

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

OA No.633 of 2013
Cuttack, this the 13th day of September, 2013

CORAM
THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
THE HON'BLE MR. R. C. MISRA, MEMBER (JUDL.)

.....
Sri Laxmidhar Dehuri, aged about 50 years, Son of Kalandi Dehuri at Amiyajhari, Po/Ps.Badachana, Dist. Jajpur now working as MTS (Multi Tax Service) in the Office of Director of Census Operation, Odisha, At-Janpath, Po.Bhoinagar, Bhubaneswar, Dist. Khurda.

...Applicant

(Advocates: M/s. Banoj Ku Pattanaik, S.S.Parida, K.Mohanty, S.Parida)

VERSUS

Union of India Represented through –

1. Director, Directorate of Census Operation, Janpath, Unit-IX, Bhubaneswar, Dist. Khurda.
2. The Deputy Director of Census, Directorate of Census Operation, Janpath, Unit-IX, Bhubaneswar, Dist. Khurda.
3. Research Officer & Regional Head, National Commission for Scheduled Tribes, Government of India, Regional Office N/1-297, IRC Village, Bhubaneswar-15, Dist. Khurda.

... Respondents

(Advocate:Mr.D.K.Bhera)

ORDER

(Oral)

A.K. PATNAIK, MEMBER (JUDL.):

We have heard Mr.S.S.Parida, Learned Counsel for the Applicant and Mr.D.K.Bhera, Learned Additional CGSC appearing for the Respondents and perused the records.

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2. The case of the Applicant, in nut shell, is that he is a Matriculate and on 27.12.1982 he was appointed as Peon and as on 5.1.1986 he was the senior most Peons in the Office of Director of Census Operation, Odisha, Bhubaneswar. On 8.8.1997 he was promoted to the post of Dafty. On 18.5.1998 one Shri K.B.Mahanta who was junior to him was promoted to the post of Assistant Compiler in Group 'C'. Applicant submitted representation praying for his promotion to Group C on 17.10.2003, 22.10.2003, 9.1.2004, and on 16.1.2006. Further case of the Applicant is that as he belongs to ST community the National Commissioner for Scheduled Tribes intervened in the matter of supersession of the applicant in the matter of promotion and accordingly issued letter dated 16.11.2006 to give promotion to the applicant to Group C post retrospectively but despite the said letter of the National Commissioner for Scheduled Tribes and representation submitted by the applicant on 14.1.2013 since till date he could not be promoted he has approached this Tribunal in the instant OA praying to direct the Respondent Nos.1 and 2 to consider and promote him to the post of Assistant Compiler in Group 'C' w.e.f. 18.5.1998 when his junior was promoted with all service benefits. But neither copy of the gradation list has been filed in this OA nor has the order of promotion of the so called junior been challenged/sought to be quashed in this OA. The said so called junior has also not been made as a party in this OA in compliance with the principles of natural justice. Copy of the Recruitment Rule showing detailed mode of promotion has also not been filed by the Applicant. Besides the above, we find that the cause of action for the applicant arose on 18.5.1998 when

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the so called junior of the applicant was promoted to the post of Assistant Compiler, Group C. According to the applicant he has made the first representation against such promotion on 17.10.2003 ^{As per} the Section 21 of the A.T. Act, 1985 if his grievance could not be redressed he could have filed the OA after expiry of six months within one year of first representation dated 17.10.2003. It is trite law that successive representation shall not save the limitation. No separate application has been filed seeking condonation of delay. In this connection we may profitably rely one of the decisions of the Hon'ble Supreme Court rendered in the case of Satish Kumar Gajbhiye, IPS V Union of India and Others. Mr.Gajbhiye, IPS filed OA No. 201 of 2006 in this Tribunal challenging the rejection of his claim for allotment to Maharashtra cadre. This Tribunal for the discussions made in the order dated 24.7.2008 disposed of the matter directing the Respondent Nos.1&2 to re examine the case of the applicant for his allotment to Maharashtra cadre in place of respondent No.3 within a period of three months from the date of receipt of copy of this order. Respondents challenged the said order of this Tribunal before the Hon'ble High Court of Orissa in WP No.17779/2008. The Hon'ble High Court of Orissa in order dated 30.03.2011 reversed the order of this Tribunal holding that allotment of Respondent No.3 to the Maharashtra cadre did not suffer from any illegality. Thereafter RP No. 93/2011 was filed which was also dismissed by the Hon'ble High Court of Orissa on 16.5.2011. Against the said order the Applicant filed Appeal before the Hon'ble Apex Court which was numbered as **Special Leave to Appeal (Civil) No(s) 16575-16576/2011 (Satish Kumar Gajbhiye, IPS**



V Union of India and Others). The Hon'ble Apex Court while dismissing the appeal thereby upholding the order of the Hon'ble High Court of Orissa in order dated **25.7.2011** observed as under:

“On 11.7.2011, the case was adjourned at the request of Dr. Rajeev Dhawan, Learned Senior Counsel appearing for the Petitioner because he wanted to study the issue relating to limitation.

Today, Learned Counsel argued that this Court should not nonsuit the petitioner on the ground that the application filed by him before the Tribunal was barred by limitation because no such point was raised before the High Court. He then submitted that the application filed by the petitioner was within limitation counted from the date of his acquiring knowledge about the appointment of respondent No.3 in the Maharashtra Cadre as an insider candidate. He emphasized that the Petitioner learnt about appointment of respondent No.3 in Maharashtra cadre for the first time in 2003 and immediately thereafter he represented against the same and upon rejection of the representation by the Central Government, he filed application before the Tribunal without any delay.

We have considered the argument/submission of the learned counsel but have not felt impressed. Although, the Tribunal had negatived the plea of bar of limitation raised by respondent No.3 and the High Court did not even consider the issue of limitation, but after having carefully scrutinized the record, we are convinced that the original application filed by the petitioner was barred by limitation and the Tribunal committed serious jurisdictional error by entertaining the same. Section 20 and 21 of the Administrative Tribunals Act, 1985 (for short “the Act”), which have bearing on the issue of limitation read as under:

“20. Application not to be admitted unless other remedies exhausted –

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal

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preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

"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.

(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) of 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."

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Section 20(1) of the Act which is couched in negative form lays down that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Sub Section (2) of Section 20 provides for extension of time by six months where the appeal preferred or representation made by the aggrieved employee has not been decided by the Government or other competent authority.

Section 21 is also couched in a negative language. It imposes an embargo against admission of an application if the same is not filed within the time prescribed under clauses (a) and (b). Of course under sub section (3) of Section 21, the Tribunal can admit an application after expiry of the period specified in sub section (2), if it is satisfied that the applicant had sufficient cause for not filing the application within the prescribed period. “

3. On examination of the facts with reference to the law laid down by Hon'ble Apex Court, quoted above, this OA is liable to be dismissed on the ground of delay and laches besides ~~being suffered~~ ^{suffering} from nonjoinder of necessary party and, therefore, the same is dismissed. There shall be no order as to costs.


(R.C.MISRA)
Member(Admn.)


(A.K.PATNAIK)
Member(Judl.)