

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 962 of 1989. 198  
T.A. No.

DATE OF DECISION 29.6.90.

P.K. Patil Petitioner

Shri M.A. Mahalle, Advocate for the Petitioner(s)

Versus

The Chief Controller of Respondent  
Accounts and others

Shri J.G. Sawant, Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Shri G. Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. Shri P.S. Choudhuri, Member (Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? X

  
( G. Sreedharan Nair )  
Vice Chairman.

(6)

Central Administrative Tribunal, New Bombay Bench  
New Bombay

O.A. 962 of 1989.

Shri P.K. Patil      ...      Applicant.  
versus  
The Chief Controller of Accounts  
Principal Accounts Office,  
Ministry of Information and Broadcasting  
and others      ...      Respondents.

P R E S E N T :

The Hon'ble Shri G. Sreedharan Nair, Vice Chairman.

The Hon'ble Shri P.S. Choudhuri, Member (Admn).

For the applicant- Shri M.A. Mahalle, Advocate

For the respondents- Shri J.G. Sawant, Advocate.

Date of hearing - 27.6.90.

Date of Judgment & Order - 29.6.90.

JUDGMENT & ORDER :

G. Sreedharan Nair, Vice Chairman :

The applicant is at present a Senior Accountant in the office of the Pay & Accounts Office, All India Radio, Bombay. While he was working as Junior Accountant, the first respondent by the order dated 25.11.1987 determined the number of Junior Accountants' posts for the grant of higher functional scale and identifying the Junior Accountants eligible for the grant of functional scale. The grievance of the applicant is that his name was not included therein though the names of his juniors have been included. A representation was submitted by the applicant on 1.12.1987 to the Chief Controller of Accounts for the inclusion of his name also among the eligible candidates for the functional <sup>scale</sup> ~~pay~~. It was considered and by the communication dated 29.1.1988, he was informed that the Departmental Promotion Committee did not consider him fit for the grant of functional grade. Thereafter, by the order dated 1.5.1989, the applicant and five others were placed in the functional grade with effect from the date of the said order.

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2. The relief claimed by the applicant is for placement in the higher functional grade with effect from 1.4.1987. It is also prayed that the fall in standard communicated to him as per the Memo dated 6.10.1987 be not treated as an adverse remark, and even if it be so treated, it may also be expunged.

3. The respondents who <sup>have</sup> entered appearance contend that the application is barred by limitation since the cause of action arose from 29.1.1988 and the application has been filed only on 27.12.1989.

4. The applicant has filed a petition for condoning the delay where it is stated that the applicant was not aware of the technicalities of the law of limitation. The prayer ~~for~~ condoning the delay is opposed by the respondents.

5. From the narration of facts made above, it cannot be doubted that the cause of action for claiming higher functional grade with effect from 1.4.1987 did arise on 29.1.1988 when the representation submitted by the applicant against the non-inclusion of his name in the list was rejected. It was submitted by the counsel of the applicant that in view of the further representations submitted by the applicant on 28.6.1988 and 18.8.1988, which were disposed of only on 21.11.1989, the cause of action has to be construed as to have arisen from that date and hence, the application is in time. We are unable to agree. The communication dated 21.11.1989 is only a letter addressed by the Accounts Officer to the Pay and Accounts Officer,

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All India Radio, Bombay intimating him that the name of the applicant was duly considered by the DPC and he was not found fit for the grant of functional scale with effect from 1.4.1987 and that the subsequent DPC which met on 8.5.1989 reviewed his case and found him fit for the functional scale with effect from 1.5.1989. As regards the non-inclusion of the name of the applicant, pursuant to the recommendation of the earlier DPC, the applicant himself had been specifically told that his representation is rejected by the Memo dated 29.1.1988. A Bench of 7 Judges of the Supreme Court has held in the decision in S.S.Rathore v. State of Madhya Pradesh, (AIR 1990 SC 10), that repeated unsuccessful representations not provided by law cannot be availed of for extending the cause of action. It was submitted by the counsel of the applicant that since the Supreme Court was dealing in Rathore's case with a suit which was dismissed on the plea of limitation, the aforesaid statement is obiter as the provisions of the Administrative Tribunals Act did not arise for consideration therein. The submission has to be rejected. No doubt, the appeal that was being considered by the Supreme Court was directed against the judgment of the High Court of Madhya Pradesh by which the High Court in a second appeal upheld the dismissal of the suit of a Government servant on the plea of limitation. However, the issue that was being considered was how far the subsequent orders passed on appeal or revision or on the basis of statutory representation against the original order, <sup>relating to a service matter</sup> can be relied upon for the purpose of computing the period of limitation for challenging the same. Reference has been made in the judgment to the provisions of the Administrative Tribunals Act since statutory guidance is available therein on the issue. As such, the enunciation of law with respect to <sup>the</sup> ~~such~~ provisions <sup>of the Act</sup> cannot be overlooked as obiter.

6. The reliance placed by the counsel of the applicant upon the decision of the Supreme Court in the State of Madhya Pradesh v. Syed Qamar Ali, [ 1967(1) SLR 228 ], to submit that there cannot be any bar of limitation as the order of supersession is void, is unfounded. There is no plea in the application that the order dated 25.11.1987 under which the first respondent identified the names of the Junior Accountants for the grant of the higher functional scale is void. Indeed, the present application has been filed assailing the said order as is clear from para 1 of the application. The applicant filed the representation dated 1.12.1987 challenging that order and praying for enlarging its scope so as to include his name as well. As such, so long as the order continued to exist, the relief claimed by the applicant cannot be allowed. It is not a case where the order is non-est, or can be ignored by the applicant as void. The relief claimed in Qamar Ali's case was for recovery of pay and allowances on the premise that the order of dismissal is void. The Supreme Court held that the order of dismissal had no legal existence and, as such, the defence of limitation that the order had to be set aside is not acceptable.

7. The second relief claimed by the applicant relates to the communication of <sup>the</sup> ~~an~~ adverse remarks on 6.10.1987. According to the applicant, on 2.12.1987 he made a representation objecting to the communication, but no reply has been received. If that be so, the application should have been filed within a period of one year after the expiry of six months from the date of the aforesaid representation.

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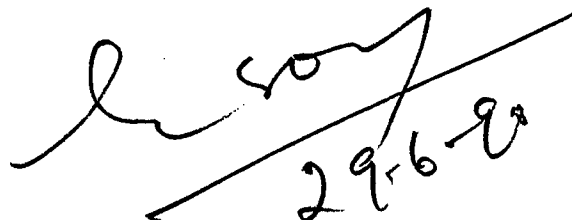
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8. We hold that the application is barred by limitation. Since no sufficient cause is established, for condoning the delay, the petition for the purpose has to be dismissed and we do so.

9. The Original Application is rejected.



( P.S. Choudhuri)  
Member (Admn)



( G. Sreedharan Nair)  
Vice Chairman.

S.F. Singh/  
28.6.90.

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