

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX DEE XXXX~~

CAT/J/12

O.A. No. 285 OF 1986.
~~XXXXXX~~

DATE OF DECISION 27-8-1990.

V.L. MUNJANI Petitioner

MR. J.J. YAJNIK Advocate for the Petitioner(s)

Versus

THE CHAIRMAN, ISRO & ORS. Respondent s.

MR. J.D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. N.R. CHANDRAN, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

V.L. Munjani,
Tradesman 'D',
136, Vidyaganar, Ambawadi,
Ahmedabad - 380 015.

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..... Petitioner.

(Advocate: Mr.J.J. Yajnik)

Versus.

1. The Chairman,
ISRO, District Office Road,
Campa Ghoda Road,
Bangalore - 9.

2. The Director, SAC
Jodhpur Tekra,
Ahmedabad.

..... Respondents.

(Advocate: Mr.J.D. Ajmera)

J U D G M E N T

O.A.No. 285 OF 1986

Date: 27-8-1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

This Original Application has been filed
for the following two reliefs :

"(A) to regularise the appointment of the petitioner as Tradesman 'B' with effect from 29-5-1978 i.e. from the date of his appointment as Tradesman 'A' and to place him in the grade of Rs. 320-400 from the said date. Further to promote him to the grade of Rs. 380-560 with effect from 1-4-1982 accordingly - the date of promotion as Tradesman 'B' forthwith."

"(B) to confer upon the petitioner all benefits, such as fixation of salary, promotion, arrears of salary, seniority etc. on the basis that the petitioner was appointed as Tradesman 'B' with effect from 29-5-1978 and was promoted to the grade of Rs. 380-560 on 1-4-1982, immediately."

2. According to Section 21(2)(a) of the Administrative Tribunals Act, 1985, this Tribunal can exercise jurisdiction with regard to a grievance which 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 order relates. The Tribunal was established on the 1st November, 1985. Counted backwards from that date, the relief for appointment as Tradesman B with effect from 29.5.78 is with regard to a grievance which arose about seven years and six months before the Tribunal came into existence. The relief for appointment as Tradesman B with effect from 1.4.1982 is about ^a cause which arose about three years and seven months before the Tribunal came into existence. Relief (A) thus cannot be taken up for adjudication as it is absolutely time barred. Relief (B) which is consequential to relief (A) cannot be adjudicated for similar reason. In any case, the alleged discrimination with similarly situated persons started in 1983 only and not from 29.5.1978, the date of his appointment ^{as} would be seen hereafter. The causes of action did not exist before 1983. The applicant had filed M.A.No. 388/88 on 21.4.88 for condonation of delay. We note that this M.A. was filed not only after Tribunal's order dated

13.8.86 admitting the application, but also after the applicant submitted written arguments on 25.1.88 and the respondents on 1.2.1988. According to Tribunal's order dated 10.5.1988, this M.A. was directed to be placed alongwith the main case on the date of final hearing and again on 12.4.1989 order in the same terms was passed and the M.A. disposed of. In this M.A. the delay is explained only from 12.9.1983, the date the applicant submitted his representation. The M.A. is equivocal even regarding the delay from 12.9.1983. In its some parts is averred that there is no delay and in some other parts case law has been cited (Collector, Land Acquisition Vs. Musamabit Katiji & Ors. AIR 1987 SC 1350 and Mohatta Bros. Vs. Chaturbhuj Chimanlal & Ors., 23(1)GLR, 585) to support the condonation prayer. The averments in the M.A. are that it was for the first time in 1983 that the applicant came to know that he was being discriminated with similarly situated persons M.G. Radhanpuri, A.D.Christian and D.N. Pandya that he submitted his representation dated 12.9.1983. The M.A. is therefore for condonation of delay from 1983 only. The respondents did not resist the M.A. by filing reply. However, in their reply to the O.A., the respondents resisted admission on grounds of limitation. A connected objection of the respondents figuring in their reply is that the applicant has not exhausted the other remedies available to him. But what the same are and how

the applicant's representation dated September 12, 1983 to which the respondents replied on February 5, 1985 does not serve the purpose of exhausting other remedies is not explained by the respondents. Therefore, their objection on this ground is not acceptable and is not accepted. With cause of action arising in 1983, both condonation of delay and any relief to the applicant if it falls due can be with relation to the year 1983 only. As the respondents' reply to the representation is dated February 5, 1985, the O.A. filed in August 1986 has been filed after about a year and six months from the date of the respondents' reply. In terms of Section 21(1)(a) of the Administrative Tribunals Act, the application should have been filed within one year from February 5, 1985. It has been filed about six months late. We condone this delay in the interests of justice.

3. The respondents appointed the applicant as Tradesman A on 29.5.78. After about five years in 1983, the respondents appointed as Tradesman B, one rank higher than Tradesman A, the three persons whose names have been mentioned above who possessed the same technical qualification as the applicant. However, before their appointment the applicant had already been promoted as Tradesman B in the normal course with effect from 1.4.1982. Nevertheless he represented on September 12, 1983 (Annexure B) that he should also have been and be appointed as Tradesman B with effect from 29.5.1978 as the three

candidates were so appointed in 1983 which representation the respondents turned down by their reply dated February 5, 1985 (Annexure A) on grounds that the applicant's technical qualification SSC ITI (Electroplating) does not figure in the list of Matric ITI trades contained in ISRO's order of 25.8.1976. The applicant was further promoted as Tradesman D in the normal course with effect from 1.10.1985. The applicant pursued his grievance in the JCM meeting held on 5.2.1986 at Ahmedabad when Mr. S.S.Vaidyanathan, Joint Secretary, Department of Space, took the following stand it is figures in the minutes of the meeting (Annexure K):

"The ISKM representatives discussed the case of Shri Munjani. It was explained by Joint Secretary that Shri Munjani's case was correctly treated by SAC, whereas the two promotions made later were wrong. The ISKM representatives did not accept this position and stated that the subsequent two promotions made in SAC treating electro-plating trade as metric trade were correct. Joint Secretary did not agree with the representatives and pointed out the ISRO norms in this regard. At this stage, the ISKM representatives pointed out that even when Shri Munjani's representation was pending with the Administration, another person having ITI Electroplating was promoted as 'T' man 'L'. They pointed out that the subsequent promotions are according to norms and Shri Munjani's case also deserves to be considered in the same manner. Joint Secretary explained how under the norms of ISRO Shri Munjani's case cannot be reconsidered and how the Department is already seized of the actions to be taken for the wrong promotions done by SAC. He further explained to them the repercussions in ISRO in case Shri Munjani's case is reopened. After discussions he agreed to present the case before Chairman after discussions with Shri S.S.Rajan also."

(emphasis provided)

This admission of mistake came to be repeated by the respondents in para 3.4 of their reply dated 20.10.86 in the following words :

"It may be stated that 3 persons with ITI in Electroplating trade have been appointed in the grade of Rs. 320-400 in the year 1983 by mistake.....
It is further submitted that those 3 persons who have been given the grade of Rs. 320-400 have already been promoted to further higher posts. Therefore even in case the mistake is rectified, it would create many other complications."

and in para 3.5 in the following words :

"Referring to paragraph 3.6 of application, it is submitted that appointments of S/s. Dipakkumar N. Pandya, A.D. Christian and M.G. Radhanpuri, to the posts of Tradesman-D (Rs. 320-400) was done due to mistake. The applicant can not claim benefit on the basis of that mistake done in respect of other persons."

The respondents remained steadfast in their above stand in their written arguments also para 6 of which says :

"It is further submitted that if by any inadvertance or by any mistake any employee has been given a grade of Rs. 320-400/- in 1983 which is I.T.I. in Electroplating, then the applicant cannot expect that the respondent authorities should commit the same mistake in his case also. It is further submitted that those persons subsequently have been promoted to further higher posts."

The ISRO's order dated 25.8.76 which did not include Electroplating, the technical qualification of the applicant, in its Matric trades as a result of which the applicant was appointed as Tradesman A can also not be questioned at this juncture as suffering from any alleged infirmity with retrospective effect of 10 years to give benefit to the applicant of appointment as Tradesman B with effect from 29.5.1978.

This order was the same in 1983 also. The respondents acted in derogation thereof by mistake. This situation cannot provide the applicant justifiable ground to agitate that by the mistake that too the order stood revised and not only from 1983 but retrospectively from 1976 or 1978. We find the applicant's pleadings and submissions in this regard devoid of all merit.

4. The respondents' only objection to giving the same treatment to the applicant as given to the three appointees as Tradesman B in 1983 as above is that the mistake which they committed in regard to these three appointees cannot be pressed for repetition in case of the applicant. This objection of the respondents is untenable seen with reference to 1983 as the time of the mistake and the fact that they, despite their being made aware in the applicant's representation dated September 12, 1983 about the mistake, took no steps to correct it. The applicant did not leave the respondents to persevere in their mistake. Equity therefore does not allow the respondents to deny the applicant from asserting his service rights from 1983 which arise from the respondents mistake committed in 1983.

5. In the case of P.K. Ramchandra Iyer Vs. Union of India, 1984 SCC(L&S) 214, on slightly different but resembling facts about one of the petitioners Dr. Gupta, the Supreme Court observed that :

"32. The present position however is that the post of Senior Biochemist has been abolished. Undoubtedly, respondent 6 by undeserved benefit of improper selection has scored a march over his colleagues in the matter of pay-scales to which he would not be entitled. Petitioner Dr. Gupta was put in the scale of Rs. 1100-1600 in 1978 while respondent 6 Dr. Mehta was put in that scale in 1980 that is two years after the petitioner. By the illegal selection respondent 6 has reached the scale of Rs. 1800-2250 while Dr. Gupta is in the scale of Rs. 1500-2000. Respondent 6 Dr. Mehta is enjoying this utterly undeserved benefit consequent upon his unsustainable selection as Senior Biochemist."

"33. Now that the post of Senior Biochemist is abolished, how do we redress the wrong ? At the hearing of this petition, it was suggested to the respondents to put both Dr. Gupta and Dr. Raman whose case will be presently examined in the scale of Rs. 1800-2250 from the date respondent 6 Dr. Mehta has been elevated to that scale. That is the only way for securing justice to Dr. Gupta and he is entitled to it."

6. A.D.Christian was, from the appointees as Tradesman B of 1983, the first to be so appointed on 18.6.1983. As the applicant had already been promoted in the normal course to that rank with effect from 1.4.1982, there remains no reason to grant any relief to the applicant with regard to his appointment as Tradesman B vis-a-viz A.D. Christian. A.D.Christian was promoted as Tradesman D with effect from 1.4.1986. The applicant was promoted as Tradesman D with effect from 1.10.1985. Thus even with regard to the next promotion, as the applicant was promoted before A.D. Christian no ground exists for ordering any relief vis-a-viz the further promotion of A.D. Christian.

7. Thus the applicant succeeds in principle, namely that the respondents having committed the mistake in making the three appointments in 1983 and having persevered in the mistake despite the applicant's representation dated September 12, 1983, the respondents were dutybound to extend the benefit of the mistake to the applicant also from the date the mistake was committed. But, as explained above, there is no ground for passing any orders for any consequential reliefs.

8. We hereby decide this application as above.

N.R.Chandran

(N.R. CHANDRAN)
Judicial Member.

M. M. Singh
27/8

(M.M. SINGH)
Administrative Member.