

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACKBENCH: CUTTACK.

Original Application No. 222 of 1983.

Date of decision : 22.9.92

Bharat P-anigrahi ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. S. Misra-l,
S. N. Misra,
Mrs. R. Sikdar, Advocates.

For the respondents ... Mr. Ganeswar Rath,
Addl. Standing Counsel (CAT)

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN.)

...

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.

....

JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act., 1985, the applicant prays for a declaration that he may be deemed to have been promoted to the Indian Audit and Accounts Service with effect from 21.3.1984, with all consequential financial benefits including pension, gratuity etc.

2. Shortly stated, the case of the applicant is that he entered into service under Respondents 1, 2 & 3 in the year 1953 and was promoted as Accounts Officer with effect from 15.4.1964. After serving for some time as Accounts Officer the applicant was eligible for promotion to Class I Service. Although there were vacancies in the Indian Audit and Accounts Service for the years 1980, 1981, 1982 and till June, 1983, the case of the applicant was neither considered for promotion nor any promotion was effected during these periods. On 26.3.1983 a new set of Rules governing the recruitment to Indian Audit and Accounts Service was enforced and therein a restriction was imposed that he whosoever has attained the age of 53 years on the first day of July, of the year to which the promotion pertains will not be recruited. Hence, the case of the applicant was not considered. According to the applicant there was no such restriction in the Rules in force prior to 26.3.1983 and therefore, the applicant being governed under the Rules in force prior to 26.3.1983, the case of the applicant should have been considered for promotion and non-consideration of the case of the applicant amounts to illegality and furthermore it is pleaded

that juniors to the applicant having been given promotion on the basis of the amended recruitment Rules, which came into force on 26.3.1983, a clear illegality has been committed by the concerned authority and hence this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that not only the case is grossly barred by limitation but on questions of fact the case of the applicant is devoid of merit and liable to be dismissed. According to the respondents the date of birth of the applicant being admittedly 30.9.1928, by September, 1981 he had crossed the age of 53 years and one time relaxation was given by the Government of India vide Annexure-R/4 that those Officers who had not completed 53 years of age by 1.7.1982 may be considered for promotion. The case of the applicant did not come within the relaxation period and therefore, the case is devoid of merit also on questions of fact. Hence, according to the respondents the case being devoid of merit is liable to be dismissed.

4. We have heard learned counsel for the applicant and Mr. Ganeswar Rath, learned Addl. Standing Counsel (CAT) for the respondents on the merits of the case. On a perusal of the pleadings of the parties and the relevant documents filed in this case, we are of the view that admittedly the vacancies having pertained to the years 1980, 1981 and 1982, the applicant was governed by the Rules in force prior to 26.3.1983. There was no such stipulation in the Rules in existence prior to 26.3.1983 regarding non-consideration of the cases of those

officers who had attained the age of 53 years. The applicant being governed under such Rules his case was certainly fit to be considered. But the question of limitation stands as a forbidden fruit against the applicant. Admittedly the promotions were given in the year- 1984 to M/s. J.K. Murty, S. Subba Rao, R.R. Gupta. Though the applicant states in paragraph 8 of the application that the applicant had made representations to the Assistant Comptroller and Auditor General (Personnel) and to the Comptroller and Auditor General of India and no reply was received from either of them, one would find that copies of such representations have not been filed. On the contrary, in paragraph 2 (a) of the counter it is stated by the respondents that no such representations were ever received and the only representation dated 30.1.1987 was received and stood rejected on 1.6.1987. The representation dated 30.1.1987 has been annexed as Annexure-A/1. No reasons have been assigned as to why copies of representations filed earlier to Annexure-A/1 were not annexed to the petition. Therefore, we cannot but accept the statement of the applicant to the above effect with a pinch of salt. We have no hesitation to accept the statement of the respondents that no such representations were filed ^{admittedly} prior to 30.1.1987. Promotions having been/given in the year 1984, limitation had already run against the applicant by the year 1987. Law is well settled that limitation cannot be saved if it has already run against a person aggrieved merely by filing a representation at a subsequent belated stage. The settled position of

law was rightly and fairly not disputed at the Bar. Hence, no particular citation is necessary to be mentioned. Admittedly, the applicant retired from service on superannuation with effect from 30.9.1986 and till then he has not agitated his grievance and if he would have done so, we are sure the applicant would not have failed to file copies of such representations. The applicant has tried to put forth his grievance practically four months after his retirement. We find there is substantial force in the contention of Mr. Ganeswar Rath, learned Additional Standing Counsel (CAT) that the case is barred by limitation, and on this count the case is liable to be dismissed. Hence, we find no merit in this case which stands dismissed leaving the parties to bear their own costs.

.....
N. S. Hawari,
.....
MEMBER (ADMN)

.....
L. G. S. 22/9/92
.....
VICE-CHAIRMAN

Central Administrative Tribunal, I
Cuttack Bench, Cuttack

22/9/1992/Sarangi

