

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 443/1993

~~T.A. NO.~~

DATE OF DECISION 29-2-1996

J.B.Jadeja

Petitioner

Mr. R.S.Gajjar

Advocate for the Petitioner (s)

Versus

Union of India

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman.

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

JUDGMENT

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

J.B.Jadeja
 III/13/A, Customs colony
 New Kandla, (Kutch). ... Applicant.

Advocate : Mr. R.S.Gajjar

Versus

1. Union of India
 Notice to be served through
 Principal Collector of
 Customs and Central Excise
 Head Quarters Baroda. Respondents.

Advocate Mr. Akil Kureshi

J U D G E M E N T

In

Date: 29-2-1996.

O.A. 443 / 1993

per Hon'ble Shri V. Radhakrishnan Member (A)

The applicant was employed as Inspector of Custom and Central Excise on 31.8.1979. He did not pass the departmental exam. when his case was considered by the D.P.C. in March 1982 alongwith others. The applicant was given adverse remarks as per Annexure A-3, in May 1985. His case was again considered by D.P.C.held in July 1985. However, the D.P.C. directed that his case should be put up after his representation against adverse remarks given to him was finalised. In the meantime his representation against adverse remarks was rejected by the respondent. By communication dated 25.8.1986, Annexure A-6, when his case came up before D.P.C. in October 1986 he was not considered fit. Ultimately he was found fit for confirmation by the D.P.C. on 10.3.1989 and he was confirmed on the same date.

2. The contention of the applicant is that;

(i) The remarks communicated to him vide Annexure A-3, where his performance was termed "just adequate" were not to be treated as adverse remarks. The DPC which was held should have considered his case.

(ii) The seniority should be considered on the basis of his date of appointment and not on the basis of date of confirmation.

His grievance is that his late confirmation and subsequent supersession by his contemporaries as well as by his juniors has reduced his chance of promotion to the higher grade of Superintendent. Accordingly he claims the following reliefs;

(a) The seniority of the applicant may kindly be fixed at appropriate place i.e. from the date of his ~~promotion~~ appointment;

(b) the seniority list circulated in 1985 then in 1989, and in 1993 may kindly be ordered to be revised and the applicant may kindly be ordered to be placed among his contemporaries and above his juniors;

(c) Any other order the Hon'ble
Central Administrative Tribunal
which may deem fit in the interest
of justice."

3. The respondents have contested the case and have stated that as per seniority Rules existant at the time of confirmation of the applicant, his seniority was to be fixed in order of confirmation and not on the basis of date of appointment. It is true that instructions regarding seniority were modified in 1992 but this order was to take effect from the date of its issue i.e. from 4.11.1992 and cases already decided on the basis of old Rules were not to be reopened. Accordingly the seniority of the applicant has been fixed correctly as per the date of confirmation. They have also contended that the adverse remarks communicated to the applicant were approved by the Reviewing Officer as well as by the Reporting Officer and his representation was rejected after due consideration. It is stated that the applicant was advised to improve his performance and when he did not do so he was given adverse remarks. The applicant was considered by the D.P.C. but because of his late passing


....5.

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of departmental examination and adverse remarks communicated to him he was not found fit. He was confirmed after the D.P.C. adjudged him fit and his seniority has been fixed correctly as per the date of confirmation. The respondents have also take the contention that the application is delayed by about 3 years and such delay is unexplained. Hence the application deserves to be rejected, not only on the ground of delay but also on account of laches as the question raised would affect the position of the other employees in the seniority list.


4. Mr. Gajjar, learned advocate for the applicant, stated that non passing of the departmental examination should not have stood in the way of the confirmation of the applicant. He also pointed out that the 1985 C.R. wherein he was stated to be "just adequate" cannot be treated as adverse remarks in view of the ruling given by the Bombay Bench of the Central Admn. Tribunal, in Krishna Dnyanba Nandgave vs. Union of India and Others (1995) 30 ATC 10 wherein it has been held that performance categorised as "just adequate" equates to "Good". He stated that number of juniors have superseeded the applicant and unless his seniority is corrected he is not likely to get promotion for quite some time.

5. Insofar as the fixation of seniority is concerned he vehemently argued that the date of appointment should be the criterion and not the date of confirmation. He supported his argument with the case decided by the Full Bench of the Central Admn. Tribunal in Ashok Mehta and Others vs. Regional Provident Fund Commissioner and Others (1993) 24 ATC 492 493. Accordingly to him the inter se seniority should be determined on the



basis of length of service. Insofar as the question of delay in approaching the Tribunal is concerned he stated that the applicant was given oral assurance by his superior that his case will be considered favourably and he was waiting for the result of the consideration. When his case ~~was~~ was not considered favourably, he ultimately approached the tribunal. According to him the delay should be condoned and in support of this contention he cited the decision ~~of~~ in the case S.V.Ramkrishna Vs. Union of India, (1993) 24 ATC 299 wherein the application though filed late was considered on merits in the interest of justice and hence the applicant's case should also be considered on merits after condoning the delay.

6. Mr. Kureshi, learned Addl. Standing Counsel, on behalf of the respondents, stated that the applicant has claimed only relief of seniority and there is nothing about adverse remarks and delay in confirmation on account of not passing the departmental examination. He stated that even when the representation of the applicant against his seniority was rejected on 21.9.1989, he had not taken any steps to approach the Tribunal to redress his grievance. He has filed this application (O.A.) only on 28.7.1993, after delay of more than four years. Moreover there is no explanation for the delay in approaching the Tribunal. He pointed out that number of officers have superceded the applicant and any relief to the applicant at this stage would have unsettling effect on the seniority position of number of officers which is not desirable. He supported his argument by the judgements of the Supreme Court in M.L.C. D'Souza Vs.



Union of India A.I.R. 1975 SC 1269 and K.R.

Mudgal & Others vs. Union of India 1986 SC 2086:

1975 SC 1269 wherein it has been clearly laid down that if a person is sleeping over his rights and there is undue delay in approaching the Tribunal the application deserves to be dismissed on laches alone.

7. At the outset it is to be seen whether the application was made within a reasonable time. The applicant was confirmed with effect from 10.3.1989 and was placed on the seniority list of 1990. He had given representation dated 17.7.1989 to the respondents regarding his position in the seniority list which was considered and rejected by the respondents on 21.9.1989, Annexure A-8. The applicant remained quiet and approached the Tribunal by filing this application on 20.7.1993 only, after a lapse of more than four years and three months. We do not find any reasonable explanation for the delay, except oral argument of Mr. Gajjar that the applicant was hoping for relief on the basis of oral assurance from his superiors. This explanation does not help him. If a person prefers to sleep over his right and does not approach the forum in time he cannot hope for any relief. This only shows his negligence and acquiescence. It is also to be kept in mind that any relief to him would adversely affect those persons in whose favour right has accrued and especially so when they have not been joined as party-respondents to the present O.A. The Hon'ble Supreme Court in the case

M.L. Cecil D'Souza V. Union of India, AIR 1986 SC

2086 has observed as follows:

"It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time".

In the circumstances in the present case there is no alternative but to dismiss the application on the ground of its being time-barred only. Accordingly we do so. No order as to costs.



(V. Radhakrishnan)
Member (A)



(N.B. Patel)
Vice Chairman

Central Administrative Tribunal

2495
26.06.96

526/96

From:-

The Registrar
Supreme Court of India.
NEW DELHI.

Section IX
SUPREME COURT OF INDIA
NEW DELHI.
DATED:- 13/05/96

To
The Registrar
High Court of GUJRAT
GUJRAT.

Central Admin. Tribunal,
Ahmedabad Bench,
Ahmedabad.

25/6/96
Smt. (S)

PETITION FOR SPECIAL LEAVE TO APPEAL CIVIL No .9969 /96

(Petition under Article 136(1) of the constitution of India from
the Judgment and Order dated 29/02/96
of the High court of Judicature at GUJRAT
in OA 443/93
J.B. JADEJA

- vs -

... PETITIONER(S)

U O I & ORS

Sir,

... RESPONDENT(S)

I am directed to inform you that the petition above mentioned
filed in the Supreme Court was dismissed
by the Court on 06/05/96

Yours faithfully

COPY TO
MR. H.A. RAICHURA (Adv)

For Registrar

For Perusal please,

Honble vice chairman (on leave)

Honble Mr. V. Radhakrishnan, member

Honble Mr. K. Rama moorthy, member

27/6
B

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No.

443/93

Transfer Application No.

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CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated :

9/5/96

Countersign :

9/5/96

Section Officer.

9/5/96

Signature of the Dealing
Assistant

OA/443/23

J. B. Fedeje

VERSUS

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