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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No.146 OF 1987.

Date of decision ... October 30, 1987.

Sri Govinda Chandra Bhol, son of late Harekrushna Bhol,
Upper Division Clerk, Aviation Research Centre, Charbatia,
At/P.O- Charbatia, Dist- Cuttack.

... Applicant.

Versus

1. Union of India, represented by the Cabinet Secretary, Department of Cabinet Affairs, Government of India, Cabinet Secretarial Bikaner House Annex, Shahi Jahan Road, New Delhi.
2. Director (Planning), Directorate and General of Security, Government of India, R.K.Puram, New Delhi.
3. Director of Aviation Research Centre, Directorate General of Security, Cabinet Secretariat, Block V (East) R.K.Puram, New Delhi- 110 006.
4. Deputy Director (Administration), Aviation Research Centre, At/P.O- Charbatia, -754 028, Dist- Cuttack.
5. Sarat Chandra Biswal, Asst. Aviation Research Centre, Sarsawa, Dist- Saharanpur, U.P.
6. Bharat Chandra Sahoo, Asst. Aviation Research Centre, At/P.O- Charbatia- 754 028, Dist- Cuttack.

M/s R.Ch.Mohanty & R.K.Mohanty, For Applicant.
Advocates.

Mr. A.B.Misra, Sr. Standing Counsel For Respondents
(Central)

C O R A M :

THE HON'BLE MR. B.P. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes .
2. To be referred to the Reporters or not ? Yes .
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes .

JUDGMENT

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, it is prayed to command the respondents to promote the applicant to the post of Assistant and to accordingly fix the seniority of the applicant in the gradation list keeping ~~him~~ ^{him} higher than those persons made Upper Division Clerks by an order dated 1.7.1976 and to also quash the order passed by the competent authority transferring the applicant to Sarsawa.

2. Shortly stated, the case of the applicant is that the applicant was promoted to the post of Upper Division Clerk in the Aviation Research Centre, Charhatia with effect from 1.8.1970 and the applicant is continuing as such. Further case of the applicant is that by order No. EA/AFC -Est-1/74 dated 1.7.1976 Government of India in the Department of Cabinet Secretariat, Store Keepers in the A.R.C. were made Upper Division Clerks. Consequently Respondent Nos. 5 and 6 were made senior to the applicant though the applicant was functioning as an Upper Division Clerk since 1.8.1970 and the applicant feels more aggrieved as Respondent Nos. 5 and 6 were promoted to the post of Assistants bypassing the applicant's legitimate claim for promotion to the post of Assistant. The departmental authorities took such an action as they treated the order dated 1.7.1976 giving retrospective effect. It is therefore prayed by the applicant that such promotions should be struck down on the basis of a judgment passed by this Bench on 24.12.1986 in Transferred Application No. 87 of 1986

forming Annexure-1.

3. In their counter, the respondents maintained that no illegality has been committed in the matter of giving promotion to Respondent Nos. 5 and 6 and therefore the application being devoid of merit is liable to be dismissed.

4. We have heard Mr. R.K.Mohanty, learned counsel for the applicant and Mr. A.B.Misra, learned Sr. Standing Counsel for the Central Government at some length. It would be appropriate to state here that exactly a similar matter came up before this Bench forming subject matter of Transferred Application No. 87 of 1986 disposed of on 24.12.1986. This judgment also forms subject matter of Annexure-1. Strong reliance was placed on behalf of the applicant over this judgment. Facts constituted in T.A. No. 87 of 1986 being exactly similar to the facts of the present case (which was not disputed at the Bar), we are of opinion that in all fitness of things findings given by us in the said judgment would have fullest application to the present case. In the said judgment, it has been stated as follows :-

" For all these reasons, we cannot but hold that the Store-Keepers were made U.D.Cs only with effect from the date of order i.e, 1.7.1976. This order admittedly has no retrospective effect. The order itself has mentioned that it will come into effect only from the date of its issue. There is, therefore, no escape from the conclusion that the Store-Keepers became U.D.Cs. only on 1.7.76 and should take their place in the gradation list of U.D.Cs below all the U.D.Cs who were on that

date already U.D.Cs."

In the said judgment, we also directed the Opposite Parties as follows :-

" The gradation list of U.D.Cs. should be recast and the petitioner given his due place in the list ".

After giving our anxious consideration to the arguments advanced at the Bar, we think that the findings arrived at by us in the said judgment and the opinion expressed therein would apply mutatis mutandis to the present case. In order to repudiate the contention of the learned counsel appearing for the applicant, the learned Sr. Standing Counsel submitted that the petition is grossly barred by limitation as cause of action, if any, arose in favour of the applicant much beyond three years prior to the Administrative Tribunals Act, 1985 having come into force and therefore, according to the learned Sr. Standing Counsel, section 21 of the Act would create a bar for entertaining such an application and in support of this contention, learned Sr. Standing Counsel relied upon two judgments of the Hon'ble Chairman, Central Administrative Tribunal, Delhi reported in 1986(1) A.T.P. C.A.T. 28 and 203. The facts of both the cases dealt by Hon'ble Chairman are clearly distinguishable. In both the cases decided by Hon'ble Chairman, the cause of action arose in favour of the petitioner much beyond three years prior to 1st November 1985 but in the present case, it has to be

decided as to when the cause of action arose in favour of the petitioner. Soon after disposal of T.A. No. 87 of 1986 the petitioner filed ~~the~~ a representation on 30.3.1987 before the appropriate authority to make applicable the judgment passed by this Bench in T.A.87 of 1986 to the case of the present applicant and accordingly his seniority in the gradation list should be recast and he should be given due promotion in preference to Respondent Nos. 5 and 6. It was admitted before us that this representation still remains pending since 30.3.1987. Section 21 (b) of the Administrative Tribunals Act, 1985 runs thus :-

" Section 21 (i) The Tribunal shall not admit an application -

- (a) xx xx
- (b) In case when appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months".

In our view, cause of action arose in favour of the applicant as soon as the judgment of this Bench was passed on 24.12.1986 in T.A.No. 87 of 1986. From the date of representation made by the applicant i.e, on 30.3.1987 six months has expired without the representation being disposed of. In such circumstances we are of opinion that the application is not barred by limitation and the principles laid down by the Hon'ble Chairman in the above mentioned judgments have no application to the facts

of the present case .

5. It was next contended by the learned Sr. Standing Counsel that after a long lapse of time old matters should not be wrecked up which would ultimately create very many difficulties for the persons who have been already promoted and in support of his contention learned Sr. Standing Counsel relied upon three judgments of the Hon'ble Supreme Court reported in A.T.R. 1987 (1) Page 1 (K.R. Mudgal & others v. R.P. Singh & others), 1977(1) S.L.F. 255 (State of Orissa v. Pyari Mohan Samantray and others) and 1976(1) S.L.F. 53 (P.S. Sadashivam v. State of Tamil Nadu). In all these cases Their Lordships have been pleased to hold that delay committed by the aggrieved person in invoking the jurisdiction of a court challenging the promotion of his juniors superseding the claim of the persons aggrieved would work out against the person aggrieved and it would not be wise to entertain an application from the aggrieved person. ' Delay ' meant by Their Lordships is nothing but long delay. The dictum laid down by Their Lordships has a binding authority over us and we cannot but accept the contention of the learned Sr. Standing Counsel if the principles laid down by Their Lordships in the above mentioned judgments are applicable to the facts of the present case. In the case of P.S. Sadashivam v. State of Tamil Nadu , the appellant before Their Lordships was selected by the State Public Service Commission as an Assistant Engineer in the year 1955 and in the year 1957 Respondent No.2 before Their Lordships

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was promoted as Divisional Engineer. Thereafter the appellant before their Lordships made several representations till the year 1970 when Respondent No.5 who was junior to the appellant was promoted to the cadre of Superintending Engineer over the head of the appellant. The appellant was promoted to the rank of Superintending Engineer on 23.1.1971 and thereafter the appellant before Their Lordships filed a writ application in the High Court of Madras. ~~The appellant before~~ ^{by} Their Lordships were of the view that the appellant not having questioned the promotion of his juniors as Superintending Engineers over his head would not be allowed to recur old matters as he could have come to the court on every one of these occasions. In that context Their Lordships dismissed the appeal of the appellant. Same is the case so far as State of Orissa v. P.M. Samantray is concerned. After the claim of P.M. Samantray was over-looked, P.M. Samantaray remained satisfied by making several representations to the Government of Orissa and to the Central Government receiving orders of rejection of the representations on each and every occasion and since the cause of action had arisen in favour of P.M. Samantray as far back as 1962 the inordinate delay committed by the said Sri Samantray in approaching the court to redress his grievances which occurred eleven years prior to the filing of the writ application before the High Court of Orissa was not thought proper by Their Lordships to be acceptable. In the case of K.F. Mudgal & others v. ^{by} F.P. Singh & others, seniority lists were published from

time to time in 1958, 1961 and 1965. No objection was ever raised by the appellant before Their Lordships in regard to the seniority lists mentioned above. Writ application was filed in the year 1976 for redressal of his grievance, eighteen years after the first draft seniority list was published in the year 1958 and therefore Their Lordships were pleased to dismiss the appeal on the ground of laches and delay on the part of the appellant before Their Lordships. All these cases are clearly distinguishable on facts. Here in the present case there has been no delay caused by the applicant. As soon as this Bench delivered judgment in T.A.No. 87 of 1986, the applicant wanted to take advantage of the principles laid down in the said judgment and immediately thereafter he has made a representation which is still pending disposal. That apart, we are sure the respondents would give effect to our judgment passed in T.A.No. 87 of 1986. This judgment was pronounced on 24.12.1986. It has not yet been set aside by the Hon'ble Supreme Court. It is not the case of the respondents that any Special Leave Petition has been filed before the Hon'ble Supreme Court praying to set aside this judgment. If no Special Leave Petition has yet been filed, period of limitation has run against the respondents and therefore, there is no further chance of invoking the jurisdiction of Hon'ble Supreme Court to set aside this judgment. In such circumstances, the respondents would undoubtedly give effect to the judgment. Therefore, the gradation list has to be recast and when the recasting takes place all the incumbents in the U.D.C. cadre have to be considered and their seniority has to be

re-fixed including the present applicant and therefore in any event the seniority list has to be re-cast so far as the present case is concerned and due promotion should be given to the applicant according to his seniority and after adjudicating his suitability. We would, therefore, direct that the respondents would treat the order dated 1.7.1976 as prospective and not retrospective and we further hold that the Store Keepers were made Upper Division Clerks only with effect from 1.7.1976 and further more we would direct that the gradation list of Upper Division Clerks be accordingly re-cast and the seniority be re-fixed and in pursuant to these directions, promotion given to Respondent Nos. 5 and 6 is hereby quashed and promotion to the post of Assistants should be re-considered and be given to the incumbents as per the seniority list and after adjudicating the suitability of those incumbents including the applicant.

6. As regards the prayer to quash the order transferring the applicant to Saraswa is concerned, we would not like to interfere and very fairly it was not pressed.

7. Thus the application stands partly allowed leaving the parties to bear their own costs. *AMR*

Sd/ K.P. Acharya
Member (Judical)
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B.R. PATEL, VICE CHAIRMAN, 9 agree

Sd/ B.R. Patel
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench.
October 30, 1987/Roy SPA.