

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 659/96

THIS THE 12 TH DAY OF DECEMBER, 2001

CORAM: SHRI S.L. JAIN. : MEMBER (J)
SMT. SHANTA SHAstry : MEMBER (A)

Madhva Shamrao Kaveri,
age about 75, last employed
as Assostant Collector of Central
Excise & Customs, Kalyan II
Division, Bombay-II Collectorate,
Address: 1, Nikhil Apartment,
Vikas Chowk, South Shivaji Nagar,
Sangli-416 416. .. Applicant

Versus

1. The Union of India, Department of Revenue, Ministry of Finance, New Delhi.
2. Under Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi.
3. Collector of Central Excise & Customs, Bombay II, Piramal Chambers, Jijibhoy Lane, Lalbagh, Parel, Mumbai-400 012. .. Respondents

Shri V.D. Vadhavkar for Shri M.I. Sethna.

O R D E R

Smt. Shanta Shastry. Member (A)

The applicant has sought to quash and set aside the order dated 02nd February, 1983 issued by Respondent No.2 and to fix the applicant's pay in the senior scale with effect from 01.6.1979 and to calculate and pay the arrears of difference of pay with effect from 01.6.1979 to 30.11.1979 when the applicant retired. The applicant has also prayed for calculation of his pension and all other terminal benefits, consequentially

with interest at 12% per annum and to pay the arrears of difference of pension.

2. The applicant joined service on 23.10.1943 as an ordinary grade Inspector and progressed by promotion to the post of Assistant Collector (Junior Scale) in the Indian Customs & Central Excise Service with effect from 29.6.1976. By then the applicant had already put in 32 1/2 years of successful service, according to the applicant. He was promoted to the post of Assistant Collector Class-I on regular basis.

3. The applicant submits that as per the then existing rules of service as contained in the department's letter dated 28th April, 1976 with further clarification issued by letter dated 01.4.1978 senior scale was to be allowed to all the promotee officers who had completed three years of regular service in the junior scale. Whereas the direct recruits were given senior scales after completion of five years in the junior scale.

4. The respondents issued letter dated 06th March, 1979 regarding fixation of pay in the senior scale in the case of Group "A" officers. This letter appeared to be in supersession of the instructions issued by the respondents vide letters dated 23.4.1976 and 01.4.1978. By this letter, it was decided to grant on provisional

basis the senior scale in accordance with the concordance table prescribed by the Department of Expenditure OM dated 14th November, 1975 to Group "A" of the Indian Customs and Central Excise Service (both direct recruit and promotees) with effect from the date they completed four years regular service in the junior scale after 01.01.1973. A further letter was issued on 31st July, 1982 addressed to all the Collectors of Central Excise. This letter was said to be in supersession of the earlier letter of the respondents dated 06.3.1979. In this letter it was categorically mentioned that all other instructions issued regarding fixation of pay in the senior scale provisionally on adhoc basis stood superseded. It was decided that the promotion of officers of Indian Customs and Central Excise Service Group "A" from junior scale to the senior scale would be made on the basis of seniority cum fitness. The applicant being disturbed by above letter, made a representation on 14th October, 1982 to the Secretary of the Central Board of Excise and Customs, New Delhi. The applicant pointed out that he was entitled to the senior scale with effect from 01.6.1979 on completion of three years of service in the junior scale. However, it appeared that due to pendency of the writ petition in the Calcutta High Court, no decision had been taken on the applicant's representations dated 12.12.1979 and 17.10.1979. The applicant sought a review of his case. He made a further representation on

30.10.1982 bringing to the notice of the Secretary of the Board, that some officers who had been promoted along with the applicant and whose names appeared in the same list had been earmarked for the senior scale. There were 18 such officers and some of them had completed only two years of regular service in the junior scale.

6. The applicant has relied on the letters dated 23rd April, 1976, 01.4.1978, 06th March, 1979 and 31st July, 1982 in support of his claim that he is entitled to the senior scale from 01.6.1979. It is the contention of the applicant that the rules as applicable as in June, 1976 must be applied to the applicant's case and the later orders cannot be made applicable.

7. The respondents have taken the preliminary plea that the application is hopelessly time barred. The cause of action arose in 1983, the reply was given to the applicant in the same year rejecting his request for promotion to the grade of STS in IC & CES Grade-A. The applicant failed to approach the Tribunal within the limitation period. The promotion to STS was denied to the applicant vide order dated 02.02.1983.

8. On merits, according to OM dated 31.7.1982 the following conditions are prescribed for eligibility of officers for consideration for promotion to STS: (i)

minimum of three years regular service other than the service rendered on appointment on provisional or adhoc basis in the Junior Time Scale (JTS) and the officers in the JTS were to be considered for promotion to the STS in the running order of their seniority. In case, the senior officers had not completed three years qualifying service his juniors are also required to wait for their promotion to the senior scale till the juniors had completed the eligibility period. (ii) all the direct recruits should have passed the departmental examination before promotion to the senior scale. Though the applicant had completed three years service in the JTS, some of his seniors had not acquired three years service in the JTS. Though the respondents have stated that it can only be conjecture that some senior officers in the running order of seniority might not have completed three years qualifying service as at present the record is not available after a lapse of 13 years. It has been further submitted that all the orders dated 23.4.1976, 01.4.1978 and 06.3.1979 relied upon by the applicant issued from time to time were provisional in nature and had provided for promotion of eligible officers on provisional basis. it was laid down in all these orders that an undertaking may be obtained from the officers promoted to STS on the basis of final orders that may be issued in due course, their date of entitlement to the STS is later than the date from which they had been provisionally allowed the concordance table benefit.

They will refund the amount over paid to them. All these orders were given finality by issue of order dated 31.7.1982 which superseded the earlier orders. The applicant has also not claimed that any junior to the applicant was promoted and therefore, the applicant has no case and the same needs to be rejected/dismissed on ground of limitation, delay and laches as well as on merits.

14. The respondents have relied on the Supreme Court judgment in the case of S.S. Rathore Vs. State of M.P. (AIR 1990 SC 100) wherein it has been held that in the case of service disputes the cause of action was to be taken to arise not from the date of original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. This principle has no application when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle. In the present case, the cause of action arose for the first time in 1983. The applicant was given a reply to his representation 02.02.1983 rejecting his request.

Considering this the application is definitely hit by limitation. The learned counsel also drew our attention to Section 21 of the Administrative Tribunals Act. According to which the Tribunal shall not admit an application in a case where final order has been made in connection with the grievance unless the application is made within one year from the date on which such final order has been made and in case where an appeal or representation has been made and the period of six months had expired thereafter when such final order having been made within one year from the date of expiry of the said six months. In the applicant's case it has gone beyond the limitation period. The learned counsel for the respondents has also produced a copy of the judgment in the case of Union of India Vs. S.S.Kotial (1999 SCC (L&S) 251). In this case, the Supreme Court allowed the appeal of the Union of India on the ground that repeated representations do not extend the cause of action. Cause of action arose when first representation was rejected. Therefore, the learned counsel for the respondents pleads that this application should be dismissed on the ground of delay and laches and limitation.

15. We have given careful consideration to the rival contentions and have perused relevant materials. We are in agreement with the respondents that when the cause of action arose way back in 1983 after the

respondents had given the reply on 02.02.1983 against the representation dated 14.10.1982 of the applicant, the OA is barred by limitation. The applicant has slept over his rights for too long a period for the courts to interfere in the matter. Therefore on the ground of limitation delay and laches, the application deserves to be dismissed.

16. On merits also it has been clearly brought out by the respondents that the applicant was not eligible for being promoted to STS at the relevant time. Though he had put in qualifying service of three years in JTS some of his seniors had not completed three years qualifying service in JTS and therefore, going by the letter dated 31.3.1982 the applicant could not be held eligible for promotion to the STS. The applicant has argued that the applicant had completed three years qualifying service in 1979 and therefore, his case should have been considered as per then prevailing orders namely the orders of 10.6.1976, 23rd April, 1976, 01st April, 1978 and 06th March, 1979. The order of 31st July, 1982 cannot be made applicable to the applicant. But we have noted that the respondents have clearly stated that all these earlier orders on which the applicant is relying were provisional orders and there is no finality about them and therefore, we have to hold that the applicant has no case. The OA is therefore, dismissed both on ground of limitation as well as on merits. No costs.

Shanta Shastray
(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain
(S.L. JAIN)
MEMBER (J)