

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
NEW DEEPOK

O.A. No.
KAXXNX

337

1986

DATE OF DECISION 08-09-1989.

Shri Pravinsinhji H. Jethwa Petitioner

Party in Person

Advocate for the Petitioner(s)

Versus

Union of India & Others.

Respondent

Mr. J.D. Ajmera for Resp. No. 1

Mr. Anil Dave for Resp. No. 2

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi : Vice Chairman

The Hon'ble Mr. P.M. Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(9)

1. Shri Pravinsinhji H. Jethwa
 I.P.S. (Retd),
 5, Wadi Plot,
 Pravinniwas,
 Porbandar. ... Petitioner

(Advocate : Mr. P in P)

Versus

1. Union of India & Others
 The Secretary,
 Ministry of Home Affairs,
 New Delhi.

2. Shri R.V.Chandramauli, IAS
 Chief Secretary,
 Govt. of Gujarat,
 Gandhinagar. ... Respondents

(Advocate : Mr.J.D. Ajmera for Resp.No.1
 Mr. Anil Dave for Resp. No.2)

JUDGMENT

O.A. 337 OF 1986

Date: 08-09-1989

Per : Hon'ble Mr.P.H. Trivedi : Vice Chairman

The petitioner has raised the claim regarding his year of allotment having been erroneously fixed and his representation in this regard having been wrongly rejected by Ministry of Home Affairs by its memo dated 12-8-1983 and subsequently by its memo dated 20-4-1985. The petitioner claims that if the deemed date of absorption as Deputy Superintendent of Police as fixed by the former Bilingual state of Bombay and if the break in service as mentioned in Exhibit - A were taken into account he would be entitled to reckon his service as Deputy Superintendent of Police in the former state of Porbandar and thereafter in the erstwhile state of Saurashtra. Until the Notification dated 7-2-1966 continuous service as D.S.P. was not required for the criterion to be followed as laid down under Rule 4 of I.P.S. (Appointment by Promotion) Regulations, 1955 and accordingly if the petitioner's case had been examined

(10)

- 3 -

without erroneously applying the test of continuous service the petitioner would have been given an year of allotment earlier much than the one given earlier. The petitioner admittedly has retired but presses his claim on account of retirement benefit like pension etc. The petitioner who could not be present on account of his health waived personal hearing.

2. Learned advocate Mr.J.D. Ajmera for the respondent was heard. The respondents has stated that the petitioner's representation regarding an earlier year of allotment claimed by him were duly considered and rejected by the Government by its letter dated 20-4-1977 and subsequently when the petitioner repeated the representation by the Government's decision conveyed by letter dated 29.12.81. The reasons for rejection were also conveyed to the Government of Gujarat as well as to petitioner by letters dated 1.3.1982 and 26.11.1982 and finally by letter dated 25.6.85 the Government of Gujarat was informed that the representation of the petitioner dated 11.9.1985 was rejected and the Government of Gujarat was asked to inform the petitioner that unless there are fresh grounds to justify reconsideration and the representation is forwarded through the Government of Gujarat further representations from the petitioner would not be entertained in future.

3. The petitioner was appointed on a regular basis as D.S.P. with effect from 11-5-1956 and completed 8 years of service on 11-5-1964 as stated by the respondent in para - 5 of the counter. The petitioner was eligible for consideration for inclusion in the select list in 1965 only in accordance with Regulation 5 of the I.P.S. (Appointment by promotion) Regulations, 1955. The petitioner's presumption that his name would have been included in the select list of 1962 to 1964 is baseless, according to the respondents' case. During this period he was not eligible for consideration. In 1965 the petitioner name was in fact considered by

R.M.

the Selection Committee but he was not found suitable for inclusion in the list at that time. The petitioner was included in the select list in 1966. His officiation in the cadre post was approved under Rule 9 of the I.P.S. (Cadre) Rules, 1954 from 11-3-1969 till his appointment to the I.P.S. and according to the respondent he had been correctly assigned 1963 as his year of allotment in accordance with Rule 3 (3) (b) of the I.P.S. (Regulation of Seniority) Rules, 1954. The petitioner's contention that two officers viz. Shri T.S. Rao and M.M. Mehta who were working under him, were placed above him in the gradation list is replied to in the counter by explaining that these two officers were Direct Recruits and their cases stood on a different footing. In case of direct recruit the year of allotment is fixed with reference to the year of their examination under Rule 3 (3) (b) of the I.P.S. (Regulation of Seniority) Rules, 1954 and the direct recruits are initially appointed in the junior scale and after completion of 4 years of service or so, are considered for the senior scale whereas the promotee officers are appointed to a senior scale post after his inclusion in the I.P.S. or even prior to that when he is posted against cadre posts on officiating basis. Similarly the case of Shri I.C. Vaishnav with whom the petitioner compares his case is sought to be distinguished by the respondents on the plea that the petitioner's presumption is that his name should have been included in the select list of 1962 to 1964 but as earlier stated he is not entitled to be inclusion in those select lists.

Re

4. The respondents have strongly urged that under Section 21 of the Administrative Tribunals Act this case cannot be entertained by the Tribunal because a cause of action having arisen in 1977 and even repeated representations in this regard having been disposed of as stated earlier.

the petitioner cannot be allowed to extend the period in which he can agitate the case before the Courts by repeating the grievances in the representations. The petitioner has not filed any application for condonation of delay. The respondents have relied upon; Husensing Vs. Lt. Governor, 1986 (3) S.L.R. 759, (2) A.T.R. 1986, C.A.T. 28 and (3) A.T.R. 1986, C.A.T. 203 V.K.Mehra Vs. Ministry of Information and Broadcasting (Principal Bench, New Delhi).

3. We are satisfied that in this case the Tribunal has no jurisdiction to entertain it and the grievances having arisen prior to 1982 it is not even within our discretion to do so. We find that the petitioner was allowed full opportunity to represent his case before the competent authority. We find that the respondents have further appended a telex dated 30-6-1988 in which they have stated that in view of the Notification dated 7-2-1965 substitute the word continuous for counting the period of qualifying service the petitioner's service rendered by him in the former state of Saurashtra was not counted for purpose of seniority in I.P.S. and inclusion of his name in earlier select list.

4. Accordingly we do not find that grounds raised in the petition can be agitated before this Tribunal and is rejected. No order as to costs.

Ranbir
(P.H.Trivedi)
Vice Chairman

Joshi
(P.M.Joshi)
Judicial Member