

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 975/1996

Date of Decision: 19th MARCH, 98

BANAMALI SARNGI

Petitioner/s

MR. M.S. RAMAMURTHY
WITH MR. RAMESH

Advocate for the
Petitioner/s

V/s.

U.O.I. & ORS.

Respondent/s

MR. R K SHETTY for R1&3

MR. R SRINIVASAN

for respondent No.2

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri P.P. Srivastava, Member(A)

- (1) To be referred to the Reporter or not? *wo*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *wo*

R. Narasimha
VICE CHAIRMAN

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

O.A. No. 975/96

Pronounced this
DATED : on 19th MARCH, 1998

CORAM : HON. SHRI JUSTICE R.G. VAIDYANATHA, VICE CHAIRMAN
HON. SHRI P.P. SRIVASTAVA, MEMBER(A)

Banamali Sarngi
Superintending Engineer
C/o. Superintending Technical Examiner
Government of India
No.1 Finance Office Road
Pune 411 001
(By Adv. Mr. Ramesh Ramamurthy)

..Applicant

V/s.

1. The Secretary,
Government of India,
Ministry of Defence,
New Delhi 110011

2. Union Public Service Commission,
Dholpur House,
New Delhi

3. Engineer-in-Chief
Army Headquarters
Kashmir House
DHQ P.O.
New Delhi 110011

(By Adv. Shri R.K. Shetty,
Counsel for Respondent Nos.1 & 3
Adv. Shri R.Srinivasan for
Respondent No.2)

..Respondents

ORDER

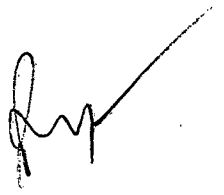
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[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard Mr. M.S. Ramamurthy with Mr. Ramesh Ramamurthy, learned counsel for the applicant and Mr. R K Shetty, learned counsel for Respondent Nos. 1 and 3 and Shri R. Srinivasan, learned counsel for Respondent No.2.



2. The applicant is working as Superintending Engineer in the Military Engineering Service (MES). His grievance is about the 1986 DPC proceedings under which he was placed on panel of Executive Engineers for the year 1982 instead of 1981. , There was dispute between direct recruits and promotees in the MES. The matter was finally decided by the Supreme Court in the case of A. JANARDHANA Vs. UNION OF INDIA, decided by the Supreme Court on 26.04.1983 in Civil Appeal No. 360 of 1980, where the Supreme Court gave certain directions as to how seniority list should be prepared. Then on the basis of the directions of the Supreme Court the DPC, chaired/presided over by a Member of the UPSC considered the promotion to the cadre of Executive Engineer for different years like 1979, 1980, 1981, 1982 and 1983. The DPC meeting was held in 1986 wherein the applicant was placed on the panel against the vacancies of Executive Engineer for the year 1982. According to the applicant if the DPC had considered the question of seniority on correct and legal basis then the applicant should have been placed in the 1981 panel itself. It is alleged that in the revised seniority list of 1987 Sr.13 to 68 of 1981 panel are all juniors to the applicant and if the applicant had been correctly placed in the 1981 panel he would have been at Sr.No.12 itself. If the applicant is kept in 1981 panel in the right place then, now he would be entitled to be considered for the promotion to the post of Additional Chief Engineer. The



reason for not giving proper place in the seniority list to the applicant is a wrong interpretation of the grading given in the ACRs of the candidates. It is stated that since the applicant was already working on ad hoc basis in the higher post of Executive Engineer the grading in the ACRs cannot be compared with the grading of his ACRs of the Assistant Executive Engineer which is a lower cadre on the principles upheld by the Full Bench in MR. S.S.SAMBHUS Vs. THE UNION OF INDIA & ORS. [1991-93 A.T. FULL BENCH JUDGMENTS 178] and confirmed by the Supreme Court that whenever an officer is working on ad hoc basis in a higher grade then his grading in ACR should be upgraded by one step for the purpose of considering his case of promotion. Since the applicant's case has been considered along with his juniors without upgrading his grading in the ACRs his seniority has been placed in 1982 panel instead of 1981 panel. Therefore, applicant has approached this Tribunal by way of this application that the proceedings of 1986 DPC under which the applicant was placed in 1982 panel should be declared as unjustified, discriminatory and violative of Articles 14 and 16 of the Constitution of India and for a direction to the Respondents to consider the case of the applicant for vacancies of 1981 by upgrading his ACRs as laid down by the Full Bench of this Tribunal in SHAMBUS case and confirmed by the Supreme Court and for other consequential benefits.



3. Though the Respondents Nos. 1 and 3 on the one hand and Respondent No.2 on the other have filed separate written statements, their defence is common. Their main plea is that the application is barred by limitation, delay and laches. It is stated that the question of seniority cannot ^{be} reopened after a lapse of ten to twelve years and therefore the application is not maintainable after the delay of so many years; that the principle enunciated by the Full Bench in SHAMBUS case and upheld by the Supreme Court depended on the peculiar facts and circumstances of that case and cannot be applied as a uniform rule in all cases. Even otherwise that decision cannot be applied to cases which had been closed long prior to the judgment; in other words the previous promotions had been prior to the judgment in SHAMBUS case cannot be reopened on the basis of a subsequent judgment. It is also their case that the application is bad for nonjoinder of necessary parties, since the persons who are above the applicant in the seniority list and who are going to be affected if the applicant's case is accepted, are not made party respondents. It is further their case that identical matter has already been concluded by the Principal Bench of the Tribunal by decision dated 29.1.1993 in Transferred Application No.1037 of 1985. It is therefore, prayed that the application be dismissed.

4. The learned counsel for the applicant Mr. Ramamurthy, contended that the proceedings of 1986 DPC meeting are vitiated and the seniority list prepared is



liable to be quashed since applicant's ACRs, who was working in the higher post, have been considered at par with the officers working the lower cadre. He argued that the applicants grading in ACRs should be upgraded by one step on the principal upheld in SAMBHUS case and upheld by the Supreme Court and DPC should be given direction to review the case of the applicant by upgrading the ACRs and for giving promotion for the 1981 vacancies and restore his rightful place in the seniority list. But the learned counsel for the respondents while refuting this contention on merits pleaded the grounds of limitation, delay and laches and nonjoinder of parties and contended that the application is not maintainable.

5. In the light of the arguments addressed before us the points that fall for determination are :

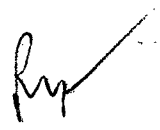
- i) Whether the application is bad, not maintainable on the ground of limitation delay and laches ?
- ii) Whether the application is bad for non-joinder of necessary parties ?
- iii) Whether on merits the applicant's grading in ACRs should be upgraded as contended ?
- iv) What order ?



6. POINT No. (i):

As for as the question of limitation is concerned, Section 21 of the Administrative Tribunals Act, 1985 provides a period of limitation of one year. In the present case the DPC proceedings were held in 1986 and as a result of the same seniority list was published in 1987. The applicant is shown, according to him, far below his juniors. Therefore, the applicant got a cause of action to question seniority list after 1986 DPC meeting or atleast when the seniority list was published in 1987. He should have immediately approached either this Tribunal or any competent court to challenge the correctness of the seniority list. Though the cause of action arose either in 1986 or 1987, the present O.A. is filed as late as in 1996. Mere making some representations or repeated representations will not save limitation as held by the Apex Court in S.S. RATHORE Vs. STATE OF MADHYA PRADEHS, [AIR 1990 SC 10]. Asn soon as the seniority list came to be published the applicant got cause of action. He cannot sleep over his rights for ten years and then come to the Court to question the correctness or legality of the seniority list.


Apart from the question of limitation, we have to consider this question from a different angle viz., from the point of view of delay and laches. Even if an application is within limitation or no period of



limitation is attracted still the claim can be rejected on the principle of delay and laches. We must bear in mind that the question of seniority cannot be kept on hanging for years together. There must be certainty to everything particularly in service matters. How can the applicant sleep over the rights over seniority list for 10 years and then move this Tribunal, which becomes a stale claim and cannot be entertained by any court or Tribunal. If the application is granted then the applicant will go about 60 places in the seniority and those 60 people are affected after a lapse of 8 to 10 years. In service jurisprudence apart from the question of limitation, delay and laches assume importance while granting relief to an applicant. Even if a party is entitled to relief on merits, the court or Tribunal may not grant if he comes to court after a long lapse of time. We will presently refer to some of the cases on this point which were pressed into service by the learned counsel appearing for the respondents.

7. In O.A. No.289/97, an identical matter filed by officers of MES like the applicant challenged the very same 1986 DPC proceedings and the question of seniority. We had rejected that application by order dated 12.12.1987 only on the ground of delay and laches.

In the case of B.S. BAJWA & ANOR Vs. STATE OF PUNJAB [J.T. 1998(1) SC 57] the Supreme Court observed that the applicants knew from the beginning their




position in the seniority but did not come to court early. Then it is observed in para 6 as follows:

"... It is well settled that in service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable."

In 1997(6) SCC 255 [STATE OF HARYANA & ORS. Vs. AJAY WALIA], it was found that the Writ Petition had been filed 13 years after cause of action arose and it was held that due to delay and laches the writ petition is not maintainable. They have even pointed out that representations repeatedly made do not furnish fresh cause of action to file Writ Petition. In fact in that case the High Court granted some relief, but the Supreme Court reversed the same holding that in view of long delay and laches the Writ Petition was not maintainable.

STATE OF KARNATAKA & ORS Vs. S.M.KOTRAYYA AND OTHERS [(1996) 6 SCC 267] - it is a case where some applicants came to the Tribunal on the ground of similar relief has been granted to some other officials in a previous case. The Supreme Court noticed that there was delay of few years and that mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted to some other officials in 1989 was not a ground for the applicants to come late and there is no sufficient ground for condonation of delay.

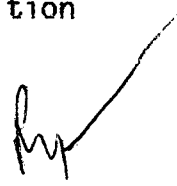


1991 SUPP (2) SCC 183 [GOVERNMENT OF ANDHRA PRADESH & ORS Vs. M.A. KAREEM & ORS] - it was a case of agitating service dispute after 13 years. The Supreme Court has observed that the Courts and Tribunals should be slow in disturbing the settled affairs in service after such a long period. Further, the Supreme Court held that the officials who are likely to be affected by the order were not made parties. It is further pointed out that delay of 8 years in initiating legal remedy is fatal and on this ground alone writ petitions are liable to be dismissed.

In the case of G.C. GUPTA & ORS Vs. N.K. PANDEY AND ORS. [AIR 1988 SC 268], it was found that the Writ Petition had been filed four years after the seniority question was settled. The Supreme Court in para 29 observed as under:

"29. In the instant case, however, I am not inclined to give any relief to the respondents (petitioners in the writ petition) by directing re-determination of the seniority of the respondents as well as the appellants on the ground of unusual laches and delay."

AIR 1990 PUNJAB AND HARYANA 117 [PUNJAB STATE ELECTRICITY BOARD, PATIALA AND ANOTHER Vs. ASHOK KUMAR SEHGAL & ORS], the Full Bench of of Punjab and Haryana expressed similar view. His Lordship Justice M.N.Punchi as he then was (presently His Lordship is the Chief Justice of the Supreme Court) observed that the unexplained delay of 10 years in filing the Writ Petition

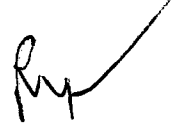


has disentitled the party to get any relief. It is observed if the promotions are scheduled retrospectively after a lapse of so many years it would lead to chaos and would put heavy financial burden on the employer.

8. It is, therefore, seen that in service matters, particularly where question of seniority is concerned, we cannot grant relief in stale claims after a long lapse of time. Here the seniority was published in 1987 and the present application is filed in 1996. Now at this distance of time we cannot direct that the seniority list should be changed and DPC should review the case of the applicant and then place him above so many officers as per 1981 seniority. Having regard to the facts and circumstances of the case we are constrained to hold that the present application is highly belated and therefore bared by limitation besides being bad on the grounds of laches and delay. There is absolutely no justification in this belated application and on this short ground the application is liable to be dismissed summarily. Point No.(i) is answered accordingly.

9. POINT No.(ii):

As already stated the applicant is claiming the seniority over many persons and he wants to be placed at Sr.No.12 and jump in the list by about 50-60 places. All

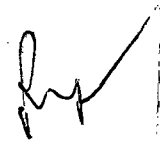


these 50-60 persons who are likely to be prejudicially affected by this order are not made parties to this O.A.

In the case of Full Bench of the Punjab and Haryana mentioned above on the ground of laches and delay it has been observed that the concerned junior who is likely to be affected is not made as a party. We have already referred to the decision of the Supreme Court in 1991 SUPP 2 SCC 183 above where it has been observed by the apex court that the persons likely to be prejudicially affected by the order are not made parties and this is one of the grounds for rejecting the petition.

In 1996(3) SCC 587 [J. JOSE DHANAPPAUL Vs. S.THOMAS AND OTHERS] it was observed that the Tribunal could not have interfered in a matter when the person to be affected was not made as a party.

It is one of the fundamental principles in law that a person who is likely to be affected by the order should be made a party to the proceeding. The applicant wants the seniority list to be changed and he should be placed at Sr. No. 12 bypassing many seniors shown in the seniority list. All those persons who are going to be affected by any order that may be passed in allowing the application should have been made parties to the O.A. Their rights cannot be denied by allowing the O.A without hearing them. Hence in our view non-impleading of persons to be prejudicially affected if the O.A. is



allowed is fatal defect in the O.A. Hence Point No.(ii) is also in the affirmation.

10. POINT No.(iii):

In view of our findings on Points (i) & (ii), the application is liable to be rejected without going into the question of merits. However, since the matter has been argued before us we will give our brief reasons on Point No.(iii).

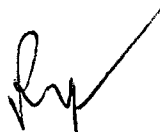
The only argument addressed on behalf of the applicant about the merits is that in view of the decision of the Full Bench in SAMBHUS case (supra) grading of the applicant's ACRs for the relevant years should be upgraded since he was working in the promotion post of Executive Engineer on ad hoc basis. The learned counsel for the respondents contended that the very ad hoc promotion of the applicant to the post of Executive Engineer is found to be illegal and such ad hoc promotions have been quashed by the Supreme Court in JANARDHANA's case and, therefore, the question of the applicant getting benefit of the ad hoc promotion for the purpose of upgrading the ACRs in view of the decision of the Full Bench in SAMBHUS case does not arise. In our view the argument is not without force.

The further argument on behalf of the respondents is that the decision of SAMBHUS case cannot be given



retrospective effect and promotions made previously cannot be reopened on the basis of a subsequent judgment. This argument is also not without force.

11. We have already seen as far as the applicant is concerned the DPC proceedings were completed in 1986 and seniority list was published in 1987. The applicant accepted the seniority list without any murmur for years together. He never approached any court of law or the Tribunal challenging the same on any ground. The judgment of SAMBHUS case was delivered on 29.10.91 by the Full Bench. Can it be that in view of the Full Bench judgment in 1991 all promotions made in all departments all over India should be re-opened and the previous promotions should be set aside and fresh promotions should be given effect retrospectively etc.? In our view such is not intended by law. Even if the decision of SAMBHUS case is applicable, still it can not be applied retrospectively and the assessment made in 1986 and the seniority list of 1987 cannot be re-opened on the basis of a judgment given by the Full bench in 1991 and that too in the present O.A. filed in 1996. If this argument is accepted then it would create chaos and anarchy in service matters all over India and in all departments of Central Government. The question of seniority cannot be kept on hanging and cannot be changed as and when some judgment is delivered by the Tribunals or courts. It may be, in future, we can follow SAMBHUS case and give appropriate directions, but the promotions and seniority



list which have become final cannot be re-opened in view of a subsequent decision given by a Court or Tribunal. In fact we have come across many decisions of the Supreme Court where they have held that even if the promotions or appointments are illegal they are not quashing the same in view of lapse of time. No authority is necessary for such a proposition of law. Therefore, in our view, even if we accept the applicant's case with the principles laid down in SAMBHUS case, the promotions made in 1986 and the seniority list prepared in 1987 which have become final cannot now be re-opened in view of the judgment in SAMBHUS case which was given in 1991.

12. Then there is serious dispute between the parties about the very application of the judgment of SAMBHUS case to the facts of the present case. The learned counsel for the respondents invited our attention and submitted that this very question arose for consideration before the Principal Bench in an identical matter in a O.A. filed by the same MES officers whose case was determined along with the applicant in the DPC held in 1986 and the seniority list published in 1987 (A.K. BAJAJ Vs. UNION OF INDIA & ORS., decided on 29.01.1993 in Tr.A.No.1037/1985) raising the same question about the same 1986 proceedings pertaining to MES. The same argument that SAMBHUS case is applicable was pressed into service before the Principal Bench and the Division Bench of the Principal Bench rejected that argument in their

judgment, the relevant portion for our present purpose, is at para 30 which reads as follows:

"30. Some of the applicants have argued that relative assessment was not on the basis of equality. While some have been adjudged on their performance in the post of Assistant Executive Engineer, some others like the applicants have been also adjudged in the higher post of Executive Engineer. In this context, they have relied upon the judgment of the Full Bench of this Tribunal dated 29.10.1991 in O A 306/1990 and connected matters - S.S.Sambus and Others Vs. Union of India and others. In our opinion, the aforesaid decision of the Full Bench and other decisions cited before us are distinguishable. In our opinion, where promotions are to be made by selection method, as in the instant case, it is entirely left to the DPC to make its own classification of the officers being considered by them for promotion, irrespective of the grading that may be shown in the confidential reports. It is for the DPC to consider the confidential reports as a whole in this regard."


For good reasons the Principal Bench has observed that SAMBHUS case is not applicable in the peculiar facts and circumstances of that case, which applies to the facts of the present case also since the applicants also belong to MES and they are also challenging the same DPC proceedings and the same seniority list. Though we have heard the learned counsel of the applicant at length we are not persuaded to take a different view. Eventhough SAMBHUS case has been upheld by the Supreme Court, in the order it is clearly mentioned that the decision given by the Full Bench appears to be fair and just in the peculiar facts and circumstances of the case. Hence agreeing with the observations of the Principal Bench we



hold that in the peculiar facts and circumstances of the present case and particularly the Full Bench decision having been given long after the DPC proceedings and the seniority list has become final and further the present application is filed only in 1996 we are not inclined to apply the preposition laid down in SAMBHUS case to the present case.

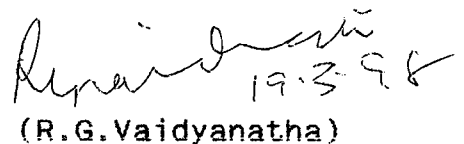
Hence taking any view of the matter we held that the applicant is not entitled to upgrading of his ACRs on the basis of the decision of the Full Bench in SAMBHUS case. Point No.(iii) is answered in negative.

13. In the result the application fails and is dismissed. However, in the circumstances of the case there would be no order as to costs.



(P.P.Srivastava)

Member(A)



(R.G.Vaidyanatha)

Vice Chairman

trk