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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.19 of 1987.

Date of decision : October 24, 1990.

Natabar Parichha ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... Mr.A.K.Mohapatra, Advocate.

For the respondents ... Mr.Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M :

THE HONOURABLE MR.B.R.PATEL, VICE-CHAIRMAN

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THE HONOURABLE MR.N.SENGUPTA, 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 ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, The facts, in brief, are that the applicant who is a Matriculate was appointed as a Lower Division Clerk(LDC) under the Dandakaranya Project on 27.3.1959 and was posted under the Executive Engineer, Umerkote Division. He was promoted to the post of Upper Division Clerk(UDC) vide order dated 7/9.5.1963 vide Annexure-1 and he joined the post of UDC on 14.5.1963. His grievance is that he was reverted to the rank of LDC by a telegraphic order dated 20.5.1963 with effect from 16.5.1963 (Annexure-2) without assigning any reason and without giving him an

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opportunity to make representation even though his promotion was on the basis of the recommendations of the duly constituted Departmental Promotion Committee (DPC). The other grievance of his is that several of his juniors have since been promoted not only to the posts of U.D.Cs. but also higher posts in supercession of his claim for promotion. He has sought a direction to be issued by the Tribunal promoting him to the post of UDC from 16.4.1960 along with one Shri B.K.Kundu, Respondent No.3 who was junior to him and to give him the special pay of Rs.35/- with effect from 1.7.1979. His further prayer is that he should be deemed to have been promoted to the post of Research Assistant along with Shri Kundu from 1986 onwards and to give him all consequential financial and other service benefits.

2. The respondents in their written statement have contended that the application is barred by limitation under section 21 of the Administrative Tribunals Act, 1985 as also under Article 137 of the Limitation Act. They have further contended that the application is liable to be dismissed on the ground of non-joinder of necessary parties as some of the persons against whom relief has been claimed have not been made parties. With regard to the applicant's prayer for special pay the respondents have taken the stand that the claim besides being barred by limitation is not entertainable on the ground that it is not covered by the appropriate rule which allows special pay only to 10 per cent of the posts in the cadre of Upper Division Clerks which carry the duties and respon-

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sibilities of complex nature and the applicant does not come within the limits so prescribed.

3. We have heard Mr.A.K.Mohapatra, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel(Central) for the respondents and have gone through the records. Mr.Mohapatra urged that Respondent No.3 joined as L.D.C. on 31.8.1959 whereas the applicant joined on 27.8.1959 and as such should be treated senior to Shri Kundu and should be promoted to the rank of U.D.C. earlier. But Shri Kundu has been promoted to the rank of U.D.C. on 16.4.1960 whereas the applicant was so promoted only on 19.4.1965. The promotion of the applicant to the post of U.D.C. should therefore have effect from 16.4.1960 and he should be promoted to the rank of Research Assistant from 1986 when Shri Kundu was so promoted. Mr.Dalai vehemently contended the claim of the applicant on the ground that the case is hopelessly barred by limitation as the cause of action so far as the promotion is concerned arose long back in 1960 when Shri Kundu was promoted or 1965 when the applicant himself was promoted. He has drawn our attention to the Research Assistants Recruitment Rules, copy of which is at Annexure-R/5, particularly to the column 11 of the Schedule. This column prescribes for method of recruitment to the post of Research Assistant and this is by transfer on deputation. The educational qualification prescribed for recruitment by this method is a Degree from a recognised University or its equivalent. Admittedly, the applicant is a Matriculate and Mr.Dalai

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has urged that Respondent No.3 was a Graduate and as such the applicant cannot claim to be recruited to the post of Research Assistant. Before going to the merit of the case we would like to ~~express~~ ^{examine} whether the case is barred by limitation. As Section 21 of the Act specifically provides for limitation, our examination will be confined to these provisions. Section 21 of the Act reads as follows :

" 21. Limitation (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a 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.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made 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; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

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(3) Notwithstanding anything contained in sub-section(1) or sub-section(2), an application may be admitted after the period of one year specified in clause(a) or clause(b) or sub-section(1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. "

Maximum period of one and half years has been allowed since filing of the representation. More than this, a period of three years immediately preceding the date of filing of the application is given and we cannot go beyond this period. It is against this provision that the facts of the case are to be examined. Mr. Mohapatra has urged that he has made representations to the competent authorities from time to time but there has been no response from them and as such the applicant cannot be held responsible for the delay in filing the application. In this connection, he has drawn our attention to the representation dated 27.10.1986 made by the applicant to the Secretary, Department of Rehabilitation (Annexure-7). With our permission subsequently he also filed a copy of the letter of the Executive Officer (Administration) written to the Executive Engineer (C) dated 18.1.1984. We have found from his representation dated 20.10.1982, copy of which is at Annexure-6 that the applicant represented his case before the Project authorities many a times for regularisation of his promotion and fixation of seniority in the post of U.D.C. This is what he has stated,

" As I have been deprived of all sorts of benefits i.e. Promotion, Financial help, Seniority etc. due to none of my faults. Finally the Project Administration have turned down my case vide letter No. 1/3/73/A.II/6364 dated 26.12.75 of the EEO (A), Koraput (copy enclosed). "

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Annexure 4 is the letter dated 26.12.1975 conveying to the applicant the decision of the Chief Administrator, Dandakaranya Project rejecting his representation. It is thus clear that the representation of the applicant had been rejected long back in December, 1975. Repeated representation thereafter on the same issue will not give him any relief so far as the limitation under section 21 of the Act is concerned. We are therefore not in a position to accept the contention of Mr. Mohapatra that the provision of section 21 of the Act will not apply because of his representation dated 27.10.1986 to the Secretary, Department of Rehabilitation which is still pending for consideration and he has filed this case on 20.1.1987 well within the period prescribed by the aforesaid provision. He has further drawn our attention to the letter of the Executive Officer (A) dated 18.1.1984 which refers to the representation of the applicant dated 20.10.1983 and states that the matter regarding promotion and seniority in the Grade of U.D.Cs. is under examination along with the case of other U.D.Cs. of similar nature and that a further communication in the matter, would follow soon after the decision was arrived at. This letter stated above is dated 18.1.1984 and is well within the period of three years immediately preceding the coming into being of the Central Administrative Tribunal in November, 1985. But it is hit by the other provisions of Section 21 of the Act i.e. the period prescribed in case where representation is made and the maximum period allowed is one and half years. This case having been filed on

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20.1.1987 i.e. three years after this letter is clearly barred by limitation. The case is thus dismissed as having been barred by limitation under section 21 of the Administrative Tribunals Act, 1985. In view of this it is not necessary for us to go into other aspects of the case as alleged by learned counsel for the parties. No costs.

Member (Judicial)

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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
October 24, 1990/SARANGI.

