

13

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 246 OF 1995
CUTTACK THIS THE 21st DAY OF August 2001

Sweta Kumar Maharana & Others

.....

Applicants.

- V e r s u s -

Union of India and Others

.....

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not? ✓
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not? ✓

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.8.2001

G. Narasimham
(G.NARASIMHAM)
MEMBER (J)

14

14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 246 OF 1995
CUTTACK THIS THE 21st DAY OF August 2001

CORAM:

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

VICE-CHAIRMAN
MEMBER (J)

.....

1. Sweta Kumar Maharana,
Aged about 46 years,
S/o Late Golak Charan Maharana
working as S.F.A.
2. Fakir Charan Behera,
aged about 39 years,
S/o Late Panchu Behera
working as S.F.A.
3. Sadasib Patra,
Aged about 46 years,
S/o Late Brundaban Patro,
working as S.F.A
4. Golak Bihari Natha,
Aged about 56 years,
S/o Late Narayan Sethi
Constable.
6. Bansidhar Das, aged 49 years,
S/O Late Raghunath Das,
Constable.

All are working in A.R.C. Charbatia,
At/P.O.Charbatia, Dist. Cuttack.

By the Advocates

..... Applicants
M/s C.A. Rao,
S.K. Purohit
S.K. Behera
P.K. Sahoo

- V e r s u s -

1. Union of India, represented through the Cabinet Secretary, New Delhi, Central Secretariat, Beekaneer House, Sahajahan Road, New Delhi.
2. Director, Aviation Research Centre, Directorate General of Security, Cabinet Secretariate, Central Secretariat Building, West Block-V, R.K.Puram, New Delhi.
3. Deputy Director (Admn.), Aviation Research Centre, Charbatia, At/P.O.Charbatia, Dist-Cuttack.
4. Prafulla Chandra Jena,
5. Sampurna Kumar Das,
6. Umakanta Das.

Sl.Nos.4 to 6 are at present working as Sub-Inspector, Aviation Research Centre, CSD, Charbatia, At/P.O.Charbatia, Dist.Cuttack.

By the Advocates

... Respondents

Mr.B.Dash
A.S.C

.....

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): These six applicants who initially joined under Respondents 1 to 3 as Constables filed this application on 6.3.95 seeking the following relief:-

"In view of the facts mentioned in paragraphs 4 to 6 of the application as the applicants came in similar to the applicants case in O.A.No.389/92 and 390/92 vide Judgment dated 10.12.93 (Annexure-2) and are entitled similar relief as was given vide Annexure-2 and therefore that applicants humbly prays

that this Hon'ble Tribunal be graciously pleased to accord promotion to the applicants with effect from the date on which Respondent nos. 4 to 6 have been promoted to different posts and also further direct that the applicants are entitled to higher scale of pay as well as other service benefits flowing out of their promotion.

And/or to pass such other order/orders as this Hon'ble Tribunal deems just equitable and proper in the facts and circumstances of the present case."

2. The following facts are not in dispute. Applicants 1 & 2 joined as Constables on 4.9.69; applicants 3, 4 & 5 joined on 1.8.70; and applicant No.6 joined on 19.8.70. Similarly while Respondent No.4 Prafulla Chandra Jena joined as Constables on 2.12.70, Respondent No.5 Sampurna Kumar Das joined on 25.8.70 and Respondent No.6 Umakant Das joined on 3.5.70. From 1.8.71 to 1.6.72 Prafulla Chandra Jena and Umakanta Das were promoted to the cadre of Naik alongwith two others. Thereafter, these four persons were further promoted to the cadre of Havildar on 1.10.75 on which date Respondent No.5 Sampurna Kumar Das being a matriculate was also directly promoted to that rank. In the meanwhile, one Shri J.K.Bhattacharya was promoted to the cadre of Sub 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 Bhattacharya should be promoted and placed above him. The appeal filed by the Department before the Supreme Court was dismissed. Hence the Department promoted 11 persons to the rank of Sub-Inspectors. As this action benefited the Respondents 4,5,6 and one Chakra Dhar Naik, they were also promoted in the resulting

vacancies.

Sometime thereafter Laxman Samal, Sunakar Behera, Surendra Naik & B.K.Sinha approached this Tribunal in O.A.390 of 92 seeking promotion to the rank of Naik from the date on which Respondent No.4 and his group were promoted. 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 Respondents 4 to 6 were so promoted, with a further direction that the applicants shall be entitled to all consequential benefits including financial benefits as well as further promotion. Some more officials like the applicants in O.A.390 of 92 also filed O.A.389 of 92 before this Tribunal with the same prayer. In terms of the order passed in O.A.390 of 92, this O.A.389 of 92 was also allowed. Since the benefit of judgments in O.A.382 of 92 and 390 of 92 were not extended in case of the applicants, they filed this application.

3. The grievance of the applicants is that as Constables they being senior to Respondents No.4 to 6 they should have been promoted earlier in all the promotional cadres than these Respondents. While the nomenclature of post of the Naik is changed as Jr.Armour of Havildar as Sr.Armour.

4. Respondents 4 to 6 though duly noticed had neither entered appearance nor filed any counter. The Departmental Respondents 1 to 3 vehemently opposed this Original Application on the ground of limitation, jurisdiction and on merits as well. Accordingly to them as per the draft serial list of Constables published on 28.1.74 while Respondents 4 to 6 figured at serial nos.116,109

and 97, applicants 1 to 6 figured at serial 84, 83, 103, 102, 101 and 106 respectively. They also take the stand that the applicants appointed as Constables were redesignated as Security Guards and then Field Assistant. Applicants 1 to 3 were promoted to the post of Senior Field Assistant with effect from 6.4.90, 30.10.89 and 9.1.92 respectively. The post of Field Assistant and Sr. Field Assistants are governed A.R.C./FF(Field Officers) Service Rules, whereas the post of Naik is governed under A.R.C.(Ordnance) Service Rules. No promotion of individuals can be given from one Service Rules to another Service Rules. Prior to promulgation of A.R.C (Ordnance) Service Rules, 1977, the promotion/appointment in the ordnance set up was being made in the manner as thought fit. The promotion was being made on the recommendation of the D.P.C. During the year 1971-72, the D.P.C approved the names of Constables Prafulla Chandra Jena, Umakant Das and three others for promotion to the cadre of Naik. They were working in the ordnance section and were therefore considered better equipped and qualified for the post of Naik.

6. No rejoinder has been filed.

7. We have heard Shri S.K.Behera the learned counsel for the applicant and Shri B.Dash the learned Additional Standing Counsel for the Department.

8. Without entering into discussion as to whether there were different modes of promotions available to the applicants and the private Respondents 4 to 6, we are of the view that this Original Application can be disposed of even on the assumption that the promotion avenue for the applicants and private Respondents 4 to 6 ^{being} is the same.

9. There is no dispute that in the cadre of Constables, the applicants joined much earlier than the Respondent 4 and 5. Respondent No.6 though junior to applicants 1 & 2 is definitely senior to Respondent 3 to 6, as evident from the dates of joining. Even assuming Respondent No.6 is junior to all the applicants, still the application can be disposed of without going into merits.

10. Respondents 4 and 6 got promotions to the cadre of Naik during the year 1971-72 and further to the cadre of Havildar on 1.10.75 on which day also Respondent No.5 was directly promoted from the cadre of Constables. In otherwords, these three Respondents superseded the applicants during 1971, 1972 and 1975 and as such got benefit of further promotions. In otherwords, the applicants were aggrieved for the first time during the year 1971, 1972 and 1975 because of promotions of the Respondents 4 to 6. As earlier stated Respondents 4 and 6 got promotion to the cadre of Naik and thereafter to the cadre of Havildar in the year 1975 and Respondent No.5 in the year 1975 got direct to the cadre of Havildar. On the basis of these promotions the Respondents got the benefit of further promotions through various judgments of High Court/Tribunals. It is not the case of the applicant that they were not aware of these developments. Yet they remained silent and for the first time in March 1995 filed this Original Application to put the clock 20 to 24 years back, seeking declaration for their promotions to the cadre of Naik (Jr. Armour) from the date the Respondent No.4 & 6 were so promoted and consequently further promotions.

11. Shri B.Das the learned Additional Standing Counsel for the Department contended that this Original Application is not

maintainable because this Tribunal lacks jurisdiction to decide a cause of action which arose in 1971, 1972 and 1975. Under Section 21(2)(a) of the A.T. Act 1985, this Tribunal cannot entertain a case, Cause of action of which arose prior to the period of 3 years immediately proceeding the date on which the jurisdiction, powers and authority of the Tribunal became exercisable under this Act. Central Administrative Tribunals started functioning from 1.11.85 onwards. Hence under this proviso this Tribunal cannot entertain any application challenging any order of the grievance mentioned in the application, ^{it} relates to any date or dates prior to 1.11.82. Since the cause of action of this application is promotion of Respondents 4 to 6 to the cadre of Naiks and Havildar 1971 to 1975, this Tribunal lacks jurisdiction to entertain this application.

12. Even assuming this Tribunal has jurisdiction, yet we agree with the learned Additional Standing Counsel that this Original Application is hopelessly barred by limitation under Section 21 of A.T. Act.

It has been contended from the side of the applicant that application filed by an employee who is placed similar 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 Apex Court in K.C. Sharma Vrs. 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 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 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 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 nonest 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 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 cases are for the individual promotions on the basis of seniority. Hence the judgments in these cases are judgments in Personam. These Judgments are not in Rem in the sense of quashing of any particular Rule/Circular or notification involved therein. Even in O.A.390/92 this Tribunal dealt the point of limitation in extenso and ultimately condoned the delay by taking note of the representations of the applicants therein. In the case before us there is no convincing material that the applicants in fact represented at any time prior to the Judgment.

13. In 1996 SCC (L & C) 1488, State of Karnataka Vrs. S.M.Kotaya, 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 judgment in Personam 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 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 alongwith many others, were dismissed from service on 3.8.67. Some of dismissed employees 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 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 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 petitions 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. Even a delay of four years in challenging a promotion before this Tribunal was held as barred by limitation by the Apex Court in A.J. Fernandis Vrs. S.C.Railway, 2001 SCC (L&S) 217.

14. Thus it is clear that the applicants though were aware of the promotions of Respondents 4 to 6 from 1971 to 1975, yet they remained silent and for the first time approached this Tribunal

in March 1995, much beyond the period of limitation under section 21 of A.T.Act and that too without filing any application for condonation of delay under provision of Section 21(3) of the A.T.Act read with Rule 8(4) of C.A.T.(Procedure) Rules 1987. This Rule 8(4) laysdown 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 cause for not making the application within the period of limitation.

It has been held by a three Judge Bench of the Apex Court in Secretary to Government of India and Others Vrs. Shivram Mahadu 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 Zchizophrenia, 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 S.C. 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 A IR 1997 SC 1125 even observed that section 21 of the A.T.Act, 1985 specifies strict limitation period and does not vest the Tribunal 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 under rare and exceptional circumstances.

15. In view of the legal position discussed above, we have no hesitation to hold that this application besides being not maintainable is also hopelessly barred by limitation and is accordingly dismissed. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.8.2001

G. Narasimham
(G. NARASIMHAM)
MEMBER (J)