

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 297 of 2013

Monday this the 20th day of June, 2016
CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

P.Balakrishnan, (Administrative Officer Grade I (Retired)
Commander Works Engineer,
Tirumala PO, now residing a Kamala Bhawan,
Kallode, Perambra PO.673525.

...Applicant

(By Advocate Mr. Nandagopal Nambiar)

Versus

1. Union of India, represented by the Secretary,
Government of India, Ministry of Defence,
New Delhi-110 001.
2. The Engineer-in-Chief, Army Headquarters
Defence Headquarters Post Office,
New Delhi-11.
3. The Chief Engineer
Southern Command, Pune-400 001.
4. The Chief Engineer (Air Force)
No.2, DC Area, Bangalore.

....Respondents

(By Advocate Mr. N.Anil Kumar, Sr.PCGC)

*The above application having been finally heard on 13.06.2016, the
Tribunal on 20.06.2016 delivered the following:*

ORDER

Per: Justice N.K. Balakrishnan, Judicial Member

The applicant has approached this Tribunal complaining of denial of promotion to the post of Senior Administrative Officer (SAO for short). He seeks a direction to be given to the respondents to grant promotion to that post w.e.f. the date on which his immediate junior-Mahadevan was promoted and also to grant him consequential benefits.

2. The gist of the case pleaded by the applicant is stated as follows:

The applicant had earlier filed OA 1565/1994 seeking a direction to the respondents to grant him promotion at par with his juniors Shri R.Sivathanu and Shri Mahadevan for which he relied upon the judgment of the Bombay Bench of the Tribunal in OA 736/1988. That OA (OA 736/1988) was in fact allowed relying on another order of Bombay Bench in OA 521/87 and that of CAT Madras Bench in TA Nos 177, 465 and 427 of 1986. OA 1565/1994 filed by the applicant was disposed of by this Tribunal vide order dated 7.7.1995 holding that the respondents are bound to consider the case of the applicant on merit in terms of the decision of the Madras Bench and Bombay Bench in the case of Joglekar which was followed by the decision of Bombay Bench in OA 736/88. It was held that the impugned order in which it was held that the benefit of that judgment is extended to the applicant in that case alone was found to be patently

incorrect. The applicant was permitted to submit a representation to the 2nd respondent and to bring to the notice of the respondent the decision in OA 736/1988 of the Bombay Bench. The 2nd respondent was directed to consider the said representation of the applicant and pass appropriate orders. Without fully understanding the spirit of the order, the respondents promoted the applicant as Administrative Officer Gr.II (AO Gr.II) from 16.6.1984 and AO Gr.I from 7.8.87 inserting the name of the applicant in the panel just above Shri N.Mahadevan. Annexure A2 is that order. Annexure A1 order became final. The name of the applicant has not been included in the panel of promotion in the grade of SAO. The applicants in all other O.As, referred to earlier, were granted eligible promotion pursuant to the direction issued in the respective order/judgment. The applicant is also entitled to get the same benefit. The applicant retired on superannuation on 31.7.1995 after rendering a total service of more than 35 years from 1.7.1961 out of which he had served as AO II for three years and as AO I for eight years. As per the Recruitment Rules the applicant was eligible to be promoted as SAO from 7.8.1992. But in spite of the directions issued by this Tribunal the applicant was denied promotion. Annexure A6 is the order passed by the respondents pursuant to the direction issued by this Tribunal in Annexure A1. Annexure A6 is illegal and unsustainable, the applicant contends.

3. As the applicant was promoted as AO I in 1995 with retrospective effect from 7.8.1987 it can be found that the applicant had completed the mandatory service of 5 years as AO Gr.II by 7.8.1992 and thereby he became eligible for further promotion to the post of SAO. The seniority of the applicant fixed as AO Gr.II on 7.8.1987, which was fixed based on Annexure A1 order dated 7.7.1995, became final. As such the applicant should have been promoted as SAO immediately prior to Shri N.Mahadevan who was the immediate junior of the applicant Hence the applicant claims the reliefs as stated above.

4. The respondents resisted the claim contending as follows:

It is not correct to say that the applicant was senior to Shri N.Mahadevan as stated by the applicant. The seniority list of AO Gr.II and AO.Gr.I were revised through review DPC and panels were published on 12.5.2000 vide Annexure R.1. As per Annexure R.1 the applicant's seniority as AO Gr.I was fixed at Sl.No.50. Sl.No.51 is that of Shri Sivathanu. Sl.No.49 is that of R.Balasubramaniam. N.Mahadevan is placed at Sl.No.10. Annexure R.2 is that seniority list. The seniority list was amended and a review DPC was held in UPSC for SAO and a panel was issued to effect promotion to the officers who had become senior to Shri Prem Sagar. The promotion effected was for the vacancy year 1992-93, 1993-94, 1994-95 and 1995-96. Shri Premsagar was promoted to the rank

of Senior Administrative Officer as per proceedings dated 12.7.1996 based on the seniority list of AO Gr.1. That was done in compliance with various court orders. Certain AOs (Gr.I) who were senior to Shri Premsagar were also required to be given promotion as SAO. The relevant rules says that if the officers placed junior to the officer concerned have been promoted he should be promoted immediately and if there is no vacancy the junior most person officiating in the higher grade should be reverted to accommodate him. Since the applicant had retired from service on 31.7.1995 well before 18.7.96 when Shri Premsagar was promoted as SAO, the applicant could not have been considered for promotion as per extant rules. AO Gr.I who were placed above Shri Premsagar in the seniority list were considered for promotion as SAO, but as the applicant retired from service on 31.7.1995 he was not considered for promotion.

5. A rejoinder was filed by the applicant refuting the averments made by the respondents in the reply statement. It is contended that the respondents are estopped from making such statements in the reply statement as they did not raise any of those contentions in OA 1565/94 which culminated in Annexure A1 order. The respondents ought to have raised all those points while Annexure A1 Original Application was under consideration. Therefore, the respondents cannot raise those contentions now. As per Annexure A2 order the seniority position of the applicant was

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clearly found and fixed above Shri N.Mahadevan. Consequential notional promotion was also granted to the applicant based on Annexure A2. The applicant was unaware of Annexure R.1 seniority list. It was passed or issued without notice to the applicant and behind his back. The respondents are bound to comply with Annexure A1 order. The applicant's claim is only to give him eligible promotion in 1993 as in the case of his immediate junior Shri Mahadevan. All his juniors were promoted in 1992-93. Shri Mahadevan also retired from service. The applicant was promoted as AO Gr.II and AO.Gr.I w.e.f. 16.6.84 and 7.8.87 respectively where his name was placed above Shri Mahadevan. After several years, the respondents cannot recast the seniority list, that too without notice to the applicant. The contention that since the applicant retired from service on 31.7.1995 he cannot claim promotion on a date prior to his retirement is totally unsustainable. The applicant was eligible for promotion to the post of SAO as per the Recruitment Rules w.e.f. 7.8.1992 on completion of 5 years service as AO Gr.I. Hence the applicant reiterated his claim for promotion as stated in the OA.

6. Additional reply statement was filed by the respondents refuting the averments made in the rejoinder.

7. We have heard the learned counsel for both sides and have also gone through the documents produced by the parties.

8. The short point that falls for consideration is whether the applicant is entitled to be promoted as SAO and whether he is entitled to get other consequential benefits?

9. It is rightly pointed out by the learned counsel for the applicant that Annexure A1 is an inter-party judgment and it has become final. Annexure A1 was not challenged by the respondents before any higher forum and as such Annexure A1 has attained finality. As Annexure A1 is an inter-party order/judgment the parties thereto are bound by that judgment. The other judgments or orders in which the respondents may be parties cannot be used as a ground to annull or nullify the valid and binding order (Annexure A1). Annexure A1 order was passed on 7.7.1995. The earlier order passed by the Bombay Bench of the Tribunal in OA 736/1988 and also other orders passed by the Tribunal were referred to in Annexure A1. It was held by the Tribunal, that it was at a loss to understand as to why the department has not fixed the seniority of all the employees who were placed in circumstances similar to those, who were the applicants before the Madras Bench. The decision given by the Madras Bench of the Tribunal ought to have been applied by the respondents to all persons who were placed in the same situation as the applicant before Madras Bench and it should not have become necessary for persons from that cadre to agitate their grievance individually and separately before various Benches of the

Tribunal. That was the observation so made by the Bombay Bench of this Tribunal in OA.736/88 (quoted in Annexure A1 order). The plea taken by the respondents in Annexure A1 that the benefit of the order in OA 736/1988 was extended only to applicants in that case and as such it was not to be extended to the applicant herein was negatived by the Tribunal in Annexure A1. It was found that the applicant was similarly circumstanced as the applicant in the cases referred to therein.

10. Be that as it may, pursuant to the direction issued under Annexure A1 order, Annexure A2 seniority list dated 12.5.1997 was issued by the respondents. Annexure A2 shows that the applicant was promoted as AO Gr.II on 16.6.84 (notionally) from the date of promotion of his immediate junior N.Mahadevan. It was further ordered that the applicant was again notionally promoted as AO Gr.I w.e.f. 7.8.1987 on the date of promotion of his immediate junior Shri Mahadevan. Therefore, since Annexure A2 was issued based on the direction issued in Annexure A1, the respondents cannot unilaterally upset the seniority or the applicant's position as AO Gr.I (w.e.f. 7.8.1997) which was conferred on him as per Annexure A2.

11. The main grievance voiced by the applicant is that after several years the seniority was upset and a list was published by the respondent presumably on the basis of some directions or orders issued by some other authorities. Those directions or orders cannot be used against the applicant

since he was not a party to any of the aforesaid proceedings. Whatever that be, since the seniority of the applicant was fixed as per Annexure A2, which was done pursuant to the direction in Annexure A1, all necessary consequences must certainly follow, the learned counsel for applicant right submits. It is vehemently argued by the learned counsel for the applicant that the fact that on completion of five years as AO Gr.I an officer is eligible to be promoted as SAO was not seriously disputed. The seniority position of the applicant was considered in Annexure A1 which is binding on the respondents and therefore, any contrary claim put forward by the respondents based on some other orders to which the applicant was not a party, cannot be pressed into service. Going by Annexures A1 and A2, it can be found that the applicant was given the seniority position just above Shri N.Mahadevan. It was in that line the applicant was granted notional promotion to the grade of AO Gr.I. It is pointed out that the request for promotion made by the applicant to the post of SAO was turned down solely on the ground that when the DPC was held for the purpose of promotion, the applicant was not in service. The fact that the applicant retired from service on 31.7.1995 cannot preclude the respondents from considering the claim of the applicant if he was otherwise entitled. As pointed out above the applicant was eligible to be promoted from 1.8.1992 as he had completed 5 years residency period as AO Gr.I.

12. The respondents have very much relied upon Annexure R1 the revised seniority list which was prepared on account of a review DPC against vacancy of the year 1983. That order was passed on 12.5.2000 long after Annexure A1 order, followed by Annexure A2. In Annexure R1 the applicant was placed just above Sivathanu. Sivathanu's name is at Sl.No.64. Applicant is at Sl.No.63. Mahadevan appears at Sl.No.66. Even going by Annexure R1 it can be seen that the applicant was above Mahadevan. If Mahadevan could be granted promotion in the DPC or Review DPC which was convened subsequently, there was no reason why the applicant was excluded from consideration for promotion as Senior AO. The fact that the applicant was otherwise eligible for promotion to the post of SAO as per Recruitment Rules in force, with effect from 7.8.1992 is not seriously disputed by the respondents. There is no specific case for the respondents that there were no sufficient vacancies so as to promote the applicant to the post of SAO. If a junior Mahadevan could be promoted as SAO, there is no reason why the applicant could be excluded or omitted to be considered for promotion at the relevant time. According to the applicant, going by Annexure A3 it can be very well found that there were sufficient number of vacancies so as to grant promotion to the applicant as SAO. It is pertinent to note that in Annexure A3 the selected officer, for being posted as SAO, was against 1992-93 vacancies. Mahadevan figured at Sl.No.1. If so it

eludes comprehension why the applicant could not be placed just above Mahadevan (bringing down the position of Mahadevan) as Sl.No.2 and promoted the applicant. It appears that the respondents did not give that much importance to Annexure A1 order followed by Annexure A2 but was simply carried away by some other orders to which the applicant was not a party. We have no hesitation to hold that the applicant is entitled to be given promotion as SAO on the date on which Shri N.Mahadevan was granted promotion in Annexure A3 the revised consolidated list.

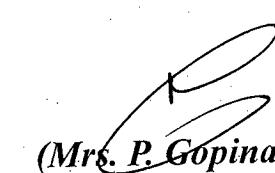
13. The other question vehemently advanced by the learned counsel for respondents is that there has been inordinate delay in the applicant raising the claim. It has to be stated that the applicant was well aware of the fact that he was entitled to get promotion in 1992 on the strength of Annexure A1 order followed by Annexure A2. But he did not raise his little finger for nearly a decade. He approached the Tribunal after about 10 years by filing OA 233/2012. That OA was disposed of by this Tribunal granting opportunity to the applicant to make representation to the Ist respondent and if so the Ist respondent was directed to dispose of the same within four months from the date of receipt of the representation. The learned counsel for the respondents would vehemently argue that the submission of a representation after a decade cannot save the period of limitation. There can be no doubt that simply because a representation is submitted (if the claim

had already become stale) such a direction issued by the Tribunal cannot come to the rescue of the applicant. (See also the decision of the Apex Court in **C.Jacob Vs. Director of Geology and Mining and others - 2008 (10) SCC 115** followed by **Union of India and others Vs. A. Durairaj (dead) - JT 2011 (3) SC 254**). But as far as the case on hand is concerned the applicant contended that it is a recurring cause of action. Since there was denial of pension, which the applicant is legally entitled to, it is a continuing wrong and that the cause of action arises every month when the reduced pension is given to the applicant. Normally a belated claim is to be rejected on the ground of delay and laches or limitation. One of the exceptions of the said rule is cases relating to continued wrong committed by the parties. It was held by the Supreme Court in **Union of India Vs. Tarsem Singh - 2008 SCJ 163** held as under:

"5.....Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied."...."

14. In so far as the relief claimed in this case is concerned, the applicant alleges it to be a continuing wrong and he has been denied due pension which he would have been entitled had the respondents included his name in Annexure A3 and had he been granted promotion to the post of SAO w.e.f the date when his junior Mahadevan was granted promotion. In view of the fact that the applicant was entitled to be considered for promotion as SAO on completion of 5 years service from 1987 the respondents are not justified in declining the promotion which he was otherwise entitled. But since he has approached this Tribunal only in 2012, the arrears should be confined three years prior to the date of filing of the OA.

15. In view of the facts stated above, this OA is disposed of directing the respondents to grant the applicant notional promotion to the post of Senior Administrative Officer with effect from the date on which Shri Mahadevan, the immediate junior of applicant was granted promotion to that post. The pay of the applicant shall be re-fixed accordingly. But it is made clear that the arrears of pension should be limited to three years prior to the filing of this OA. No order as to costs.


(Mrs. P. Gopinath)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member