

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.No.670/2000

Dated: 28/5/01.

● Shri T.T.Bhaskaran

Applicants.

Shri S.P.Saxena

Advocate for

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri B.N.Bahadur, Member(A).

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

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *x*
- (3) Library. *x*

Am S
(B.N. BAHADUR)
MEMBER (A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO:670/2000

DATED THE 28th DAY OF MAY, 2001.

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER(A).
HON'BLE SHRI S.L.JAIN, MEMBER(A)

Shri T.T.Bhaskaran,
Upper Division Clerk,
College of Military Engineering,
Pune - 411 031.

... Applicant.

By Advocate Shri S.P.Saxena.

V/s.

1. The Union of India,
Through The Secretary,
Ministry of Defence,
DHQ P.O.New Delhi-11.
2. The Engineer-In-Chief,
Army Headquarters,
Kashmir House,
New Delhi - 11.
3. The Commandant,
College of Military Engineering,
Dapodi, Pune - 411 031.

... Respondents.

By Advocate Shri R.K.Shetty

(O R D E R)

Per Shri B.N.Bahadur, Member(A)

The Applicant in the case, Shri T.T.Bhaskaran seeks the relief for a declaration from the Tribunal, that he is entitled to reckon his seniority in the post of LDC w.e.f. 30/12/1966, for the next promotion to UDC. Consequential reliefs in terms of promotion to UDC are also sought in terms of the specific prayers made at para 8(c) 8(d) of the OA. Consequential financial benefits are also sought.

2. The applicant states that he was initially

...2/-

[Handwritten signature]

appointed as LDC on 30/12/1966 in a civilian capacity along with a large number of other persons. He states that due to the then national emergency and Indo Pak conflict, a large number of persons, including the applicant, were appointed as LDC without being sponsored through Employment Exchanges. He was transferred to the Office of Respondent No.3 under surplus/deficiency adjustment made by Army Headquarters and joined as LDC at the College of Military Engineering (CME) on 17/7/1971, after availing the joining time from 16/6/1971. Applicant also avers that he completed his probation period successfully, and that this fact was also strengthens his claim for seniority from 30/12/1966.

3. The grievance of the Applicant is that Respondents did not treat him as a regular employee, on the ground that he was over age at the time of his appointment. He asserts that his appointment needs to be regularised, by relaxation of upper age limit for his initial appointment. Further details of his career are described by him in the OA where the applicant asserts inter alia that his case was taken up vide letter at Ex-A-3. Some 98 cases were pending for regularisation on one count or other, and in view of the inaction of the Ministry, the employees' seniority in LDC grade was not fixed properly. Regularisation order was later issued dated 1/10/1990 in respect of 98 employees but the effective date of regularisation was ordered as 1/10/1990. Further, it was ordered that the period of irregular appointment would count only for benefits of pay, leave and qualifying service for retirement benefits. Applicant cites the judgement in OA.315/93 made on 13/8/1993 (A-4), and also the order of this Bench in OA No.322/87 as being supportive of his case in view of the benefits granted to similarly placed persons.

Ans.

4. The respondents in the case have filed a written statement, in reply, stating that through a communication dated 22/2/2000 the applicant has been informed that the benefit of the judgements in QA No.322/87 and QA.315/93 cannot be extended to him. Making the point that the applicant is an adhoc appointee by back door entry, the written statement confirms the other facts given by applicant regarding regularisation. The contention taken is that the applicant had become aware of the relevant order on 1/10/90 itself, and hence delay and laches are alleged and the principle of limitation taken in support of.

5. Another point taken in the written statement relates to the settled law against those seeking to unsettle settled seniority positions. The legal issue of non-joinder of party respondents, who are likely to be superceded, in case of a favourable judgement to the applicant, are also made. Further, details of the applicant's career and facts are also expounded in the written statement of the applicant. The facts of the other two OAs referred to viz. OAs filed by Shri Pillai and Shri Mathew are also described.

6. We have heard learned counsel on both sides, and have also perused the papers in the case including the rejoinder filed by applicant and the case law referred to, on behalf of both sides.

7. Arguing the case on behalf of the applicant, his learned counsel Shri S.P.Saxena first took us over the facts of the case and defended his case on the point of limitation by stating that the cause of action arose to the applicant only in 1990, when his application was turned down vide communication dated 22/8/2000 (Ex.A-1). He made the point that soon after

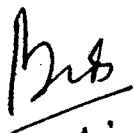


this date., the applicant had made a representation dated 15/1/91 (Ex.A-6) and that an interim reply stating that the representation is under examination for final decision was made on 6/8/2000 (Ex.A-8). Shri Saxena sought to rely on the ratio of the judgement made by Madras High Court in the matter reported at SLJ 1992 (1) CAT 87.

8. Learned Counsel for Applicant argued his case on the strength of the judgements made by this Tribunal in the aforesaid two QAs filed by Shri S.S.Pillai (QA-322/87) and the other filed by Smt.Mathew (QA.315/93). The learned counsel argued that the infirmities in the case of applicant now being made the defence had already stood cured by Respondents by their action of the regularisation of the applicant.

9. Arguing the case on behalf of the Respondents, their learned counsel, Shri R.K.Shetty, first took up the point regarding limitation, delay and laches. He argued that this was an old matter, and the relevant date for purposes of limitation only came because of the 1990 order. Some benefits had already been given and allowing the benefit of seniority as claimed by the applicant would also amount to unsettling the settled position. The well known cases of S.S.Rathod (AIR 1990 SC 10) and Bhoop Singh (AIR 1992 SC 1414) were cited by learned counsel for Respondents.

10. The other point raised was that no one was made party respondents and the judgements in the matter of B.V. Siviah (1998 SCC (L&S) 1656) and B.S.Bajwa (1998 SCC (L&S) 611) were cited in this regard. The judgement in the matter of State of Karnataka V/s. S.M.Kottaiah (1996 (6) SCC 267) was also cited. Learned Counsel concluded by saying that unsettling the settled seniority is not favoured by settled

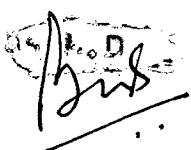


law in this aspect has not been touched upon in the orders made in the two OAs being depended upon by the applicant.

11. Rearguing the case briefly, Learned Counsel, Shri Saxena, stated that at that time the applicant was not aware as to who was senior ~~in~~ the regularisation order and hence it was not possible for the applicant to array any particular person as Respondent in this OA.

12. Let us first deal with the aspect relating to limitation as also delay and laches. The defence of the Applicant is that limitation has to be taken to arise only from the date when the representations ~~was~~ turned down, i.e. from 22/8/2000 (Ex.A). He has sought support of the judgement referred to in para 7 above. Even if we agree to this legal position as applicable in the present case, the delay and laches involved cannot automatically be ignored. Well and truly, there is substance in the argument of the Learned Counsel for the Respondents that the Applicant had become aware of this position as early as in 1990, and should have come up to this Tribunal at that time if he wanted to get a benefit through judicial examination.

13. We have also examined the aspect of support drawn from the two O.As cited in support of his case by the Applicant. In O.A. No.322/87 decided by this Tribunal on 8/7/1992 the O.A. has been disposed of on the ground that the Applicant's services stood regularised of on the ground ~~that the~~ Applicant's services stood regularised in 1968, and hence directions were given to assume that he was regularised from date of appointment in 1966, and consequential benefits provided. In the second OA, namely O.A. No.315/93, decided on 13/8/1993, benefits were provided on the basis of the earlier O.A. for counting of services



...6/-

as L.D.C. from a back date. Now, importantly, in both these O.As. the Applicants therein had come up to this Tribunal in 1987 and 1993 respectively. In both these O.As the crucial order dated 1/10/1990 was taken into account.

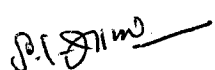
14. In the above context, we have now the present Applicant who comes up to this Tribunal in the year 2000 by filing an O.A. on 5/9/2000. The aspect of delay and laches will come in his way,. Also when a benefit is sought through intervention by judicial determination, the aspect and law settled regarding unsettling of settled seniority will be importantly relevant. We are in agreement with the counsel for the Respondents that, the judgement cited by him in regard to need to avoid unsettling seniority would be relevant. It is well settled by the Hon'ble Apex Court that Courts and Tribunals should avoid giving benefits of seniority where the settled position is liable to be unsettled and thereby affecting a number of persons who have already received promotions, specially when a considerable period of time has elapsed. Here, in the present case, obviously in the last ten years or so, others have been promoted and the Applicant has chosen to keep quiet and has only resorted to making representation/s over long ten years. Providing seniority to him from that date will surely involve upsetting promotions granted to others and causing administrative complications. Importantly, it would be against the principle settled by the Hon'ble Apex Court, as discussed above.

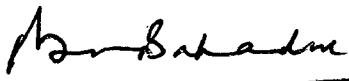
15. It is in this context that we also agree with the contention and argument made by the learned counsel for the Respondent that the Applicant has chosen not to bring

B.S.

in, as Respondents any of the persons who would be aggrieved if the Applicant is provided with the relief that is sought. Non joinder of parties is, therefore, another legal flaw in the case of the Applicant.

16. In view of the above position, specially in regard to the delay and laches, the unsettling of seniority positions after a period of ten years and the flaw on non joinder of parties, we are not convinced of the justification for interference in the matter. In the consequence, this O.A. is therefore dismissed with no order as to costs.


(S.L.JAIN)
MEMBER(J)


(B.N.BAHADUR)
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 46/2001 in O.A.No. 670/2000.

Dated this Friday, the 3rd day of August, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

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

T. T. Bhaskaran ... Applicant

VERSUS

Union of India & Others ... Respondents.

TRIBUNAL'S ORDER ON CIRCULATION

PER : Shri B. N. Bahadur, Member (A).

This is a Review Petition No. 46/2001 filed by the Applicant in O.A. No. 670/00. This O.A. was disposed of by us on 20.05.2001.

2. The Applicant states that he desires to file the present Review Petition on the grounds that respondent has not placed on record the list or names of regularly appointed L.D.C./U.D.C. who would be adversely affected if the applicant is granted seniority from the date of applicant's appointment. It is his contention that if he is granted seniority from the date of appointment, no other staff will be adversely affected.

... 2

3. Secondly, a ground is also taken that the Tribunal has not given any reason as to why the ratio of the case decided by the Madras Bench of the Tribunal is not to be followed. This point is argued in the Review Petition.

4. We have carefully considered the Review Petition and find that both grounds taken are such that they question the stand/reasoning taken by the Tribunal in deciding the case. Such grievance may well be entertained by the applicant but this cannot become the subject matter that can be agitated in a review petition. The remedy will lie elsewhere, as provided in law.

5. Suffice to say that this is not a case where there is any error apparent on the face of the record or any new fact brought to light. In fact, such claims have not even been made. Hence, the Review Petition does not deserve consideration. It is hereby rejected. No costs.


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


(B. N. BAHADUR)
MEMBER (A).

dt. 31.8.01
order/J... ..
to Applicant/Respondent(s)
on 29.8.01
