

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK**

ORIGINAL APPLICATION NO.147 OF 1995
Cuttack this the 3rd day of July, 2001

N. Nath & Another ... Applicants

• • •

Applicants

- VERSUS -

Union of India & Others ... Respondents

• • •

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 44.
2. Whether it be circulated to all the Benches of the N.C. Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
31.7.2001

(G. NARASIMHAM)
MEMBER (JUDICIAL)

retrospective effect, i.e., from the date their juniors were promoted to the cadre of Sub Inspectors, pursuant to the direction of this Bench in Original Application No.390/92, disposed of on 10.11.1993 (Annexure-1).

2. Facts are not very much in dispute. Before referring to the facts it is worthwhile to note that originally from the post of Constable one was getting promotion to the post of Naik, which is a Feeder Cadre to the next promotional post of Havildar, from which post promotion to the cadre of Sub Inspector can be made. The post of Constable has since been redesignated as Field Assistant. Similarly, the post of Naik has been redesignated as Junior Armourer and Havildar as Senior Armourer. From 1.8.1971 to 1.6.1972, S/Shri P.C.Jena, Umakanta Das, Chakradhar Nayak and Alekh Ch.Das (Res.4), who joined as Constables and were juniors to the applicants were promoted to the cadre of Naik. Thereafter these four persons were further promoted to the cadre of Havildars on 1.10.1975, on which date one Shri S.K. Das (Res.5), a Constable was also directly promoted to the cadre of Havildar. In the meanwhile, one Shri J.K.Bhattacharya was promoted to the cadre of Inspector, for which some officials approached the High Court in several Writ Applications. Those applications were transferred to this Tribunal and this Tribunal directed that all the officials senior to Shri Bhattacharya should be similarly promoted and placed above him. The appeal preferred by the Department before the Apex Court was dismissed. Hence the Department promoted 11 persons to the rank of Sub Inspectors. The benefit of this judgment was extended to S/Shri P.C.Jena, U.K.Das, Chakradhar Nayak and S.K.Das, by further promoting them to the cadre of Sub Inspectors in the

resultant vacancies.

Sometime thereafter S/Shri Laxman Samal, Sunakar Behera, Surendra Nayak and B.K.Sinha approached this Tribunal in Original Application No.390/92, seeking promotions to the rank of Naik from the date on which S/Shri P.C.Jena and that group, who were junior to them as Constables were promoted. As earlier stated, this Original Application was disposed off on 10.12.1993, with a declaration that the applicants therein were to have been promoted to the cadre of Naik from the date/ dates on which S/Shri P.C.Jena, S.K.Das, U.K.Das and A.C.Das were so promoted, with further direction that the applicants shall be entitled to all consequential benefits including financial benefits as well as further promotions.

3. There is no dispute that the applicants as Constables are senior to S/Shri P.C.Jena, U.K.Das, S.K.Das and A.C.Das and also to the applicants in O.A.390/92. The grievance of the applicants is that after coming to know of retrospective promotions of the applicants of O.A.390/92, they represented to the departmental authorities during 1994 to extend similar benefits to them, but without any response. Hence this Application.

4. The departmental respondents 1 to 3 opposed the prayer of the applicants on the ground of limitation as well as on merits. The application is barred by limitation, because from the version of the applicants, the cause of action for filing an application of this nature arose during the years 1971-72, when their juniors P.C.Jena and group were promoted to the cadre of Naik. Hence, in the year 1995, i.e., after remaining silent for about 24 years they should not have

approached the Tribunal through an indirect prayer that by virtue of the judgment of this Tribunal they ought to have been promoted to the cadre of Naik (now Junior Armourer) with retrospective effect and consequently to the higher grade from the dates their juniors (applicants in O.A.390/92) were so promoted. Moreover, they did not even join themselves as parties in O.A.390/92. It is not their case that they were not aware of filing of this these applications by some of their juniors before the High Court/Tribunal.

On merits it is the case of the Department that for the first time promotions to the posts of Naik (Junior Armourer) came to be covered under A.R.C. (Ordnance) Service Rules, 1977. Prior to promulgation of A.R.C. (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 years 1971-72, a D.P.C. approved the names of Constables, viz., S/Shri P.C.Jena, U.K.Das, C.D.Nayak, A.C.Das and D.M.Bhera for promotion as they were working in Ordnance Section and were, therefore, considered better equipped and qualified to the posts of Naik. The applicants were working in other Units and were considered for appointment to the posts of Naik w.e.f. 1.9.1973, taking into account their long service in the grade of Constables. For the promotion to the cadre of Havildar, the D.P.C. met on 18.7.1975 and approved the promotions of S/Shri P.C.Jena, U.K.Das, C.D.Nayak and S.K.Das. In that proceedings, the case of Shri 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

in O.A.390/92 was pronounced on 10.12.1993, but the applicants therein were promoted from the date on which their juniors, viz., S/Shri P.C.Jena, U.K.Das and S.K.Das were promoted.

5. Respondent Nos. 4 and 5 (intervenors) also filed separate counter more or less on the same line as stated by the departmental respondents, opposing the prayer of the applicants.

6. No rejoinder has been filed by the applicants.

7. We have heard the learned counsels on record and perused the records.

8. There is no dispute that the applicants in O.A.390/92 were junior to the applicants in the instant case in the cadre of Constables. It is also not in dispute that S/Shri P.C.Jena, U.K.Das, C.D.Nayak, A.C.Das and S.K.Das are juniors to the applicants as Constables in O.A.390/92. In other words, as Constables, these two applicants were senior to all of them who are admittedly are in the cadre of Sub Inspectors. When the applicants filed this Original Application they were serving as Senior Armourers. Question for consideration is whether they are entitled to reliefs claimed in this Original Application filed in June, 1995, which would indirectly mean that they seek a declaration that they ought to have been promoted to the cadre of Naik with retrospective effect and consequently to the higher grades from the dates their juniors were so promoted.

9. It has been contended from the side of the applicants that application filed by these employees who are similarly placed to the employees, who already got the benefit of a judgment of a Court/Tribunal should not be rejected on the ground of limitation.

We are aware of the judgment of the Constitution Bench of the Apex Court in K.C.Sharma vs. Union of India, reported in 1998(1) SLJ 54 to this effect. But this judgment of the Apex Court is a judgment in rem and not in personem. 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. The Full Bench of this Tribunal held that the notification in so far as giving retrospective effect is concerned violated Articles 14 and 16 of the Constitution. As the Railway refused to extend the benefit of the judgment of the Full Bench to the Guards, who were not parties before the Full Bench, some of them filed O.A.774/94 before the C.A.T., Principal Bench. The Railway opposed that application on the ground of limitation. The Apex Court held that the application could not be rejected on the ground that giving retrospective effect to the notification was non est and as such all the Railway Guards would be entitled to the benefit of the judgment. That was a judgment in rem and not in personem.

But the cases filed by Shri J.K.Bhattacharya and others and also applications in O.A.390/92 centred round the inter se seniority as Constables and consequential reliefs prayed in those cases were for the individual promotion on the basis of seniority. Hence the judgment in these cases are judgments in personem. These judgments are not in rem in the sense, ~~as~~ quashing of any particular rule/circular/instruction and/or notification was not involved therein.

Even in O.A.390/92, this Tribunal dealt the point of limitation in extenso and ultimately condoned the delay by

19 19

taking note of the representations filed by the applicants therein. In the case before us, there is no convincing material to show that the applicants in ^{fact} deed represented at any time prior to the judgment in O.A.390/92, claiming promotions on the ground that their juniors in the cadre of Constables were earlier promoted. Though ⁱⁿ Paras-4 (e) (f) of the O.A. they have averred that they made several representations, the applicants have neither annexed to the O.A. copies of such representations nor mentioned, if not the date(s), at least the year or month when those representations ^{were} made to the departmental authorities. On the other hand, the Department specifically denied to have received any such representation. Hence we cannot take note of the averments of the applicants with regard to submission of representations. For the first time after pronouncement of judgment in O.A.390/92 and consequent upon promotions of the applicants therein, the applicants in the instant case represented during 1994, claiming promotions and seniority and consequent promotions to higher grades.

Thus, here is a case where the applicants were aggrieved for the first time during 1971-92, because of promotions of some of their juniors to the cadre of Naik and thereafter subsequently they were also aggrieved on account of further ^{sub} promotions of their junior as well as promotions of some of their juniors by virtue of various judgments of High Court/Tribunal. It is not their case that they were not aware of these developments. Yet they remained silent ^{and} for the first time in June, 1995, filed this Original Application to put the clock back by 24 years in order to get a declaration of their promotion to the cadre of Naik (Junior Armourer) and consequently

further promotions.

In 1996 SCC (L&S) 1488 (State of Karnataka vs. S.M. Kotrayya) the Apex Court, while interpreting Section 21 of the Administrative Tribunals Act, 1985, held that mere fact that the applicants filed belated applications 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 applications 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 judgment in personem the date of judgment 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 Judges Bench of the Apex Court in Bhoop Singh vs. Union of India reported in A.I.R. 1992 SC 1414 also did not grant relief, though persons similarly placed got the

21
21

relief. In that case the applicant along with many others was dismissed from service on 3.8.1967. Some of the dismissed employees like the applicant filed Writ Petitions in Delhi High Court in 1969-70 for quashing the orders of dismissal. 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 the same were transferred to the Central Administrative Tribunal. The Tribunal allowed those applications. The Delhi Administration preferred appeals before the Supreme Court which were ultimately dismissed. Thereafter the petitioner Bheop Singh filed O.A.753/89 before the 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 limitations. The Tribunal rejected the application on the ground of limitation. The Apex Court disallowed the claim of the petitioner 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 dismissal 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 that case the respondents were Temporary Constables in the service under Delhi Administration. The services of some other Constables like them were terminated on 6.3.1967. Some terminated Constables, similarly placed, filed Writ Petitions before the Delhi High Court in 1978. Those were allowed on 18.7.1983. Thereafter, the respondents filed the

Writ Petition in Delhi High Court in 1983-84. Those Writ Petitions were transferred to the Tribunal and the Tribunal allowed the petitions in spite of plea of limitation raised by the Department therein. The Apex Court held that since no explanation was given for the delay of 16 to 18 years from the date of termination in filing Writ Petitions, the applications were barred by limitation.

Again in Union of India vrs. Kesharilal Bablani reported in AIR 1999 SC 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.

Thus it is clear that though the applicants were aware of promotions of their juniors sometime in 1971-72, and also their consequential further promotions during the subsequent years, yet they remained silent without filing any representation or filing any case before the 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, as envisaged under Section 21(3) of the A.T. Act, 1985, read with Rule 8(4) of C.A.T. (Procedure) Rules, 1987. This Rule 8(4) lays down that when an applicant seeks condonation of delay he shall file a separate application supported by an affidavit. Unless there is a prayer for condonation of delay supported by an affidavit, this Tribunal may not examine the issue as to whether the applicants had sufficient cause for not making the application within the period of limitation Under Section 21 of the A.T. Act.

It has been held by a Three Judges Bench of the Apex Court in SECRETARY TO GOVERNMENT OF INDIA AND OTHERS VRS. SHIVRAM MAHADU GAIKWAD - reported in (1995) 30 ATC 635 that when plea of limitation is raised, the Tribunal can not 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 Administrative Tribunals 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 u/s. 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 the 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 and exceptional circumstances.

24

gy

:12:

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 S. S. S.
(SOMNATH S. S.)
VICE-CHAIRMAN
31.7.2001

31.7.01
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K. Sahoo/-