

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A 434 of 1993

Date of Decision : 17.07.2001

Mr. R. C. Pandya : Petitioner (s)

Mr. P. H. Pathak : Advocate for the petitioner [s]

Versus

Union of India and Ors. : Respondents(s)

Mr. B. N. Doctor : Advocate for the respondent [s]

CORAM :

THE HON'BLE MR. A. S. SANGHVI : MEMBER [J]

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER [A]

JUDGMENT

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

R. C. Pandya
Asstt. Head Record Officer,
RMS-SR Division,
Rampura Badatvadi
Surat - 395 003.

- Applicant -

Advocate : Mr. P. H. Pathak

Versus

1. Union of India
Notice to be served through,
Chief Postmaster General,
Gujarat Circle,
Khanpur, Ahmedabad.
2. Regional Postmaster General,
Pratapgunj,
Nr. Vikrambag Colony,
Vadodara - 2.
3. Sr. Supdt. of R.M.S.,
'W' Division,
Pratapgunj,
Nr. Vikrambag Colony,
Vadodara - 2.
4. H. K. Kanani
Asst. Head Record Officer,
Headquarter Office
Vadodara.

- Respondents -

Advocate : Mr. B. N. Doctor

JUDGMENT
O.A 434 of 1993

Date : 17/07/2001

Per Hon'ble Shri. A. S. Sanghvi : Member [J].

The applicant who was serving as a Sorting Assistant at Baroda is aggrieved by the action of the respondents in not confirming him in the service with effect from 1.3.85 and has prayed that the respondents be directed to grant the benefit of confirmation to him from the date when his junior was granted with all consequential benefits. According to the applicant, after he joined the duty w.e.f. 20th Sept., 1960, there was no complaint or any adverse remark against him till 1985-86. For the first time in the year 1985-86, adverse remarks were made in his C.R. and according to the applicant they were passed due to the prejudicial mind of the respondent no.3. He has complained that he had not been given any opportunity of being heard before passing such adverse remark. Further grievance of the applicant is that the adverse remarks for the year 1985-86 ought not to have been considered to be adverse at the time of his confirmation. The DPC which met for considering the question of confirmation, did not find him fit on account of the adverse remarks passed against him for the year 1985-86. This was the last DPC which met for confirmation as thereafter the Govt. had amended the rules appropriately and the requirement of formal order of confirmation is dispensed with. However, due to the irregularity on the part of the respondents, he is made to suffer and the junior to him i.e., respondent no.4 is confirmed w.e.f. 1.3.85 and granted

consequential benefits of promotion etc., while the applicant not having been confirmed is deprived of further consequential benefits. In para 3 of his O.A the applicant has stated that the confirmation of the respondent no.4 in the year 1985 was not known to the applicant nor any such document or letter were communicated by the respondent but for the first time in the year 1988 when the respondents circulated the seniority list the applicant came to know about the confirmation of his junior. He therefore immediately informed the respondents that there was no justification in not confirming him and confirming the junior prior to him. A representation moved by him had remained unanswered. The applicant had thereafter addressed another representation on dated 29.6.91 to the Chief Postmaster General and the same was disposed of by the office of the Chief Postmaster General vide his letter dated 31.7.91 informing the applicant that his case was considered but he was not found fit by the DPC for confirmation. According to the applicant on 1.3.85 when his junior was considered as fit and given confirmation, there was no adverse remarks in his CR and there was nothing against him which would have justified the DPC to refuse confirmation to him. According to him, this is a clear case of non-application of mind and therefore the action of the respondents in not confirming him be set aside and the respondents be directed to confirm him with effect from the date his junior is confirmed.

2. The respondents have resisted the O.A and in their reply contended inter alia that the applicant was confirmed as a Sorting

Assistant w.e.f. 1.3.63 and was officiating as Accountant since 28.1.75. He was thereafter promoted in LSG grade as AHRO vide order dated 31.3.84 and posted as AHRO, Rajkot. The respondents have also contended that on promotion as AHRO (LSG Grade) the convince applicant was placed on probation period of two years and hence his case for confirmation was taken up for consideration after his completion of the probation period i.e., after 30th April, 1986. The DPC for confirmation was held on 2.12.87 and as per the Directorate Memo dated 30th November, 1963 and 6.4.1966 the assessment of the performance of the applicant of last five years was taken into consideration. Since the applicant had received adverse remarks for the year 1985-86, which were communicated to him on dated 28.4.86, the DPC had assessed him as unfit for confirmation. They have also contended that the applicant had not represented against the adverse remarks and therefore the adverse remarks had become final. It is also contended by the respondents that the O.A is barred by limitation as the applicant is seeking to reopen the confirmation case after a period of 8 to 9 years. It is also contended that subsequent representation dated 29.6.91 was preferred by the applicant only to bring his case within limitation and this representation does not extend the period of limitation. The respondents have prayed that the O.A be dismissed with costs.

3. We have heard the learned advocates of both the parties. Mr. B.N. Doctor, learned advocate appearing for the respondents has at the outset submitted that he is raising the question of limitation as a preliminary objection to the maintainability of the O.A. He has

pointed out that the Supreme Court in the case of S.S. Rathod Vs. State of M.P. reported in 1990 SC 10, has held that the question of limitation be decided first and only thereafter the question of merit be considered. Referring to the relief clause in the O.A as well as the column of limitation, Mr. Doctor has submitted that the applicant had contended in the O.A that the O.A was within the limitation though the cause of action as per the relief clause has accrued to the applicant from 1.3.85, when he was not confirmed in the said post. The O.A filed in 1993 is therefore clearly barred by limitation as Section 21 of the Administrative Tribunals Act prescribes the limitation of only one year.

4. Mr. Pathak, learned advocate for the applicant on the other hand has submitted that the O.A is already admitted and hence the question of limitation does not survive. He has further submitted that the applicant is not challenging the adverse remarks but challenging the action of the respondents to place him on probation of two years. According to him, the representation of the applicant was replied by the respondents only on dated 15.1.93 and since the decision was conveyed to the applicant only on 15.1.93, the cause of action for filing this O.A had arisen for the applicant only on 15.1.93. The O.A is therefore within limitation.

5. So far the first contention of Mr. Pathak that O.A is admitted and hence the question of limitation does not survive, we may point out that mere admission of the O.A does not extinguish the question of limitation as at the time of admission of the O.A, that

question was not decided by the Tribunal. Furthermore, from the proceedings of this O.A it becomes quite obvious that the question of limitation was kept open for decision by the Tribunal at the time of admission of the O.A. The proceedings of 2.9.93 reveal that notice was directed to be issued to the respondents on admission to file reply on admission and it was also observed that perusing the Annexures, the question of limitation would arise. It is pertinent to note that in reply the respondents have raised the question of limitation and this question was not decided by the Tribunal at the time of admission of the O.A. Hence it is open for the respondents to raise that question at the time of final hearing, more so, when no application for condonation of delay is also moved by the applicant. Since from the pleadings itself, the question of limitation arises, the O.A could not be decided on merit without first deciding the question of limitation. In the case of Rameshchandra Sharma Vs. Udhamp Singh reported in 1999 (5) SLR 654, referring to the question of time barred O.A in the context of the provisions of Section 21 of the Administrative Tribunals Act, 1985, the Supreme Court has observed as under :-

"7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21 (3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this stage. In our opinion, the O.A filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21 (1) of the Administrative Tribunals Act, 1985. The law in this behalf (-sic-) settled, see Secretary to Government of India and others V. Shivram Mahadu Gaikad, 1995 Supp. (3) SCC 231 : [1995 (6) SLR 812 (SC)]."

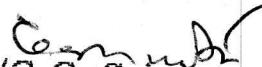
This decision squarely answers the contention of Mr. Pathak that the question of limitation does not survive. The Supreme Court has in uncertain terms laid down that the Tribunal should first decide the question of limitation and will not be right in deciding the O.A on merit over looking the statutory provisions of Section 21.

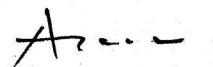
6. Considering the facts of the case in the light of the contention regarding limitation, we find that the grievance of the applicant is that he was not confirmed w.e.f., 1.3.85 though his junior was confirmed w.e.f., 1.3.85. In para 3 of the O.A, it is mentioned by the applicant that he had no knowledge about the confirmation of the respondent no.4 in the year 1985 but he had come to know about the same for the first time in the year 1988 when the respondents circulated the seniority list. Assuming for the sake of argument that the applicant had come to know for the first time in 1988 that he was not confirmed but his junior was confirmed then also the cause of action for filing this O.A challenging the confirmation of his junior and also challenging his own non-confirmation had arisen for the applicant in the year 1988. The grievance of the applicant is that the DPC which met in the year 1986 had unauthorisedly and arbitrarily considered adverse remarks of 1985-86 though the DPC was required to consider the five years record prior to 1.3.85. This grievance as well as the relief prayed for by the applicant in this O.A leave no room for doubt that the cause of action for this O.A had arisen in the year 1986 or at the most in the year 1988. Significantly, the applicant had

represented on 2.3.88 and after the representation was turned down on 5.4.88, he had sat silent for three years. He suddenly woke up on 29.6.91 and addressed a representation to the Chief Postmaster General seeking confirmation w.e.f. 1.3.85. This representation was replied to by the authorities on dated 15.1.93 and considering this reply to be giving rise to a fresh cause of action, the applicant has filed this O.A. It is quite obvious that the representation dated 29.6.91 was sent by the applicant with a view to bring his case within the limitation. It is a settled position of law that repeated representations do not extend the period of limitation and that the cause of action for filing the O.A arises only when the first representation is decided. Since the first representation of the applicant was decided by the respondents in the year 1988, the cause of action for filing this O.A had arisen for the applicant only in the year 1988. The applicant has not moved any delay condone application. On the contrary, he has asserted that the application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act. We are unable to agree with the averments made by the applicant in his O.A. We find that the O.A is barred by limitation as the same has not been preferred within one year of the accruing of the cause of action to the applicant.

7. In view of our finding that the O.A is barred by limitation, we are not entering into the consideration of the merit of the case. The Supreme Court in the case of Ramesh Chandra Sharma (Supra) has held that it will not be proper for the Tribunal to decide the O.A

on merit when the same is barred by limitation. Under the circumstances, we hold that the O.A being barred by limitation, the same deserves to be rejected. In the conclusion therefore we reject the O.A with no order as to costs.


(G.C. Srivastava)
Member (A)


(A.S. Sanghvi)
Member (J)

MB

FORM NO : 21
(See, Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

OA/TA/RA/CPL 434/93 of

R. C. Pandya APPLICANT (S)

VERSUS

U.O. & S. S. RESPONDENT (S)

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FORM NO : 21
(See, Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

OA/TA/RA/CPL 17/12/93 of

APPLICANT (S)

VERSUS

C. Patel RESPONDENT (S) 17/12/93

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FORM NO : 21
(See, Rule 114)

Certified that the file is complete in all aspect

P. B. S. S.

M.

Signature of S.O. (J)

Signature of
Dealing Hand