hon'ble Supreme court reported in (1994) 28 ATC 294 State of Tamil Nadu Vs. T.V. Venugopalan. In that case no doubt, the question of correction of date of birth and in that context the limitation provided for the same in Tamil Nadu State and Sub-ordinate service Rules have come up for consideration. Nevertheless, the paramount question involved in the said case was whether the limitation prescribed in the said service rules for seeking correction of date of birth should be strictly enforced or not, The Supreme court in the said case took the view that despite the Apex court having held that inordinate delay in making the application is itself a ground for rejecting the correction of date of birth and finding that the Tribunal or courts have unfortunately been unduly liberal in entertaining and allowing the government employees or public employees to remain in office. The

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dedision of the Tribunal in the said case by which the O.A was allowed was held to be a stark instance where the Tribunal has grossly ~~carred~~ erred in showing over indulgence in granting the reliefs.

22. In this context we may also usefully refer to a decision of the Hon'ble Supreme court reported in AIR 1974 S.C 2271' Sadashiv Swamy Vs. State of Tamil Nadu where it was held that stale and belated matters are not to be entertained to unsettle settled position.

23. The Principal Bench of the Tribunal in a decision reported in 1992(2) ATR pg 31 had observed that the law on limitation cannot be brushed aside without adequate and sufficient grounds for condoning delay. A seniority list issued in 1986 was questioned through an O.A filed in the year 1991. The O.A was dismissed on the ground of being barred by limitation and reliance was placed on the Supreme court decision in 'S.S. Rathore Vs. State of M.P. reported in 1989(2) ATR S.C. 335.

24. On a conspectus of the discussion hereinabove we are of the firm view that the O.A is barred by limitation laches and acquiscence and no good ground to condone the delay is made out. The law of limitation as laid down in Section 21 of the Administrative Tribunals Act cannot be brushed aside without assigning sufficient grounds for condoning the delay. In view of these conclusions we also do not feel to called upon to adjudicate the merit of the claim made in this and the other O.As.

25. The learned counsels for the applicants in the other O.As, which have been connected and are being disposed of by this common juagment, had advanced no submissions nor pointed out any individual facts of the O.As and have only submited that

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the O.As in which they are counsels for the applicants may be decided in terms of our conclusions in the leading O.A No. 543/93. We are therefore not indicating the particular facts of the other O.As and are deciding the said O.As on the broad questions of law including that of limitation, delay and laches.

26. On a conspectus of the discussion hereinabove, all the O.As are dismissed with Rs.500/- as costs in each of the O.As payable to the respondents by the applicants.

Member(A) Vice Chairman

Dated : 31st Jan 1995