

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW BOMBAY BENCH~~
 NEW BOMBAY BENCH
 CAMP AT NAGPUR.

~~OkAxN~~ St.No. N-13/89 198
~~XXAXN~~

DATE OF DECISION 17.3.1989

Shri M.D.Mathur Petitioner

Shri S.G.Aney Advocate for the Petitioner(s)

Versus

Union of India & others. Respondents

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.Y.Priolkar, 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? *No Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, CAMP AT NAGPUR

(4)

Stamp Application No. N-13/89

Shri M.D.Mathur
310, Laxmi Nagar,
Nagpur 440 022.

... Applicant

V/S.

Union of India
Ministry of Steel & Mines
New Delhi.

AND OTHERS.

... Respondents

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

ORAL JUDGMENT

Dated: 17.3.1989

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

Heard Mr.S.G.Aney, learned advocate for the
applicant.

2. The applicant was appointed as Upper Division Clerk in the Department of Airborne Mineral Surveys and Exploration w.e.f. 23.12.1966. By order dated 28.6.1969 he was promoted as Assistant w.e.f. 1.7.1969 on adhoc basis on trial for a period of six months in the first instance.

3. By order dated 24.5.1976 the applicant was reverted to the post of UDC w.e.f. 31.5.1976 and posted at Bangalore in the Office of the Dy.Director General AMSE of Geological Survey of India, Bangalore i.e. Respondent No. 3. Before the reversion order came into effect, the applicant filed Writ Petition No. 6305/76 in the Karnataka High Court and obtained stay against the reversion order.

4. The applicant had made the following prayers in the Writ Petition (i) to quash the order of reversion of the petitioner dated 24.5.1976 from the post of Assistant to

that of an Upper Division Clerk, and (ii) to consider the regularisation of the petitioner as Assistant and regularise the same w.e.f. 1.7.1969. On 10.4.1981 the Karnataka High Court dismissed the Writ Petition on merits.

5. Against the above order, the applicant preferred Writ Appeal No. 795/81 before a Division Bench of Karnataka High Court. However, when the appeal came up for hearing on 16.4.1987 the applicant filed a memo requesting that he may be allowed to withdraw the writ petition out of which the appeal had arisen. It was also stated therein that the appellant wanted to agitate the entire matter before the appropriate authority. The learned counsel appearing for Respondents Nos. 1 to 3 in the appeal had no objection to the withdrawal of the Writ Petition and also to the appellant agitating the points before the appropriate authority. Hence, the High Court dismissed the Writ Petition as withdrawn. Operative part of the High Court order reads like this : "In this situation, we dismiss Writ Petition No. 6305/1976 as withdrawn with the result this writ appeal becomes infructuous and stands disposed of".

6. Thereafter, the applicant submitted his representation dated 15.7.1987 requesting that he should be given the benefit of seniority from the date of his regular appointment on 1.7.1969. According to the applicant no decision is communicated to him on that representation.

7. On 14.3.1989 the applicant has filed the present application under Section 19 of the Administrative Tribunals Act. The prayers made by him deserve to be quoted and they are as under :

- "i) To direct the respondents to grant promotion to the applicant as Assistant from the date of his first appointment i.e. w.e.f. 1.7.1969, and grant him all consequential benefits of this promotion including further promotions to the post of Superintendent w.e.f. 3.2.81 and Administrative Officer with retrospective effect from the date his juniors were promoted.
- ii) To direct the respondents to give the applicant all consequential benefits including seniority, arrears as pay and allowances, etc. arising out of the grant of the said promotions.
- iii) To quash and set aside the order of reversion.
- iv) To saddle the cost of the application on the respondents no. 1 to 3.
- v) To grant any other relief that this Hon'ble Court may deem fit in the facts and circumstances of the case."

8. We may point out that the order referred to in clause (iii) is the order of reversion dated 24.5.1976 referred to earlier. It is clear from the prayers that the main prayer of the applicant is to grant him promotion as Assistant from the date of his first appointment as adhoc Assistant with effect from 1.7.1969. The other prayers are depending on that main prayer and consequential in nature. It may be recalled that prayer 2 in the applicant's previous Writ Petition No. 6305/1976 before the Karnataka High Court was substantially the same. Moreover, prayer (iii) in the present application is for quashing the reversion order dated 24.5.1976 and it was the same as prayer (1) in the Writ Petition before the Karnataka High Court. As already pointed out the Karnataka High Court has dismissed the Writ Petition on merits on 10.4.1981. The applicant had filed Writ Appeal No. 795/81 before a Division Bench of the Karnataka High Court and we have already quoted the order passed by the Division Bench of the Karnataka High Court in appeal on 16.4.1987. Though in the memo filed by the applicant, he had requested for permission to withdraw the application with liberty to make a representation to the authorities to consider his

2

case for seniority and other benefits and though that is referred to in the final order of the Division Bench in appeal, the order of the Division Bench cannot be construed as permitting the applicant to withdraw the Writ Petition with liberty to file a fresh application in respect of the same subject matter. In view of the final order passed, it cannot be said that the applicant was given liberty to file a fresh application in respect of the same subject matter.

9. We may point out that the applicant has made a representation dated 15.5.1987 and we are told that it is not yet decided. But even when a petition is withdrawn that does not prevent the petitioner to agitate his grievance before the competent authorities of the department. But if the decision of the authorities goes against the petitioner that will not enable him to approach the Tribunal in respect of the same subject matter as in the previous petition. As the prayers made in the present application are substantially the same as in the Writ Petition No. 6305/76 before the Karnataka High Court, we are of the view that this application is not maintainable.

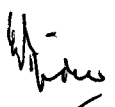
10. Mr.S.G.Aney, learned advocate for the applicant submitted that by orders passed in May, 1980 and February, 1981 two of his juniors were promoted as Superintendents. The orders show that they were working as Assistants. We have quoted all the prayers made by the applicant in this application. Prayer (i) shows that he has requested for his promotion to the post of Superintendent w.e.f. 3.2.1981, as a consequential relief to his main prayer, namely, to grant him promotion as Assistant w.e.f. 1.7.1969.

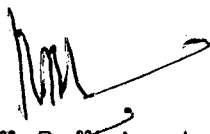
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11. Even assuming that it is an independent prayer, we feel that it is barred by limitation as provided in Section 21 of the Administrative Tribunal's Act. Mr. Aney submitted that the applicant did not seek any independent relief for his promotion to the post of Superintendent w.e.f. 3.2.1981 by filing another writ petition because of the pendency of previous writ petition No. 6305/76. We are unable to accept this argument because cause of action in previous writ petition was different from the cause of action which arose on 3.2.1981.

12. We further find that the present application as a whole is barred by limitation because the applicant is claiming reliefs regarding ^athe grievance which had arisen in 1969 i.e. about 20 years back.

13. In result, we do not find that the present application is worth admitting. Hence, we reject the same summarily.


(M.Y. Priolkar)
Member (A)


(M.B. Mujumdar)
Member (J)