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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 146 OF 1995
CUTTACK THIS THE 18th DAY OF July 2001

Harihar Das

.....

Applicant

- V e r s u s -

Union of India & Others

Respondents.

For Instructions

1. Whether it be referred to Reporters or not? Yes.
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not? No.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.7.2001

16-7-01
(G. NARASIMHAM)
MEMBER (J)

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.146 OF 1995
CUTTACK THIS THE 18th DAY OF July 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER(J)

.....

Sri Harihar Das, aged about 53 years,
Son of Late Rameswar Das, at present
working as Senior Armour in the
establishment of Aviation Research
Centre, Charbatia, P.O.Charbatia,
P.S.Choudwar, Dist-Cuttack.

..... Applicant

By the Advocates

Mr.R.C.Das

- Versus-

1. Union of India, represented through
Cabinet Secretary, Central Secretariat
Ministry of Defence, New Delhi,
Beekaneer House, Amerie, New Delhi-1100011.
2. Director of Aviation Research Centre,
New Delhi, Block-V, East R.K.Puram,
New Delhi-110016.
3. Deputy Director, Aviation Research
Centre, Charbatia, P.O.Charbatia,
P.S.Choudwar, Dist.Cuttack.
4. Asst. Director(Administration)
Aviation Research Centre, Charbatia,
At/P.O.Charbatia, P.S.Choudwar,
Dist.Cuttack.

..... Respondents

By the Advocates

Mr. A.K.Bose

A.S.C

.....

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): In this Original Application, filed in June 1995, applicant who initially joined as Constable under Respondents on 3.11.64, prays for his promotion to the post of Sub-Inspector with retrospective effect i.e. from the date his juniors were promoted to the cadre of Sub-Inspectors, ^{permanently} ~~as per~~ the direction of this Tribunal in the Original Application 390 of 92 disposed of on 10.02.93. (Annexure-2)

2. Facts are not very much in dispute. Before referring to the facts it is worthwhile to remember that originally from the post of Constable one was getting promotion to the post of Naik, from Naik to Havildar and thereafter to Sub-Inspector. The post of Constable has since been redesignated as Field Assistant. So also the post of Naik a Jr.Armour and Havildar as Sr.Armour.

3. From 1.8.71 to 1.6.72, P.C.Jena, Umakanta Das, Chakradhar Naik and Alekh Chandra Das who joined as Constable much after the applicant, were promoted to the cadre of Naik. Thereafter, these four persons were further promoted to the cadre of Havildar on 1.10.75 on which date one S.K.Das was also directly promoted to that rank. In the meanwhile, one Shri J.K.Bhattacharya was promoted to the cadre of Inspector for which some officials approached the Orissa High Court in six writ applications. These applications were transferred to this Tribunal and this Tribunal directed that all the officials senior to Bhattacharaya should similarly promoted and placed above him. The Department's appeal before the Supreme Court was dismissed. Hence the Department promoted 11 persons to the rank of Sub-Inspectors. As this action benefitted, P.C.Jena, Umakanta Das, Chakradhar Naik and S.K.Das

were also promoted in the resulting vacancies.

After some time thereafter Laxman Samal, Sunakar Behera, Surendra Naik and B.K.Sinha approached this Tribunal in O.A.390 of 1992 seeking promotion to the rank of Naik from the date on which P.C.Jena and that group who are junior to them were promoted. As earlier stated that this Original Application was disposed of on 10.2.93 with a declaration that the applicants therein were deemed to have been promoted to the rank of Naik from the date or dates on which P.C.Jena, S.K.Das, Umakanta Das and Alekha Charan Das were so promoted, with further direction the applicants shall be entitled to all consequential benefits including financial benefits as well as further promotion.

There is no dispute that the applicant as Constable is senior to P.C.Jena, Umakanta Das, Chakradhar Naik and Alekh Charan Das and also to the applicants in O.A.390/92. The grievance of the applicant is that after coming to know of the retrospective promotions of the applicants of O.A.390/92. he represented to the authorities on 20.2.94 to extend similar benefit to him. As there was no response he sent representations dated.30.5.94, 6.8.94 and 4.11.94. The Assistant Director (Respondent No.4) in Memorandum dated.26.12.94 rejected his representation (Annexure-3) on the ground that benefit of judgements passed by this Tribunal cannot be extended to employees who are not parties to those cases. According to the applicant, he being senior to all those persons who have since been promoted, the cadre of Sub-Inspector and similarly placed is entitled to get the benefit of the judgement of this Tribunal and should be promoted to the cadre of Sub-Inspector with retrospective effect, that is from the date or

dates on which his juniors in the Constable cadre were promoted.

4. In their counter Respondents opposed the prayer of the applicant on the ground of limitation as well as on merits. According to them, the grievance of the applicant is that his juniors R.C.Jena and group are promoted during the year 1971-72 to the cadre of Naik and as such as per his own version the cause of action for filing an application in this nature arose during the year 1971-72. Hence in the year 1995 i.e. after remaining silent for about 24 years he cannot approach this Tribunal through an indirect prayer that by virtue of the judgment of this Tribunal he should be promoted to the cadre of Naik (Now Jr. Armour) with retrospective effect and consequently to the higher grades from the dates they were so promoted. Moreover, he did not even join himself as a party in O.A. 390/92. It is not his case that he ^{was} ~~is~~ not aware of filing of these applications by some of his juniors before High Court or Tribunal. Having remained silent all these years, he cannot come at a belated stage and file this application which is hopelessly barred by limitation.

On merits it is the case of the Department that for the first time promotion to the post of Naik (Jr. Armour) came to be covered under ARC (Ordnance) Service Rules, 1977. Prior to promulgation of ARC (Ordnance) Service Rules, 1977 promotion to the post of Naik was being done in the manner as thought fit at the time of taking decision. During the year 1971-72 the DFC approved the names of Constable P.C.Jena, U.K.Das, C.D.Naik A.C.Das and D.M.Behera for promotion as they were working in Ordnance section and were therefore, considered better equipped

and qualified for the post of Naik. The applicant was working in another unit and was considered for promotion to the post of Naik w.e.f. 1.5.73 taking into account his long service in the grade of Constable. For promotion to the cadre of Havildar, the DPC met on 18.7.75 and approved the promotions of P.C.Jena, U.K.Das, C.D.Naik and S.K.Das. In that proceeding in the case of S.K.Das a matriculate Constable whose pay scale was equivalent to that of Naik was considered ^{for} promotion to the cadre of Havildar direct. The judgment of this Tribunal of O.A.390/92 was passed on 10.2.93. The applicants therein were promoted from the date on which his juniors that P.C.Jena, S.K.Das and A.C.Das were promoted.

5. No rejoinder has been filed.

6. We have heard Shri R.C.Das, learned counsel for the applicant and A.K.Bose, the learned Sr.Standing Counsel for the Departments.

7. There is no dispute that applicants in O.A.390/92 were juniors to the applicant in the cadre of Constable and P.C.Jena, U.K.Das and two others and also S.K.Das are junior to the applicant of 390/92 in that cadre. In otherwords, as Constable the applicant was senior to all of them and who admittedly, are in the cadre of Sub-Inspector. When the applicant filed this Original Application he ^{was} serving as Sr.Armour. As we understand from the counter that the applicant would not be entitled to relief prayed by him because he had slept over the matter all these years and as such this application is hopelessly barred by limitation.

8. It has been contended from the side of the applicant that application filed by an employee who is placed similar

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to the employees who already got the benefit of a judgement of a Court/Tribunal should not be rejected on the ground of limitation. We are aware of the judgement of the Constitution Bench of Apex Court in K.C.Sharma Vrs. Union of India reported in 1998(1) SLJ 54 to this effect. But this judgement of the Apex Court is a judgement in Rem and not in Personam. In that case a notification of the Railway Board curtailing the maximum period of running allowance in respect of Railway Guards was reduced from 75% to 45% with retrospective effect. This was challenged by some of the Guards. Full Bench of this Tribunal held that the notification so far as giving retrospective effect violated Article 14 and 16 of Constitution. As the Railway refused to extend the benefit of the judgement of the full Bench to the guards who are not parties before the Full Bench, some of them filed O.A.774/94 before the Principal Bench of the Tribunal. The Railway opposed that application on the ground of limitation. The Apex Court held that the application cannot be rejected on the ground that the retrospective effect of the notification was non-est and as such all the Railway Guards would be entitled to the benefit of the judgement. That was a Judgement in Rem and not in Personam.

But the cases filed by Bhattacharya and others and also applicants of O.A.390/92 centre round inter se seniority as Constables and consequential reliefs prayed in those case are for the individual promotions on the basis of seniority. Hence the judgments in these cases are judgements in Personam. These Judgments are not in Rem in the sense of quashing of any particular Rule/Circular or notification involved therein.

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Even in O.A.390/92 this Tribunal dealt the point of limitation in extenso and ultimately condoned the delay by the taking note of the representations of the applicants therein. In the case before us there is no convincing material that the applicant in fact represented at any time prior to the Judgment in O.A.390/92 claiming promotion on the ground that his juniors in the cadre of Constables were earlier promoted. Though in para-4(E) of the O.A. he pleaded that he made several representations he neither annexed copies of such representations nor mentioned, if not the dates at least the year or month when all such representations were sent to the Department. On the otherhand the Department specifically denied to have received any such representation. Hence we cannot take note of these two averments in regard to representations made in para 4(E) of the Original Applications. For the first time, after the pronouncement of judgment in O.A.390/92 and consequent upon promotion of applicants therein, he represented claiming promotions and seniority and consequent promotions and such representation was for the first time sent on 22.2.94. This was rejected on 26.12.94.

Thus here is a case where the applicant was aggrieved for the first time during the year 1971-72 because of promotions of some of his juniors to the cadre of Naik and thereafter, further promotions and also promotions of some of his juniors through various Judgments of High Court/Tribunal. It is not his case in this application that he was not aware of these developments. Yet he remained silent and for the first time in June, 1995 filed this Original Application to put the clock 24 years back in order to get a declaration of his promotion to the cadre of Naik (Jr.Armour) and consequently further promotions.

9. In 1996 SCC (L&S) 1488, State of Karnataka Vrs. S.M. Kotrayya, the Apex Court while interpreting section 21 of the Administrative Tribunal Act, 1985 held that mere fact that the applicants filed belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal is not a proper explanation to justify the condonation of delay. The explanation must relate to failure to avail the remedy within the limitation period i.e from the date when the cause of action arose. The Respondents in this case were teachers in the Department of Education and availed L.T.C. during the year 1981-82. But later it was found that they had never utilised the benefit of L.T.C. but had drawn the amounts and spent the same. Consequently, the recovery was made in the year 1984-86. Some teachers challenged this recovery before the Administrative Tribunal which allowed their application in August 1989. On knowing the same, Respondents filed applications in August 1989 before the Tribunal with an application to condone delay. The Tribunal condoned the delay and allowed the application. On appeal by the Department, the ^{Apex} Court held as above. Thus it is clear from the decision of the Apex Court that in case of judgement in personam the date of judgement is not the cause of action for filing an application but the date on which the aggrieved order was passed against them by the Department is the date of cause of action.

A three Judge Bench of the Apex Court in Bhoop Singh Vrs. Union of India reported in AIR, 1992, 1414 also did not grant relief, though persons similarly placed got relief. In that case the applicant along with many others were dismissed from service on 3.8.67. Some of dismissed employees like the applicant filed writ petitions in Delhi High Court in 1969-70 for quashing

the orders of termination. These were allowed. Thereafter, some more dismissed Constables filed writ petitions in 1978 which was also allowed. Thereafter, some more Constables filed writ petitions in Delhi High Court and same were transferred to Central Administrative Tribunal. Tribunal allowed these applications. The Delhi Administration preferred appeals before the Supreme Court which were ultimately dismissed. Thereafter, the petitioner Bhoop Singh filed O.A. 753/89 before this Tribunal praying for reinstatement with all consequential benefits on the ground that his case and claim are similar to that of Police Constables who had succeeded in the earlier rounds of litigation. The Tribunal rejected the application on the ground of limitation. The Apex Court disallowed the claim of the petition for reinstatement because he had not explained the delay of 22 years in approaching the Tribunal, even though some of the dismissed Constables like him challenged their dismissed and obtained the orders of reinstatement.

Similar is also the decision of the Apex Court in Delhi Administration Vrs. Hiralal reported in 2000(1) SC SLJ page.48. In this case the respondents were temporary Constables in the service of Delhi Administration. Their services of some other Constables like them were terminated on 6.3.67. Some terminated Constables similarly placed filed writ petitions before the Delhi High Court in 1978. They were allowed on 18.7.83. Thereafter, the Respondents filed the writ petition in Delhi High Court in 1983-84. These writ petitions were transferred to this Tribunal and the Tribunal allowed these petitions in spite of plea of limitation raised by the Department. The Apex Court held that since no explanation was given for delay of 16 to

18 years from the date of termination in filing writ petitions, the applications are barred by limitation.

Again in Union of India Vrs. Kesharilal Bablani reported in AIR 1999 S.C. 517, the Supreme Court disallowed the prayer for reopening the process of selection and notification of appointments made to it after a delay of 10 years.

10. Thus it is clear that though the applicant was aware of promotions of his juniors sometime 1971-72 and also their consequential further promotions during the subsequent year, yet he remained silent without filing any representations or filing any case before High Court/Tribunal all these years and for the first time in June 1995 approached this Tribunal, and that too without filing any application for condonation of delay under proviso section 21(3) of the A.T. Act read with Rule 8(4) of C.A.T (Procedure) Rules 1987. This Rule 8(4) lays down when an applicant seeks condonation of delay he shall file a separate application supported by an affidavit. Unless there is prayer for condonation of delay supported by an affidavit, this Tribunal may not examine the issue as to whether the applicant had sufficient case for not making the application within the period of limitation U/s 21 of the A.T. Act.

It has been held by a three Judge Bench of the Apex Court in Secretary to Government of India and Others Vrs. Shivram Bahadu Gaikwad reported in (1995) 30 A.T.C. 635 that when plea of limitation is raised, Tribunal cannot enter into discussion on merits, without deciding the point of limitation. It was further held question of condonation of delay will arise only when an application for condonation is made U/s 21(3) of the

A.T.Act. In that case though it was contended that the delay was due to the fact of the applicant was suffering from Schizophrenia, the Apex Court held that this ground could have been projected as ground for condonation of delay in an application 21(3) of the Act. Again in Ramesh Chandra Sharma Vrs. Udham Singh Kamal reported in AIR 1999 SC, 3837, the same view was reiterated.

A larger Bench of the Apex Court consisting of seven Judges in para 16 of L.Chandra Kumar's Case reported in AIR 1997 SC 1125 even observed that section 21 of the A.T.Act, 1985 specifies strict limitation period and does not vest the Tribunals under the Act with power to condone delay. This observation when read with Section 21(3) of the Act and Rule 8(4) of CAT (Procedure) Rules would necessarily mean that condonation of delay, even in case of delay of few days, would arise for consideration only when application for condonation supported by an affidavit is filed and that condonation is neither automatic nor liberal but ^{with rare} ~~on same~~ and exceptional circumstances.

11. In view of the legal position discussed above, we have no hesitation to hold that this application is hopelessly barred by limitation and is accordingly dismissed. No costs.

Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

18-7-07
(G.NARASIMHAM)

MEMBER(J)