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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Decision : 20.02.2002

O.A No. 253/1999.

1. Kamal Kumar Jain son of Shri Tara Chand Jain, aged about 38 years, resident of A/34, VAN-VIHAR, Tonk Road, Jaipur, at present employed on the post of Inspector Excise IAD, Central Excise Commissionerate Jaipur-I, Statue Circle, C-Scheme, Jaipur.
2. G L Saini son of Shri Bhagwan Dasji Saini, aged about 42 years, resident of 18/683, Chopasani Housing Board, Jodhpur, at present employed on the post of Intelligence Officer, Directorate of Revenue Intelligence, 447, Pal-Link Road, Jodhpur.

... APPLICANTS.

versus

1. Union of India through Secretary to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Chairman, Central Board of Excise and Customs, North Block, New Delhi.
3. Dy. Commissioner (personnel and Vigilance), Cadre Control Unit, Central Excise Commissionerate Jaipur-I Statue Circle, C-Scheme, Jaipur.
4. Shri. V K Gupta, Superintendent Custom Range Poongal, Distt. Bikaner.
5. Shri Darshan Singh, Superintendent, Customs Division, Jaisalmer.
6. Shri Piyus Kumar, Superintendent, Service Tax Cell, Central Excise Commissionerate, Jaipur-I, Statue Circle, C-Scheme, Jaipur.
7. Shri H R Gupta, Superintendent, Central Excise Range, Behror, Distt. Alwar.
8. Shri G R Arora, Superintendent Customs Division, Sriganganagar.
9. Shri V K Soni, Superintendent Central Excise Division, Bhilwara.
10. Shri M K Gautam, Inspector, Customs Division, Bikaner.

... RESPONDENTS.

Mr. B. Khan counsel for the applicants.

Mr. Vinit Mathur counsel for respondent No. 1 to 3.
None is present for the other respondents.

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Hon'ble Mr. Justice O.P. Garg, Vice Chairman.
Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :
(per Hon'ble Mr. Justice O.P. Garg)

Applicants Kamal Kumar Jain and G L Saini who were employed at the time of filing of the present OA respectively on the posts of Inspector Excise IAD, Central Excise Commissionerate Jaipur-I, Jaipur and Intelligence Officer, Directorate of Revenue Intelligence, Jodhpur, have prayed for the following reliefs:-

" (i) That the impugned order dated 18.6.99 Annexure A/5, rejecting the representation of the applicants, may be declared illegal and the same may be quashed.

(ii) That the respondents No. 1 to 3 may be directed to assign seniority to the applicant above the respondents No. 4 to 10 on the post of Inspector and the impugned seniority list dated 25.04.1997, Annexure A/1, and allow all consequential benefits including the consideration for further promotions at par with their next juniors and consequently the impugned orders dated 30.06.1998, 08.10.1998 & 08.10.1998 Annex. A/2, A/3, A/4 respectively, may be ordered to be modified accordingly.

(iii) That any other direction, or orders may be passed in favour of the applicants which may be deemed just and proper under the facts and circumstances of this case in the interest of Justice."

2. Applicants are the direct recruits. They are claiming seniority over the promotee Inspectors. The quota of the direct recruits is 75% while that of the promotees, it is 25%. It is maintained that the private respondent No. 4 to 10, who were promoted after the recruitment and joining of the applicants, cannot become senior. A detailed reply has been filed by the official respondents. The stand taken by them is that the seniority has been determined in view of the office memorandum dated 22.12.1959, which provides where, ~~an~~ enough number of direct recruits or promotees is not available, the slots meant for ~~or~~ direct recruits or promotees which

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could not be filled up were left vacant and when direct recruits or promotees become available through later examinations or selections, such persons occupied the vacant slots, thereby becoming senior to the persons who were already working in the grade on regular basis. The plea that the OA is barred by limitation has already been taken.

3. Heard the learned counsel for the parties.

4. A preliminary objection was raised by Shri Vinit Mathur, Learned counsel for the respondents, that the present OA is barred by limitation and on the same ground a similar OA No. 554/90, Prem Prakash Sharma vs. U.C.I. & Ors., has been dismissed on 20.10.1995. A copy of the judgment dated 20.10.95 passed in OA No. 554/90 has been Annexured with reply filed by the respondents. We have perused the detailed decision in the case of Prem Prakash Sharma, and find that the OA was dismissed as being barred by limitation. Though it was another applicant but he was also holding the post of Inspector and has challenged the same seniority list, which is in-dispute in the present OA. Shri B. Khan, Learned counsel for the applicant, does not dispute the facts as stated by Shri Vinit Mathur, Learned counsel for the respondents, but pointed out that the cause of action to the present applicants arose after their representation made pursuant to the directions of this Tribunal dated 12.01.1999 passed in OA No. 323/98, has been rejected. The said OA was not decided on merits and a direction for disposal of the representation made by the applicants of that OA was issued on the request of the counsel for the

applicants who did not press the OA on merits. The rejection of the representations of the applicants would not have the effect of enlarging or extending the period of limitation even though the representation came to be decided in pursuance ^{of} to the orders of this Tribunal. In this connection a reference may be made to the decision of the Apex Court in the case of S.S. Rathore vs. State of Madhya Pradesh 1990 SCC (L&S) 50. The division benches of the various Tribunals have also taken the view that the period of limitation is not revived by making the repeated departmental representations. (Dev Raj vs. Union of India, (1987) 2 ATC 189 (CAT) (jab) ; Ganpat Dashrath Sarate vs. U.O.I. (1986) 1 ATC 521 (CAT) (Bom.)). Rejection of a non statutory representation submitted subsequent to rejection of the original representation, does not give a fresh cause of action. (Satyabir Singh vs. Union of India, (1987) 3 ATC 924 (CAT) (ND) .). A departmental representation made seven years after the accrual of the cause of action could not stop limitation. (V.S. Raghavan vs. Secy. to the Ministry of Defence, (1987) 3 ATC 602 (CAT) (Mad) .).

5. Learned counsel for the applicant placed reliance on the decision of the Apex Court in the case of Kuldeep Chandra vs. U.O.I. & Ors. 1996 (1), All India Service Law Journal, 113, in which it was held that the seniority list which became final in the year 1982 could be challenged by the concerned employee only when his chance for promotion comes and, therefore, the delay could not impede the proceedings. The above observation has to be

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confined to the peculiar facts of that case. It is not of universal application. The C.A.T., Allahabad Bench in the case of G.C. Bhattacharya vs. Railway Board and another in OA No. 1269/1992 decided on 14.03.1997, has clearly taken the view that any representation made by the Government servant based on a decision of the Tribunal in another case, several years after the right to sue occurred to him, cannot give rise to a fresh cause of action. The law on the point has been discussed in the earlier OA No. 554/90, Prem Prakash Sharma vs. U.O.I. & Ors (Supra) and since in all respects the facts of the present case are identical to the facts of that case, we do not find any sound reason to deviate from the findings recorded in that judgment. Adopting the reasoning in Prem Prakash Charma vs. U.O.I. & Ors. and fortified by the decisions mentioned above as well as the recent decisions of the Apex Court in the case of Govt. of A.P. v. Mohd. Ghouse Mohinuddin (Pattanaik, J.) (2001) 8 Supreme Court Cases 416 and A.J. Fernandis vs. Divisional Manager, South Central Railway and Others, (2001) 1 Supreme Court Cases 240, we have no hesitation in coming to the conclusion that the present application is in the teeth of the provision of the Administrative Tribunals Act, 1985.

6. A passing reference may be made to the merits of the case also. It has been decided by the Bombay Bench of the Central Administrative Tribunal in OA No. 425/92 Shankar Ram Chandra Kadam, and 146 Others vs. U.O.I. and Others, decided on 06.12.1995,

that the seniority of Inspectors of Central Excise Department who were directly recruited should be fixed on the basis of MHA, OM dated 22.12.1959. From this decision, it is clear that the seniority of the direct recruited Inspectors of Central Excise Department vis a vis the promotee Inspectors is to be determined with reference to the instructions contained in OM dated 22.12.1959. In the present case, the promotee Inspectors who are respondent No. 4 to 10 have ranked senior to the applicants on account of the fact that they have been assigned the position or the slots meant for them within their quota. The claim of the applicants is, therefore, found to be meritless.

7. The OA is accordingly dismissed both on the ground of limitation as well as on merits. No order as to costs.

Gopal Singh

(GOPAL SINGH)
Adm. Member

O.P. Garg

(JUSTICE O.P. GARG)
Vice Chairman

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Part II and III destroyed
in my presence on ... 3-7-57
under the supervision of
Section Officer () as per
order dated ... 14/3/57

Section Officer (Record)

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