

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 211/96/199

15th

Date of Decision: SEPTEMBER 96

Hari Om Kumar

Petitioner/s

Mr. P A Prabhakaran

Advocate for the
Petitioner/s

V/s.

UNION OF INDIA & Ors.

Respondent/s

Mr. V G Rege

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R G Vaidyanatha, Vice Chairman

Hon'ble Shri D S Baweja, Member (A)

- (1) To be referred to the Reporter or not? *yes*
- (2) Whether it needs to be circulated to *no* other Benches of the Tribunal?

Replied to

V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A./ No. 211/96

DATED : THIS 15th OF SEPTEMBER, 1998

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri D S Baweja, Member(A)

Hari Om Kumar
Commissioner of Income Tax (Appeals)
XV Mahalakshmi Chambers
S K Rathode Marg
Mumbai 400034
R/at. D-1 Hyderabad Estate
Central Govt. Officers
Staff Quarters
Napean Sea Road, Mumbai 400006
(By Mr. P A Prabhakaran, Advocate) ..Applicant

v/s.

1. Union of India through
Secretary, Ministry of Finance
Department of Revenue
North Block, New Delhi
and
The Cabinet Secretariat
Rashtrapati Bhavan
New Delhi
2. The Chairman
Central Board of Direct Taxes
New Delhi
3. Union Public Service Commission
through its Chairman
Shahajan Road, New Delhi
4. Shri D P Mujumdar
Commissioner of Income Tax
Aayakar Bhavan
M K Road, Mumbai 400020
5. Ms. H S Subramanya
Commissioner of Income Tax
C/o. Central Board of Direct Taxes
New Delhi
6. Shri J G Arora
Commissioner of income tax
Baroda (Gujarat)
7. Shri S C Yadav
Commissioner of Income Tax
C/o. Central Board of Direct Taxes
New Delhi ..Respondents
(Respondents 1 and 2 by Mr.
V G Rege, Counsel)

ORDER
[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application filed seeking retrospective promotion and claiming seniority over Respondent Nos. 4 to 7. The official respondents viz., Respondents Nos. 1 and 2 have filed the reply. Private respondents have not filed any reply. We are disposing off this application at the admission stage after hearing fully the learned counsel appearing on both the sides.

2. The applicant is a Commissioner of Income Tax. He was promoted as Commissioner of Income Tax by order dated 16.12.1988. the applicant's grievance is that he should have been promoted on 4.1.1988 when some of his juniors came to be promoted. He, therefore, wants seniority over his juniors who had been promoted by order dated 4.1.1988. According to him he had very good record of service from the very beginning. In spite of this in the order of promotion dated 4.1.1988 number of officers came to be promoted including some of the juniors to the applicant, but the applicant's name was missing. Then the applicant sent a representation dated 8.2.88 complaining about dropping his name from the promotion list. However, on the basis of the same ACRs and service records the next DPC considered the case of the applicant for promotion and on that basis the applicant came to be promoted on 16.12.1988. One Mr. Pannalal was granted promotion by the Appointments Committee of the Cabinet though his name had not been included by the DPC. Though the applicant's name was included in the DPC recommendations, his name was excluded when it was



considered by the Appointments Committee of the Cabinet. Hence the applicant prays that the order dated 4.1.1988 be quashed and the respondents be directed to grant promotion to the applicant with effect from 4.1.1988 and he should be placed above Respondents 4 to 7.

3. The respondents have filed a reply justifying their action. It is admitted that the applicant's name had been recommended for promotion by the DPC. However, the Government after careful consideration did not approve the name of the applicant for promotion. It is stated that the recommendation of the DPC is only advisory in nature and the Government may for good and sufficient reasons decline to accept the recommendation of the DPC. Reasons are recorded in the relevant file as to why the applicant's name was not approved for the purposes of promotion by Appointments Committee of the Cabinet. It is stated that the applicant's cause of action arose in January 1988 and the present application is filed in 1996 and hence it is barred by limitation. It is, therefore, prayed that the application be dismissed with costs.

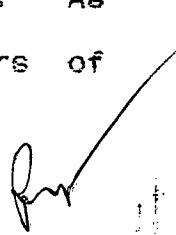
4. The learned counsel for the applicant contended that the applicant had good record of service and his name had been recommended by the DPC and exclusion of his name by the ACC was arbitrary and unjustified. He further submitted that some of the colleagues of the applicant had filed applications before other Benches of the Tribunal pertaining to the same DPC and they have succeeded in getting a direction to the Government to

reconsider their cases. It is therefore submitted that the Respondents should be directed to reconsider the case of the applicant and grant him promotion with effect from 4.1.1988 and give him proper placement in the seniority list. The learned counsel for the respondents contended that the applicant's name has been rightly excluded in the order of promotion dated 4.1.1988, but few months later the applicant has been considered and promoted and no case is made out by the applicant for granting promotion with effect from 4.1.1988. Further the learned counsel for the respondents contended that the application is barred by limitation and principles of delay and laches.

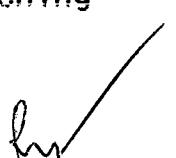
5. In reply the learned counsel for the applicant submitted that the right of the applicant to claim promotion is continuing cause of action and further he was waiting for decision in similar cases filed by his colleagues and therefore there was delay in approaching the Tribunal and hence there is no question of any limitation.

6. Since the question of limitation, delay and laches goes to the root of the matter we will first consider this question and give our finding.

7. In this case the applicant was not promoted as a Commissioner of Income Tax but his juniors came to be promoted as per the impugned order dated 4.1.1988. As many as 63 officers were promoted as Commissioners of



Income Tax by this order including the juniors to the applicant. Since the applicant's name did not find place in this order dated 4.1.88 the applicant got an immediate cause of action to challenge the same by approaching a Court of Tribunal. It is not as if he was not conscious of his supersession. Within a month after the impugned order dated 4.1.88 the applicant sent a detailed representation to the Government making a grievance about his supersession and requesting that he may be promoted in due turn and without any loss of seniority. Even if the Government did not give any reply, then as provided in Section 21 of the Administrative Tribunals Act, he should have approached this Tribunal after waiting for six months. Therefore, in our view the applicant got a cause of action immediately on 4.1.1988 or at least six months after his representation dated 8.2.88 to approach this Tribunal to challenge his supersession. Then we find that the applicant did get promotion by order dated 16.12.1988. At least at that time the applicant should have approached this Tribunal stating that though he has been promoted he has not been given seniority. Therefore, the earliest period the applicant should have approached this Tribunal was in 1988 when he was superseded by order dated 4.1.88. But the present application is filed eight years later in February, 1996. On the face of it the application is barred by limitation besides being hit by the principles of delay and laches. It is not a case of few months delay or one or two years delay, but there is delay of eight years in approaching this Tribunal.



8. The one and only explanation given in the application for the delay and canvassed by the learned counsel for the applicant before us that the applicant was waiting for the outcome of the cases since some other officers had filed application before this Tribunal and other Tribunals challenging their supersession. In our view this contention has no merit. Supersession is always on individual basis. It cannot be equated with cases of others supersession. If it is a case of mere asking of fixation of pay or some other common relief then there is some justification for one to say that since some other persons were fighting the cause he was waiting for the result of the same. As far as promotion and supersession is concerned it is a claim based on individual case. Nobody has right to promotion. Everybody has a right to be considered for promotion. Why the applicant was not considered for promotion or why he was superseded depends upon his service record. Similarly why other candidates like Sing and others were superseded depends on their service records. Therefore, the applicant's contention that he was waiting for the outcome of the applications filed by other officers has no merit and is liable to be rejected.

9. Another contention of the learned counsel for the applicant is that right to promotion is a service matter and it is a continuous cause of action and therefore there is no bar of limitation. It is very difficult to accept this submission in view of the statutory mandate of providing one year limitation in Section 21 of the

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Administrative Tribunals Act, 1985. This Tribunal is constituted only to settle service disputes and Section 21 provides that period of one year limitation from the date of cause of action. Now we have seen that cause of action arose to the applicant on 4.1.1988 when the applicant came to be superseded. Therefore, the applicant should have rushed to this Tribunal within one year from 4.1.1988. Even granting for a moment we accept the argument of the learned counsel for the applicant on the question of continuing cause of action the applicant cannot get over the principle of delay and laches. For example, for filing a Writ Petition there is no bar of limitation at all. But it cannot be said that High Court should entertain and grant relief whenever a party approached the same. There are many decided cases where it is held that even if there is no period of limitation in filing a Writ Petition the High Court will refuse to entertain it or grant any relief if it is hit by the principles of delay and laches.

10. The learned counsel for the applicant has invited our attention to some decisions. He has mentioned in his notes of arguments, a case reported in 1984 (2)SLR 248. There is no decision at page 248, but the decision commences from page 246. It is a decision of the Allahabad High Court [in the case of THE UNION OF INDIA Vs. RAM BABU] regarding some disciplinary inquiry matter. It has no bearing either on the question of promotion or on the question of limitation. The citation appears to be wrong.

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Then reliance has been placed on a case reported in 1990 (3) SLJ (CAT) 19 in the case of N.R. NAIK & ORS. Vs. UNION OF INDIA & ORS. In that decision, given by a Bench of this Tribunal in a circuit sitting at Goa, the question was about regularisation of casual labourers. In para 21 there is an observation that the two OAs have been filed by 101 persons. It is mentioned that may be due to poverty or fear other employees similarly placed like the applicants might not have come to this Tribunal for appropriate relief and since they are deciding a question of general importance they are granting relief to all other similarly situated employees. In our view this decision has absolutely no application to the facts of the present case. We are concerned with a case of promotion and supersession. There cannot be identical cases of two supersessions. Even otherwise the applicant is a senior officer of the rank of Commissioner of Income Tax and he could not have waited for eight years without approaching the Tribunal. At least in that case the Tribunal has observed that due to poverty or fear the casual labour employees might not have approached the Tribunal and since they were deciding a common principle they were granting relief to all similarly situated employees. This decision has absolutely no bearing on the point under consideration.

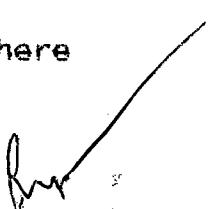
During the course of arguments while referring to P. L.Shah's case, the citation was not given. We are able to trace the citation. It is a case reported in 1989



SCC(L&S) 223 and pertaining to the question of payment of subsistence allowance. But the Tribunal had rejected the application solely on the ground of limitation. The Supreme Court pointed out that the right to subsistence allowance arises every month and therefore the application could not have been rejected in total and therefore the case was remanded to consider whether the applicant can be granted subsistence allowance for the period within limitation. On the basis of this remand order, the Ahmedabad Bench of the Tribunal considered the case and held that the applicant will be entitled to arrears of subsistence allowance but restricted the arrears only to one year prior to the date of the application [Vide 1991 (1) ATJ 21].

In our view this judgement will not help the applicant in any way. If it is a mere case of monetary claim and is a continuing cause of action the claim can be allowed restricting the arrears to only one year. In the present case the applicant is claiming no arrears of pay and allowances but he is claiming retrospective promotion in respect of a cause of action which arose about eight years prior to the date of application and it cannot be granted. In such a case restricting the arrears to one year does not arise at all.

Then reliance was placed on the decision of the Apex Court reported in AIR 1990 SC 1308 [STATE OF MADHYA PRADESH Vs. BANI SINGH & ANOR.]. That was a case where



though there was some delay the Tribunal condoned the delay in the facts and circumstances of that case. The Supreme Court has mentioned the special facts of that case in para 8 to show about the cause of delay. In our view it is purely a decision based on the peculiar facts and circumstances of that case.

Reliance was placed on (1988) 6 ATC 397 in the case of SHRI DHARAMPAL AND ORS Vs. UNION OF INDIA AND OTHERS. It was a case of Writ Petition filed in High Court, transferred to the Tribunal after the coming into force of the Administrative Tribunals Act, 1985. In such a case question of limitation does not arise because there is no limitation in filing a writ petition in the High Court which was later transferred to the Tribunal. As far as the question of laches and delay are concerned the Tribunal gave some special reasons and came to the conclusion that the application cannot be rejected on the ground of limitation. In the peculiar facts and circumstances, the Tribunal has given special reasons in para 13 of the reported judgement as to why the delay should be condoned including an assurance given by the Home Minister in Parliament on the point at dispute, the Tribunal did not attach importance to the question of delay and laches and granted the relief in the peculiar facts and circumstances of that case.

11. In our view the applicant got the first cause of action on 4.1.88 when the order of appointment of commissioner of Income Tax was issued and then when it

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did not include the applicant's name and it included the names of his juniors. There was no necessity for making a representation to the respondents at all since the applicant has been superseded. Giving some margin to the representation made by the applicant, the applicant should have waited for a reasonable time or for at least six months and then file an application challenging his supersession. Then he got one more cause of action when in December 1988 he came to be promoted from prospective date and without giving any retrospective promotion or seniority. Therefore, the earliest was the applicant should have approached this Tribunal in 1988 or early part of 1989. But he has come to this Tribunal eight years later in 1996. It is not a case of granting some financial benefits to the applicant. If the applicant's prayer is granted it is going to affect the seniority list and upset the seniority position of the private respondents. It is fairly well settled that challenge to a seniority list should not be entertained after a lapse of time since it would unsettle the settled matter. The question of seniority cannot be kept hanging on for years to come and there should be some finality and certainty in service matters, particularly in the question of seniority.

12. We had occasion to consider many decisions for deciding similar cases in this Tribunal and we are fortified in our view by a number of decisions of the Apex court and refer to only a few of them just to show

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that the application of this type can be dismissed due to limitation or by applying the principles of delay and laches. We have the recent judgement of the Supreme Court in 1997(2) SC SLJ 1 [JAGDISH LAL & ORS Vs. STATE OF HARYANA & ORS.]. After rejecting the claim of the appellant on merits, the Supreme Court further observed in para 19 that delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is pointed out that appellants kept sleeping over their rights for long and elected to wake up when they had impetus from some decisions of the Supreme Court. Therefore it is observed that the High Court rightly dismissed the Writ Petition on the ground of delay as well.

In 1991 SCC(L&S) 1206 [GOVERNMENT OF ANDHRA PRADESH AND ORS. Vs. M.A.KAREEM & ORS.] the Supreme Court observed that the Writ Petition filed after eight years of passing the impugned order suffers from delay which is fatal. It was a case of applicant challenging the seniority list.

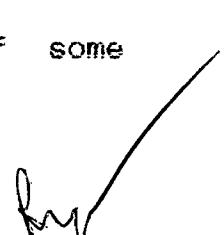
In 1993 SCC(L&S) 960 [PRAFULLA KUMAR SWAIN Vs. PRAKASH CHANDRA MISRA & ORS] the Supreme Court allowed the appeal and set aside the order passed by the Tribunal not only on merits but also on the ground of delay and laches. The Orissa Administrative Tribunal had allowed the application and granted relief regarding seniority list which was published in 1985 and came to the challenged by filing application in 1988. That means



there was a delay of three years in approaching the Tribunal for challenging the seniority list. The Supreme Court held that this delay of three years was fatal and the Tribunal was not justified in interfering with the seniority list and hence both on merits and on the ground of delay the appeal came to be allowed.

In AIR 1974 SC 2271 [P.S. SADASIVASWAMY Vs. STATE OF TAMIL NADU] it was held that the Writ Petition was liable to be dismissed in limine on the ground of delay and laches. In fact there is an observation by the Supreme Court that in case of seniority or challenging promotions or supersessions the aggrieved party should approach the Tribunal at least within six months or at the most a year of such promotion of his junior. We have already seen in the present case the applicant has kept quite for eight or nine years in spite of his juniors being promoted and kept above him in the seniority list.

In AIR 1975 SC 1269 [MALCOM LAWRENCE CECIL D'SOUZA Vs. UNION OF INDIA & ORS] it is observed that one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. It is further pointed out that raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It is further observed that in the interest of smoothness and efficiency of service such matters should be given a quietus after lapse of some time.



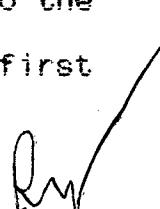
13. For the above reasons our considered view is that the applicant has come to the court belatedly after eight years. The applicant has been subsequently promoted but he is now challenging his earlier supersession and consequently loss of seniority. In view of the long delay of eight years, by applying the law of limitation as mentioned in Section 21 of the Administrative Tribunals Act and by applying principles of delay and laches we hold that the application is not maintainable and is liable to be dismissed.

14. As far as merits are concerned, the applicant's case is that his supersession is illegal and contrary to the rules. His case is that he had good record of service and his name was recommended by the DPC but not approved by the Appointing Authority. The learned counsel for the applicant pointed out that the first DPC was held in September 1987 when the name of the applicant was recommended but the promotion order dated 4.1.1988 did not contain the name of the applicant. It is further pointed out that the second time the DPC meeting was held in April 1988 and again the name of the applicant was recommended and this time the appointing authority approved the recommendation and granted promotion to the applicant by issuing the order dated 16.12.1988. Now the applicant wants that his promotion should be with effect from 1.4.1988. It was contended that the appointing authority must give reasons for disagreeing with the recommendation of the DPC. Then it was further pointed out that if the appointing authority had taken a decision

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in January 1988 not to promote the applicant then how come the same appointing authority promoted the same applicant in December 1988 without any additional material. For this submission reliance was strongly placed on judgements of this Tribunal pertaining to some other officials belonging to the same DPC meeting and against the same first order of promotion dated 4.1.1988. In particular the learned counsel for the applicant contended that the case of B N SINGH is identical on all aspects to the case of the applicant and since B N Singh has succeeded in getting an order from the Principal Bench vide order dated 12.7.1995 in O.A. No. 1506/89, the applicant is also entitled to identical reliefs. Learned counsel for the respondents contended that as far as promotion is concerned each officer's case should be considered separately and there can not be any identity of case for promotion.

15. We have heard the submission of both sides. We have perused all the judgements of the different Tribunals pertaining to the same DPC. Since the applicant's counsel submitted that the case of B N SINGH is identical to the case of the applicant, we have carefully perused the reasoning given by the Principal Bench in B N Singh's case and the concerned DPC records, now produced by the learned counsel for the respondents, and we have also considered the case of the applicant from the DPC file and find that their cases are not identical. As far as B N Singh's case is concerned, the Tribunal has come to the conclusions that he has been superseded on the first



occasion but has been granted promotion on the second occasion without any additional material and additional CRs or special reports and therefore his supersession on the first instance therefore not sustainable and hence the applicant is allowed by directing the appointing authority to again consult the UPSC by making a back reference and then take a decision whether he should be promoted or not on the basis of DPC held in September 1987.

16. As could be seen from the records of the Appointments Committee of the Cabinet (ACC, for short), no doubt the case of the applicant and B N Singh and many other were recommended by the DPC for promotion. But in the file of ACC as far as B N Singh is concerned there is a definite note that having regard to the entries in his ACR he is not fit for promotion. If he was found unfit for promotion by the ACC in December 1987 how he can be granted promotion on the same ACR one year later. It was this fact which had a bearing in the case of B N Singh's case which remanded the matter by giving a direction to the ACC as already mentioned. As far as the applicant is concerned the note in the file of the ACC is that some entries are favorable to the applicant in some years, but in one year 1984-85 the applicant was downgraded to average by the Reviewing Officer. In some years he has got grading as 'good' and in some years 'very good'. Then it is mentioned that considering the over all record it may be considered whether he should wait for one more



year before the empanelment. Therefore as far as the applicant is concerned he was not sought to be superseded but it is recorded as to why he should not wait for one year before empanelment. Then again here next DPC recommendation went in his favour and the applicant was considered and granted promotion. Therefore, the question is whether the reasoning of the Principal Bench as far as B N Singh is concerned (that he is found unfit) applies on all fours to the case of the applicant, whose case was only deferred by one year for promotion. Therefore, there is a debatable point within the case of the applicant is on all fours as the case of B N Singh. It is a moot point. We have already seen how the applicant's case suffered from delay and laches and the bar of limitation. Since we have come to the conclusion that the applicant's case suffers from limitation, delay and laches, we do not wish to go into details of the case of the applicant to decide whether the case of applicant is distinct and separate and is not similar to the case of B. N. Singh or his case is independent to the case of B.N.Singh. In view of our finding on the question of limitation, delay and laches, the application has to fail and therefore we are not recording any finding or opinion on the question whether similar direction should be given in the case of the applicant as was given by the Principal Bench in the case of B N Singh.

Since we are still at the stage of admission, in our view the application is liable to be rejected on the ground of limitation, delay and laches.

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17. In the result the application is rejected at the admission stage on the ground of limitation, delay and laches. No order as to costs.

D S Baweja
(D S Baweja)

Member (A)

R G Vaidyanatha
(R G Vaidyanatha)

Vice Chairman

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