

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.152/87.

Shri S.A.B.Patil,
H4/2607,
Hari-On Housing Society,
Maharashtra Housing Board,
191-A Yerawada Pune-6.

... Applicant

V/s.

1. The Secretary,
Ministry of Defence,
Department of Defence (Prodn),
New Delhi.
2. The Chairman,
Ordnance Factories Board,
10-A Auckland Road,
Calcutta-1.
3. The Chairman,
Departmental Promotion Committee (IIB),
Ordnance Factories Board,
10-A Auckland Road,
Calcutta-1.
4. The General Manager,
High Explosives Factory
Kirkee, Pune-3.
5. The General Manager,
Ammunition Factory
Kirkee, Pune-3.
6. Shri H.Ramakrishnan,
Asst. Works Manager,
Ammunition Factory
Kirkee, Pune-3.
7. Shri P.V.Chitte. A.W.M.
Ammn. Factory,
Kirkee, Pune-3.
8. Shri S.K.Verma. A.W.M.
Ordnance Factory,
Dehra-Dun (U.P.)

... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

Oral Judgment:

¶ Per Shri M.B.Mujumdar, Member(J)¶ Dated: 5.12.1988.

The applicant Shri S.A.B.Patil has filed this application under section 19 of the Administrative Tribunal's Act on 12.2.1987. The applicant was appointed as Chargeman Gr.I on 9.1.1964 in the Ammunition Factory at Kirkee, Pune. In August, 1970 he was promoted as Assistant Foreman. In 1978 he was promoted as Foreman

and since then he is working as Foreman. At present he is working as Foreman in the Ordnance Factory at Dehu Road.

2. In 1964-65 some Chargemen Gr.II who were junior to the applicant were promoted as Assistant Foremen. In July or August, 1964 the applicant made a representation against his supersession, but he was informed by the authorities that they were following the rules regarding seniority framed on 6.1.1961. In 1978, S.P.Saxena & 15 others had filed Special Civil Application No.1791 of 1978 in the High Court of Judicature at Bombay Challenging the seniority list of Chargeman Gr.II (Chemist) and all Assistant Foreman (Chemist) dated 31.10.1977 and 30.3.1978, respectively. It was the grievance of the Petitioners in that case that in the same seniority list, Respondents Nos. 3 to 73 who were junior to them had been shown above them. In that case the rules framed on 6.1.1961 were challenged by the Petitioners and by its judgment delivered on 1.12.1981, the High Court held that these rules were not applicable to the Petitioners before them. In the result, the impugned seniority lists were struck down by the High Court with a direction that fresh seniority lists be drawn of the said two categories by giving the seniority to the petitioners on the basis of their continuous officiation in the respective posts. The petitioners were also held entitled to all consequential reliefs such as the adjustments of their dates of promotions to the higher posts on the basis of recast lists. The Respondents in that case had preferred S.L.P. (Civil) No.8356/82 in the Supreme Court of India against the judgment of the High Court. However, on 3.2.1984 the Supreme Court dismissed the S.L.P. Thereafter, the seniority list was amended as can be seen from the letter dated 8.12.1986 from the Government of India, Ministry of Defence, Ordnance Factory Board addressed to the

General Manager, High Explosives Factory, Kirkee. By that letter the General Manager was asked to show the amended seniority list to S.P.Saxena who was Petitioner No.1 in Writ Petition filed before the High Court, for showing if there was any discrepancy in the amended seniority list. As there was no discrepancy, the amended seniority list was finalised.

3. After the decision of the High Court, the applicant represented for the first time on 26.4.1982 and even thereafter he continued making representations. While admitting the application on 25.2.1987, we directed the respondents to dispose of the representation submitted by the applicant on 26.12.1986 as early as possible. It appears that that representation was rejected on 19.8.1987. The applicant was thereafter allowed to file a rejoinder.

4. In the present application (O.A. 152/87) the applicant has prayed for directing the respondents to implement the judgment of the Bombay High Court in Special Civil Application No.1791/78 in preparing fresh seniority lists in different grades of Chargeman Gr.I (Mechanical), Assistant Foreman (Mechanical) and Foreman (Mechanical) based on the seniority rules framed in 1956, ignoring the rules framed on 6.1.1961 which have been held inapplicable by the Bombay High Court. The applicant has further prayed for assigning him his ~~due~~ seniority in the Grade of Chargeman Gr.I (Mechanical) w.e.f. 9.1.1964 which is the date of his initial appointment as Chargeman Gr.I. He has also prayed for other consequential reliefs, such as for promotion to the next higher grade of Asstt. Foreman (Mech.) based on the revised seniority list, etc. In short, what the applicant has prayed in this application is to give him benefits of the judgment of the Bombay High Court in Special Civil Application No.1791/78.

5. The respondents have resisted the application by filing the affidavit in reply of Shri S.N.Patil, Dy. General Manager, High Explosive Factory of the Respondents at Pune. According to them the grievance of the applicant relates to the seniority list prepared more than 20 years back and subsequent revision of the list from time to time. The applicant was not a party to the Special Civil Application No.1791/1978 and hence he cannot take advantage of the Judgment of the High Court in that case. It is admitted that the applicant was making representations from April, 1982, but it is pointed out that these were not statutory representations and hence cannot be considered while computing the period of limitation. It is therefore, submitted that on the ground of delay and laches, the application should not be allowed, in order not to reopen the issues which are settled more than 23 years back. In support of these submissions they have relied on two judgments of the Madras Bench of the CAT in Tr. Application No.886/86 and Misc.Petition No.155/87. Copies of these judgments are attached to the written statements.

6. Admittedly, the applicant was not a party to the Special Civil Application filed by S.P.Saxena and 15 others in the High Court of Judicature at Bombay in 1978. When the Special Leave Petition preferred by the respondents was rejected by the Supreme Court, the respondents have implemented the decision of the Bombay High Court by reviewing and rectifying the seniority of the 16 petitioners who had filed the petition in the Bombay High Court and have also given consequential reliefs to those petitioners. It is the case of the applicant that the same benefits should be given to him implementing the decision of the Bombay High Court.

7. But after hearing the arguments for both the sides and considering the facts we are not inclined to grant the prayer of the applicant.

8. As already pointed out, it is the grievance of the applicant that he was superseded by his juniors in 1964-65 when some Chargemen Gr.II who were junior to him were promoted as Assistant Foremen. He had made a representation against such supersession in July or August, 1964 itself but it was turned down by pointing out that the respondents were following the 1961 seniority rules. If the applicant would have been vigilant, he would have approached the High Court or some other Court within a reasonable period thereafter. S.P.Saxena and 15 others had approached the High Court in 1978 by preferring Special Civil Application No.1791/78. The applicant could have joined himself in that petition if he so wanted. The Judgment of the High Court shows that in respect of the Petitioners before them, some directions were given to the respondents. In view of that decision, the respondents were not bound to revise the entire seniority list so as to unsettle the seniority, promotions, etc., of many other persons. Moreover, those who were likely to be affected by the decision of the High Court were made parties through a Special Civil Application No.1791/78. They were Respondents Nos. 2 to 73. If we allow this application, indisputably many persons are likely to be affected who are not made parties to this application. Moreover, unlike the High Court exercising jurisdiction under Article 326 of the Constitution of India, we are bound by the provisions regarding limitation in section 21 of the Central Administrative Tribunals Act, 1985. The

applicant's grievance in this application relates to supersession in 1964-65 based on the seniority rules of 6.1.1961. After his representation made in July or August 1964 against his supersession was turned down by the ~~High~~ ^{authorities,} ~~Court~~, he did not approach any Court or make any ⁶representation till the High Court decided the Special Civil Application in December, 1981. In V.K.Mehra Vs. Secretary, Ministry of Information and Broadcasting, ATR 1986 CAT 203 the Principal Bench of this Tribunal has held that the Administrative Tribunals Act does not vest any power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1.11.1982 i.e. prior to three years before the Constitution of this Tribunal. It is further held in that case that in such a case there is no question of condoning the delay in filing the petition, but it is a question of entertaining a petition in respect of a grievance arising prior to that date. As the application before the Principal Bench related to a grievance arising out of an order dated 25.2.1981 the Bench held that the Tribunal had no jurisdiction, power or authority to entertain the same though it was filed within 6 months of its Constitution.

9. We may also refer here to a judgment of the Full Bench of this Tribunal in the case of R.S.Chimni and 7 others Vs. Union of India (Tr. Application No.18/87 decided on 17th June, 1988). The applicants in that case had filed a Writ Petition in the High Court of Andhra Pradesh in 1981 challenging certain rules regarding

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promotion. The full bench allowed the petition. The learned advocate for the respondents had expressed an apprehension that consequent to the decision of the full bench several persons who were not parties to the writ petition would come forward with fresh application and claim the same relief which had been granted to the applicants. While dealing with this apprehension the full bench has observed:

"They would be fixed at the relevant positions in their respective grades in the new service and will be entitled to the consequential benefits of seniority, promotion and other benefits in accordance with the terms and conditions of the DRDS rules. Sri Nagaraja Rao CGSC had expressed an apprehension that consequent to our present decision several persons who are not parties to the present application would come forward with fresh applications and claim the same relief as has now been granted to the applicants. The apprehension that other employees would file fresh applications long years after the cause of action has arisen may be unfounded in view of the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985."

10. Turning to the judgments relied upon by the respondents we may point out that in Tr. Application No.886/86 which was a writ petition filed by P.Viswambharan and 11 others in the High Court of Madras in 1984, The grievance of the petitioners had arisen in 1966. As the petitioners had approached the High Court after 18 years, that too after they were promoted twice to the higher posts, the Tribunal refused to interfere as that would have unsettled the matters which were settled 20 years back. The other judgment relied upon by the respondents is the judgment of the Madras Bench delivered on 30th March, 1987. In that case One D.Thilagan had challenged the seniority list prepared in 1980. The applicant had filed

representations but they were rejected in 1985 and June, 1986. As these were non-statutory representations, the Tribunal refused to condone the delay and dismissed the application. We are in complete agreement with these decisions of the Madras Bench. We are also of the view that the fact that the Bombay High Court had allowed the Writ Petition filed by S.P.Saxena and 15 others will not entitle us to take the same view in this case. The High Court was not bound by the provisions of limitation unlike this Tribunal. In the result, we dismiss this application with no order as to costs.



(M.Y. PRIOLKAR)
MEMBER (A)



(M.B. MUJUMDAR)
MEMBER (J).