

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.329 of 2006

Allahabad, this the 2nd day of March, 2008

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)

Baleshwar Nath Srivastava
S/o Late Krishana Nand
141-142 Gangotri, Havelia,
Jhunshi, Allahabad.

...Applicant.

(By Advocate : Shri Rajiv Verma
Shri R. Tripathi

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Expenditure, New Delhi.
2. The Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi-110002.
3. The Accountant General (A&E) I U.P. Allahabad.
4. The Principal Accountant General (Audit) I U.P. Allahabad.
5. The Accountant General (Audit) II U.P. Allahabad.

...Respondents.

(By Advocate : Shri A. Sthalaker)

O R D E R

By Hon'ble Mr. A.K. Gaur, Member (J)

Through this OA the applicant has claimed the following reliefs:

- "(i) Issue order or direction quashing the impugned order dated 11.9.1984, placing the Junior Section Officer in the Higher post of Selection grade and order dated 28.3.2005 not to promote the applicant on the post of the selection grade officer by the respondent No.3.
- (ii) Issue order or direction commanding the respondent No.3 to promote the applicant on the

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post of the selection grade section officer in the scale of Rs.775-1000 pay scale with effect from 1.3.1984.

- (iii) Issue order or direction, directing the respondents to pay all emoluments along with other consequential benefits regarding salary, gratuity and pension from the date of 1.3.1984.*

2. The grievance of the applicant is that several junior persons to him have been promoted, whereas the case of the applicant for promotion has not been considered by the respondents. The applicant has already retired from the post of Senior Audit Officer on 30.09.2001 from the office of the Accountant General (Audit II) UP Allahabad. The applicant has passed the Subordinate Accounts Service Examination in November 1975 of the Indian Audit and Accounts Department, as was promoted in the scale of Rs. 500-20-700 EB-25-900 as Section Officer on 25.07.1979. It has been contended by the applicant that with a view to improve the quality of works and efficiency of the employees in the office of the Comptroller and Auditor General of India, it has been decided to reorganize the combined Audit and Account office in two separate organization i.e. (i) Accounts and Entitlement office and (ii) Audit offices under the Accountant General with their own cadres. The service conditions of the employees of the separated offices i.e. Accounts and Audit cadres are being laid down and procedure prescribed for promotion and other matters have been notified by the Accountant General I UP Allahabad vide letter dated 20.12.1983 to be effective from 01.03.1984. In order to give effect to the said

scheme notified vide A.G's order dated 20.12.1983 of bifurcation of the department and placing of the officers and staff, the criteria followed by the department was (1) preference of the employees (2) Seniority as on 01.03.1983. The respondents had prepared a list and the petitioner was allocated Accounts and Entitlement of AG UP Allahabad on 01.03.1984 and kept in waiting list at Sl. NO. 56 of Section Officer cadres for onwards transfer to Audit Office. Vide order dated 11.09.1984, 23 Section Officers were promoted as selection grade section officer in the scale of Rs. 775-35-880-40-1000, which has been filed as Annexure 1 to the OA.

3. The grievance of the applicant is that while making promotion in the selection grade section officer (Accounts) out of 23, 13 section officers junior to the applicant were empanelled and promoted. The seniority and the experience of the applicant has illegally and arbitrarily been ignored, and as such the applicant could not be promoted inspite of being eligible to the promotion on the post of the selection grade section officer. The applicant has also named Sri Om Prakash Khare whose seniority in gradation list as on 01.03.1983, was at Sl. No. 177 and who happens to be much more junior to the applicant. The applicant has already filed Civil Misc. Writ Petition No. 6743/84 before Hon'ble Allahabad High Court for redressal of his grievances that number of junior

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persons have been promoted and the case of the applicant could not be considered by the respondents. After coming into force the A.T. Act, 1985 this matter was transferred to this Tribunal and numbered as TA 241 (T) of 1987, O.P. Khare Vs. Union of India and others. According to his own admission the applicant represented AG UP, Allahabad in the year 1994 through proper channel. But the office did not reply the same. The applicant met personally with the competent authority but the respondents have taken no action. The applicant also submitted representation in the year 2003 before the Accountant General (A&E) I) UP but the authority kept silent over the genuine grievance of the applicant. The applicant finally submitted the entire matter before the Comptroller and Auditor General of India alongwith the judgment and order of this Tribunal dated 31.08.1992 of Sri O.P. Khare Vs. U.O.I. & Ors passed in TA 241(T)/87 with the prayer to give him the scale of section officer w.e.f. 01.03.1984 on the basis of seniority of the applicant. Vide letter dated 28.03.2005 the competent authority informed the applicant that after careful consideration of all facts, it has been decided that the applicant has no claim for grant of selection grade section officer w.e.f. 01.03.1984 and rejected the representation dated 07.01.2003. In support of the OA the applicant has also filed Civil Misc. Delay Condonation Application No. 1932/06.

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4. Sri S.K. Pandey brief holder of Sri Amit Sthalekar learned counsel for the respondents at the very outset raised 03 preliminary objections i.e. OA is highly time barred and no reasonable and plausible explanation has not been give by the applicant. Respondents' counsel also submitted that the relief claimed by the applicant seeking direction to promote the applicant on the post of selection grade section officer in the scale of Rs. 775-1000 w.e.f. 01.03.1984 is barred by principle of latches and delay. Respondents' counsel has submitted that the applicant has retired after attaining the age of superannuation in the year 2000, but has approached this Tribunal in the year 2006 after inordinate delay and the explanation offered in the delay condonation application is not at all convincing. The applicant in his representation dated 07.01.2003 also referred the case of O.P. Khare. Sri O.P. Khare was allowed selection grade in the grade of Section Officer in compliance of the direction of this Tribunal vide judgment dated 31.08.1992 in TA 241/87. Further on filing SLP by the department before the Hon'ble Supreme Court against order dated 31.08.1992, the Hon'ble Apex Court vide its judgment and order dated 24.02.1994 in Civil Appeal No. 4036/93 clearly observed that the relief granted by the Tribunal Allahabad Bench, will be confined to Sri O.P. Khare only, without pronouncing the question of law.

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5. Learned counsel for the applicant on the other hand submitted that the grievance of the applicant comes within the purview of recurring cause of action and in support of his contention he has relied upon the judgment in 1995 (5) SCC 628 : *M.P. Gupta Vs. Union of India and others.*

6. We have carefully considered the arguments advanced by the learned counsel for the applicant and in our considered view the grievance of the applicant does not come within the purview of recurring cause of action as the applicant is seeking promotion with retrospective effect quo his juniors. The Hon'ble Supreme Court in its decision rendered in *JT 2002 (5) SC 367 E. Parmeshwara Vs. Union of India and others* held that even in continuing cause of action the OA can be dismissed on the ground of delay and laches. Learned counsel for the respondents has placed reliance on the decision rendered by Hon'ble Supreme Court in *AIR 1976 SC 1639 and 2617* in order to buttress the contention that filing of several representations will not grant benefit of limitation. Learned counsel for the respondents also placed reliance on *2006 (12) Scale 347, UP Jal Nigam's case* and *2006 (4) SCC 322 Karnataka Power Corporation Vs. K. Thangappa*, the Hon'ble Apex Court has clearly held that, "it is trite law that the discretionary juniors may not be exercise in favour of those who approached the Court after inordinate delay. The delay and

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latches are the relevant factor for exercising jurisdiction."

7. In view of the aforesaid decision of the Hon'ble Supreme Court the OA deserves to be dismissed on the ground of delay and latches.

8. Learned counsel for the respondents further contended that the applicant had retired from the department in the year 2001, but he did not approach this Tribunal earlier as such we are satisfied that the OA is not maintainable on the ground of delay and latches. We may also observe that in view of the decision of Hon'ble Supreme Court in 1976 SCC (L&S) 115, *Malcam Lawarnce Desuja Vs. Union of India and others* the seniority list cannot be challenged after a long lapse of time. The Hon'ble Supreme Court in his latest decision given in 2007 AISLJ 73 *Andhra Pradesh Public Service Commission Vs. K. Sudarshan Reddy* held that settled seniority may not be upset after long lapse of time. Learned counsel for the respondents placed reliance on the decision of Hon'ble Supreme Court in 2006 SC (L&S) 1105 *H.K.P. Sudarakara Vs. State of Kerela* and contended that the prayer of the applicant whose seniority was wrongly determined long ago may not be challenged by filing the OA. In view of the settled principle that the settled seniority may not be unsettled after a long lapse of time.

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9. Learned counsel for the respondents would further contends that a large number of persons referred to in paragraph 4.8 and 4.9 of the OA have been promoted as selection grade section officer's, but the name of the applicant has not been considered by the respondents illegally and all those juniors have not been impleaded as one of the respondents in the case. Sri S.K. Pandey brief holder of Sri Amit Sthalekar learned counsel for the respondents' has relied upon the decision of the Hon'ble Supreme Court in the following cases:

- a. 2006 (6) Scale 167 K.H. Siraj Vs. High Court of Kerela
- b. 2001 (5) JT 42
- c. 2000 SCC (L&S) 845

The aforesaid decisions were referred to in order to buttress the contention that those persons who are allegedly junior to the applicant have not been impleaded as one of the respondents in the OA and the OA deserves to be dismissed on this ground alone.

10. We have carefully considered the arguments advanced by the learned counsel for the respondents on the point of non impleadment of juniors in the OA and in our considered view, non impleadment of those juniors, as one of the respondents the OA may not be dismissed.

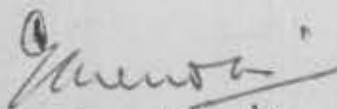
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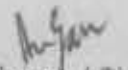
11. We have given our anxious thought to the preliminary objection raised by the respondents' counsel on the ground of delay and laches and challenge of seniority list after a long lapse of time and claim of promotion at such belated stage. We find force in the argument of the respondents' counsel and in view of our observation as above the OA filed by the applicant is liable to be dismissed on both these points.

12. As the applicant has failed to indicate any reason or plausible explanation for condonation of delay, we dismiss the OA.

13. There shall be no order as to costs.


Member (A)

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Member (J)