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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 665/89

198

~~T.A. XXX No.~~

DATE OF DECISION 9.2.1990

Shri G.M.Panchang Petitioner

Mrs. P.R.Shetty Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr.M.I.Sethna Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B.Mujumdar, Member (J)

The Hon'ble Mr. P.S.Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*

2. To be referred to the Reporter or not ? *Yes*

3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

DA.NO. 665/89

Shri G.M.Panchang

... Applicant

vs.

Union of India & ors.

... Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri P.S.Chaudhuri

Appearance

Mrs. P.R.Shetty
Advocate
for the Applicant

Mr. M.I.Sethna
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 9.2.1990

(PER: M.B.Mujumdar, Member (J))

The applicant who is a very highly qualified person was initially selected by the then Bombay-Sind Public Service Commission for Waterways Engineering Research at Karachi. Thereafter he joined the Indian Waterways Experiment Station on transfer to continue his research in waterways engineering problems at Pune w.e.f. 1.9.1944. He retired in December, 1970 while he was working as Director of Central Water & Power Commission. He was making representations even when he was in service for giving him promotion from 1947 to 1961 and for revising his seniority. But that request was turned down on 9.2.1971.

2. Thereafter, he filed Civil Writ Petition No. 283/72 in the High Court of Delhi. It was dismissed by judgment delivered on 22.11.1985. We may quote ^{the} last 2 paras of the judgment, which are as under :

"Now, therefore, the question is can any relief be given to the petitioner at this stage after so many years. The petitioner himself is claiming only monetary relief. No cause is shown as to why the petitioner did not move and seek redress from Court till the year 1972 excepting saying that the decision of the Supreme Court in Ravi Verma's (supra) case came only in the year 1972. The petitioner had opportunity to seek legal redress when retrospective promotion was denied to him on the date when he was promoted as Research Officer in 1955 and also when he was denied the promotion prior to his absorption in the Statistical Service. Merely because the Supreme Court judgment has come at a subsequent date the petitioner cannot be permitted to re-open the question of his seniority related to the year prior to 1955. When rights have been determined and finality has been brought to the status of persons in service merely because a judgment is delivered by Court in some other litigation subsequently a person cannot be allowed to re-open his case. Law has to be dynamic and ever-changing. More so the Judge made law. Judgments in the last decades or so have opened up new vistas and frontiers till then unknown. However, all these decisions do not permit a Court to apply new principles to old cases which have become barred by limitation. The court cannot embark on a process of de-stabilisation by opening up stale claims. The case in hand amply proves this principle. A long delay defeats even a just claim. Justice if not secured timely may result in injustice because justice ought to favour only the diligent. Thus though one would sympathise with the petitioner, nothing much can be done for him at this stage.

In the result the writ petition is dismissed. In the circumstances of the case, however, there will be no order as to costs."

3. Against that judgment, the applicant had preferred Special Leave to Appeal (Civil) No. 5543/86. By order dated 12.1.1987 the Supreme Court (Hon'ble Mr. Justice G.L. Oza and Hon'ble Mr. Justice M.M. Dutt) dismissed the SLP by passing the following order :

"The Special Leave Petition is dismissed with liberty to the petitioner to approach to the competent court and may pursue his rights, if any, in accordance with law."

4. After the above order was passed, the applicant has filed the present application on 21.8.1989 under section 19 of the Administrative Tribunals Act, 1985.

5. We have heard Mrs. P.R.Shetty, learned advocate for the applicant and Mr.M.I.Sethna, learned advocate for the respondents.

6. It was not disputed before us that the grievance of the applicant and reliefs claimed by him in the writ petition before Delhi High Court and this application are practically the same.

7. While giving relief under Article 226 of the Constitution of India, the High Court is not bound by the provisions regarding limitation; however, the doctrine of delay and laches applies to the petitions under that Article. From the portion of the judgment of the Delhi High Court which we have quoted above, it is clear that the applicant was having a good case in view of the judgment of the Supreme Court in Ravi Verma's case but the High Court rejected the petition because the applicant had approached the High Court after a long delay.

8. As against this, this Tribunal is bound by the provisions regarding limitation in section 21 of the Administrative Tribunals Act. This section had come up before this Tribunal in a number of cases for interpretation. As long back as in 1986, the Principal Bench of this Tribunal in V.K.Mehra v. Secretary of Ministry of Information & Broadcasting, ATR 1986 CAT 203, has held that the Act does not vest any authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1.11.1982, i.e. more than 3 years prior to the constitution of this Tribunal. It is further held that in such a case there is no question of condoning the delay in filing the application before the Tribunal. We cannot do better than by quoting para 3 of the judgment :

"3. In Regn. No. T-34/85 Capt. Lachhman Singh v. Secretary, Ministry of Personnel and Training, we held :

"The period of three years laid down under sub-section(2) of Section 21 would have to be computed with reference to any order made on such a representation and not with reference to the earlier order..... the Tribunal would have jurisdiction under sub-section (2) of Section 21 to entertain an application in respect of "any order" made between 1.11.1982 and 1.11.1985".

The limited power that is vested to condone the delay in filing the application within the period prescribed is under Section 21 provided the grievance is in respect of an order made within 3 years of the constitution of the Tribunal. Though the present petition is filed within six months of the constitution of the Tribunal in respect of an order made prior to 1.11.1985 as contemplated by sub-section (3) of Section 21, since it relates to a grievance arising out of an order dated 22.5.1981, a date more than 3 years immediately preceding the constitution of the Tribunal, this Tribunal has no jurisdiction, power or authority to entertain the petition. This petition is, therefore, dismissed."

9. The above view is being consistently followed by the various Benches of this Tribunal. In a recent judgment of the Principal Bench of the Tribunal in Zile Singh v. Delhi Administration & Ors., ATR 1989 (2) C.A.T. 246, the Bench comprising of Mr. Justice Amitav Banerji, Chairman and Mr. J.C. Roy, Administrative Member, has observed as follows :

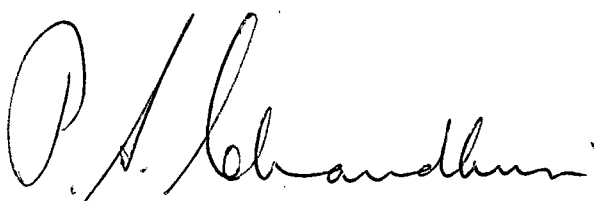
"It is well settled by the Tribunal that matters arising before 1.11.82 cannot be entertained by the Tribunal. In the case of V.K.Mehra v. The Secretary, Ministry of Information & Broadcasting (ATR 1986(1)CAT 203), a Bench of this Tribunal held that the Act does not vest any power or authority in the Tribunal to take cognizance of of a grievance arising out of an order made prior to 1.11.82. In such a case there is no question of condoning the delay in filing the petition but it is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 1.11.82. It was held that the Tribunal has no jurisdiction, power or authority to entertain a matter against an order ^{which} had been made prior to 1.11.82. The same view was taken by the Bangalore Bench of the Tribunal in the case of Thimna v. DRM Bangalore Division, Southern Railway (1987(4) ATC 328). There an order of 2.7.79 was challenged on 9.9.86. On this ground also, this O.A. is liable to fail."

10. In the present case the grievance of the applicant relates to something which had taken place some time before 1961. For the same grievance he had filed the writ petition before the Delhi High Court. But it was dismissed on the ground of long delay. So far as this Tribunal is concerned, we have no jurisdiction to entertain this application as it concerns the grievance prior to 1961.

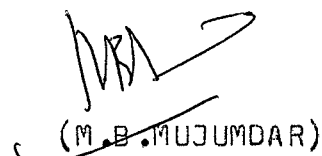
11. It was argued by Mrs. P.R.Shetty, learned advocate for the applicant that in view of the order of the Supreme Court dated 12.1.1979 we can entertain and decide this application. According to her, the Supreme Court has given liberty to the applicant to approach a competent court for pursuing his rights, if any, in accordance with law. In our view the words, "in accordance with law" are important. In other words, we would have been required to entertain this application if that would have been permissible in accordance with provisions of the Administrative Tribunals Act. But section 21 of the Act as interpreted by this Tribunal comes in the way of the applicant.

12. Moreover, we may point out that the Supreme Court has not set aside the judgment of the Delhi High Court dated 22.11.1985. Only the special leave petition was dismissed by the Supreme Court with liberty to the applicant to approach the court and for pursuing his right, if any, that too in accordance with law.

13. In result, we reject the application summarily, with no order as to costs.



(P.S. CHAUDHURI)
MEMBER (A)



(M.B. MUJUMDAR)
MEMBER (J)