

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

PRE DELIVERY JUDGEMENT IN OA.NO. 32/96.

Hon'ble Vice Chairman / Member (J) /
Member (A) may kindly see the above judgement for
approval / signature.

PK:87/w
V.C. / Member (J) / Member (A)

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A) *I agree.*

L-9-

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 32/96

Date of Decision : 14th January 2003

K.R.Nair & Ors.

Applicant

Shri G.S.Walia

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.G.Rege for R-1&2
Shri P.A.Prabhakaran for
Pvt.Respondents.

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library Yes

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.32/96

Dated this the 14th day of January 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

1. K.R.Nair
2. R.R.Pillai
3. R.P.Singh
4. S.K.P.Sinha
5. K.S.Rawat

All are working as
Income Tax Officers at Bombay,
under Chief Commissioner of
Income Tax, Aykar Bhavan,
M.K.Road, Mumbai.

...Applicants

By Advocate Shri G.S.Walia

vs.

1. Union of India
through The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.
2. Chief Commissioner of Income Tax,
Aykar Bhavan, M.K.Road,
Mumbai.

Promotees

3. P.D.Shvshankaran
4. S.P.Haridasan
5. A.Narayanan
6. R.Dhananjayan
7. Smt.Laxmi V.Nair
8. Ms.Ragini Kamble
9. M.Damodaran
10. Mrs.Saudamini Panicker
11. R.Krishnan
12. Mrs.V.Shashi Prabha
13. P.T.Mohanan
14. P.Achuthan Nair
15. C.M.Daniel
16. Vijendra Anchan
17. D.K.God
18. L.V.Chotalia

..2/-

1/2

19. J.R.Yadav
20. Smt.S.S.Gore
21. K.M.Buch
22. D.D.Koyande
23. T.Girija Vallabhan

Direct Recruits

24. S.R.Singh
25. Smt.Beena Dinesh
26. V.Krishna Swami
27. Rajan M.Iyer
28. Milind Patil
29. K.P.R. R.Murthy
30. Mrs.N.Nadkarni
31. Smt.N.Jaggi
32. Mrs.Bina Hrishikesh
33. Gopal D.Sharma
34. P.Nagendra Kumar
35. Mrs.Usha Prasad
36. Arvind G.Desai
37. M.P.Ahuja
38. S.M.Kabra
39. Dinesh Chaurasia
40. Verghese Joseph
41. Suresh T.Nair
42. Rajesh D.Menon
43. A.N.V.Iyer
44. Mahadevan A.M.Krishna
45. Tushar K.Inamdar
46. Rajeev Kumar
47. Ms.Geeta Rajesh
48. Anil Gupta
49. V.Muraleedharan
50. R.M.Motwani
51. Mrs.Agnes Thomas
52. Rajiv Kesarvani
53. D.Yadav
54. Mrs.Sudha Ramchandran

Respondents who have passed the
I.T.O. Examination after the
Applicants.

55. Abdul Lateef
56. Lalitha V.Ayeer
57. Ms.Angaline D'Souza
58. M.G.Ajwani
59. M.G.Kunte
60. Mrs.Meena Divakaran
61. R.M.Nair
62. D.B.Mishra
63. V.P.Rajan
64. C.T.S.Kartha
65. K.W.Vispute
66. T.P.Shirke
67. J.D.Ganvir
68. T.A.Khan
69. M.V.Rajguru
70. V.K.Sheron
71. Mrs.K.P.R.Chacko

... Respondents

By Advocate Shri V.G.Rege
for R-1 & 2 and Shri P.A.
Prabhakaran for Pvt.Respondents.

S. V. M.

..3/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside order dated 2.2.1994 and 7.4.1995 with the declaration that the seniority of the applicants vis-a-vis others has to be prepared on the basis of Rule 5 and the clarification thereof in the cadre of Income Tax Inspectors taking into consideration the grades in the feeder category and the employees vis-a-vis employees who are in the lower grade in the feeder category and the said position should be reflected in the seniority list prepared for the cadre of Income Tax Officers under their letter dated 13.3.1995 with all consequential benefits of arrears of pay, increments etc. and applicants are senior to Respondents No.3 to 71 as Income Tax Inspectors and Income Tax Officers.

2. The applicants have claimed in para 8 (f) "Joint Application may be allowed to be filed".

3. Applicant No.1 K.R.Nair represented vide his representation dated 9.3.1994 (Not filed but referred in Ex.A) which was replied vide letter dated 29.6.1994 (Ex.A.OA.p.28) which is not the subject matter of the present OA. as no relief to quash and set aside the same is sought. He has further represented vide his representation dated 6.12.1994 (Ex.H OA. page 46 & 47).

Replies

Applicant No.2 R.R.Pillai has represented vide his representation dated 3.8.1993 (Ex.F OA.page 44) which is replied vide letter dated 3.3.1994 (Ex.G), Represented vide representation dated 31.3.1995 (Ex.K OA. page 55 & 56) 3.4.1995 (Ex.L OA.p.57). It also appears that he has also represented vide his representation dated 16.3.1994 and 5.4.1994 (referred in Ex.M) which was replied vide reply dated 8.9.1994 (Ex.M OA.p. 58).

Applicant No.4 S.K.P.Sinha has represented vide his representation dated 13.6.1994 (Ex.Q), 18.7.1994 (Ex.S OA.p.73 & 74) which were replied vide letter dated 29.6.1994 (Ex.R) and 7.4.1995 (Ex.T OA.p.75) respectively.

4. Perusal of the above facts makes it clear that Applicant No.3 R.P.Singh and Applicant No.5 K.S.Rawat have not at any time represented their grievance to the respondents. The learned counsel for the respondents argued that as the said applicants have not represented their grievance to the respondents, the OA. in respect of the said applicants is pre-mature and deserves to be dismissed solely on this ground. He further argued that as it is an OA. wherein five applicants are seeking relief by filing the joint application, the joint application is not maintainable, as such OA. in respect of all the applicants deserves to be dismissed.

J.CW/

.5/-

5. The applicants have filed the OA. on 23.11.1995. As stated above, representation of the Applicants No.1, 2 and 4 have been decided on 29.6.1994, 8.9.1994, 29.6.1994 and 7.4.1995 respectively, the learned counsel for the respondents argued that OA. filed beyond the period of one year from the date of passing the impugned orders, by Applicant No.1,2 and 4 is barred by limitation.

6. The grievance of the applicants is that vide order dated 15.2.1988 (Ex.C OA.p.32) by which they were promoted to officiate as Inspectors of Income Tax states that the inter-se seniority of the promoted officials will be indicated separately (OA.p.36 para 5). The applicants state that thereafter the respondents never published the seniority list of Inspectors of Income Tax. They have stated that when they were due for promotion to the post of Income Tax Officers Group-B, the eligibility list dated 30.4.1993 (Ex.D) was published which was ordered to be circulated amongst the officials and officials who consider themselves but whose names are not included in the list may please be hand over their application personally to the office, i.e. 219, Ayakar Bhavan, M.K.Road on or before 30.6.1993.

7. Inspector of Income Tax has to pass the examination for being included in eligibility list of Income Tax Officers Group-B.

100/-

..6/-

8. The claim is resisted by Respondents No.1 & 2 alleging that the application is hopelessly time barred as representation in the matter of seniority stood disposed of on or about 2.2.1994 (Ex.B). The further representation in the matter and reply to the same Annexure-T dated 7.4.1995 is on record (Ex.E). As such, OA. filed on or about 22.11.1995 after more than one year from 2.2.1994 is beyond the period of limitation. The reply dated 2.2.1994 (Ex.B) is in reply to the representation in the matter of alleged wrong/improper fixation of seniority. The replies dated 2.2.1994 and 7.4.1995 deal with and relates to different subjects and matter. The application suffers from multifarious causes of action as such not maintainable under Rules framed under Administrative Tribunals Act, 1985.

9. There is no common interest of the applicants at stake- eligibility for promotion to Income Tax Officer Group 'B' depends on one's position in seniority, zone of consideration, passing of concerned departmental examination, A.C.R. Thus, the facts and interest being not similar, identical and common the application is not maintainable.

10. Regarding consequential benefit of arrears of pay and increments, every applicant ought to have filed independent and separate applications or at least they ought to have paid fee of Rs.52/- each by filing the common and joint application.

3/11/

.. 7/-

11. The Applicant No.1 made representation on or about 9.4.1994 and the same was replied vide letter dated 29.6.1994 (Ex.A) rejecting the same, which is not the order under challenge. In addition to it, the subject matter being the same, OA. is barred by time.

12. The Applicant No.2 made representation dated 13.7.1993 to which respondents have replied vide their reply dated 2.2.1994 rejecting the same, as such, OA. is barred by time.

13. Central Administrative Tribunal (Procedure) Rules, 1987 Rule 4 (5) (a) is worth reproducing which is extracted below :-

"4 (5)(a) Notwithstanding anything contained in sub-rules (1) to (3), the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter."

14. The perusal of the same makes it clear that before filing an application wherein more than one person is to be joined, the applicants must seek the permission of the Tribunal. We have carefully gone ^{through} ~~to~~ the record and we find that no such permission was ever sought.

15. The earlier discussion regarding the cause of action which arises to different applicants who have joined in the application arises on different dates as soon as the representation for seniority in Inspectors cadre is decided. As such, the applicants have no common cause of action.

16. The applicants have prayed a common relief though they belong to different feeder categories. As such, when for the post of Income Tax Inspector there exists different feeder categories having the ratio fixed, Claim of Applicants No.1 & 2 who belong to merit list category can not be equated with other category candidates.

17. The common interest of the applicants may be correction of the seniority list. Cause of action arises to them on different dates, filing of one application by more than one person can not be permitted. As such, OA. suffers from defect as contemplated under Rule 4(5)(a) of CAT (Procedure) Rules, 1987.

18. The Rules are framed in exercise of powers conferred in clauses (d),(f) of Section 35 and clause (c) of 36 of Administrative Tribunals Act, 1985. It is worth mentioning that the Rules are meant to follow the same. By arraying more than one person who has different causes of action, the claim of one which is barred by time can not be allowed to be agitated along with others. The perusal of the discussion made above makes it clear that claim of none of the applicants is maintainable as claim of Applicant No.1, 2 and 4 is barred by time as the cause of action in favour of the Applicant No.1, if any, arises on 29.6.1994, Applicant No.2 arises on 3.3.1994, Applicant No.4 arises on 29.6.1994 while the OA. is filed on 23.11.1995 beyond the period of one year, as it is barred in view of Section 21 of the Administrative Tribunals Act, 1985.

SDM/-

.9/-

19. The respondents have rightly pointed out that Applicant No.3 R.P.Singh and Applicant No.5 K.S.Rawat had not at any time represented their grievance to the respondents. As such, they have not exhausted the departmental remedies. Joining the said applicants in the present application is also one of the grounds to reject the OA. in view of Rule 4 (5) (a) of CAT (Procedure) Rules, 1987.

20. Suffice to state that after rejection of first representation, further representation in the same matter agitating the same grievance does not give fresh cause of action to the applicants.

21. The above discussion leads us to conclude that OA. suffers from defects of Rule 4 (5)(a) of CAT (Procedure) Rules, 1987, also barred by time and filed by some of the applicants without exhausting departmental remedies. As such, we do not proceed to examine the matter on merit.

22. The OA. is disposed of with cost amounting to Rs.1,000/payable by the applicants jointly and severally to the Respondents No. 1 & 2 and also a cost of Rs.200/- payable to other respondents who have filed their written statements by the applicants jointly and severally within two months from the date of receipt of the copy of the order.

Shanta 9-

(SMT.SHANTA SHAstry)

MEMBER (A)

Jain

(S.L.JAIN)

MEMBER (J)

mrj.