

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE FOURTH DAY OF SEPTEMBER 1986

Present : Hon'ble Justice K.S. Puttaswamy,

Vice-Chairman

Hon'ble Shri P. Srinivasan

Member

Transferred Application No.138/86

G. Ramachandran Pillai,
Son of Sri Gopala Pillai,
Office Superintendent in the
Office of the Regional Labour
Commissioner (Central),
6/7, Crescent Road, High Grounds,
Bangalore-560 001

...

Applicant

(Shri M.S. Anandaramu . Advocate)

Vs.

1. The Chief Labour Commissioner(Central),
Government of India,
Ministry of Labour,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi.
2. The Regional Labour Commissioner(Central)
Government of India,
Ministry of Labour,
Shastry Bhavan, Madras-600006.
3. Shri P. Anandraj,
Labour Enforcement Officer (Central)
19, Avvaiayar Street,
Subramaniam Nager, Suramangalam.
4. Shri M. Divakaran,
Labour Enforcement Officer (Central)
36/1026, Karakkatt Road, Ernakulam,
Cochin - 682 016.
5. Shri P.V. Abraham,
Labour Enforcement Officer (Central)
2, Kumara Swamy Raja Street,
Shenoy Nagar, Madurai-625 020.
6. Shri G.P. Choube,
C/o Regional Labour Commissioner(Central),
203, North Civil Lines,
Jabalpur-(M.P.).

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Respondents

(Shri M. Vasudeva Rao . Advocate)

The application has come up for hearing before Court today.

Vice-Chairman made the following:

O R D E R

In this application made under Section 19 of the Administrative Tribunals Act, 1985, (Central Act 13 of 1985) ('The Act') the applicant has sought for a direction to respondents 1 and 2 to include his name in the seniority list of Upper Division Clerks (UDC) and promote him to the post of Labour Enforcement Officer (Central) (LEO) with effect from 31.1.1977 from which date his juniors are stated to have been promoted as LEO.

On 16.1.1960 the applicant initially joined service in the Labour Department of the Government of India as a Lower Division Clerk-cum-Steno Typist and has continued to serve in that and other capacities thereafter.

Sometime before 19.5.1971, Government of India, decided to bifurcate the posts of Clerks and Stenographers and create two separate and distinct cadres of Clerks and Stenographers. On the basis of that decision, Government of India in its letter dated 19.5.1971 (Annexure 2) gave an option to the officials who had been recruited as Lower Division Clerks-cum-Steno Typists/Stenographers to either to continue as Lower Division Clerks or as Stenographers and that communication was served on the applicant in the office where he was then working. The option was to be exercised before 30.6.71. On receipt of that communication (Annexure 2) the applicant, instead of exercising his option as he should have done, wrote a letter on 28.6.1971 to the concerned officer under whom he was working (Annexure 3) to furnish him clarifications on the prospects of promotions in the two cadres. We are not told as to how that request for

clarification was dealt with by the immediate officer to whom it was addressed or by the superior officers. But one thing that is certain is, that the applicant did not exercise his option at any rate within the stipulated time on which ground, he was treated as a Stenographer and continued to serve as a Stenographer from 1971 and onwards securing allsuch benefits and promotions to which he was entitled as a Stenographer. As on 20.11.1985 on which day this application was presented before the Tribunal, the applicant had secured promotion to the post of 'Office Superintendent' with effect from 15.4.1985 and has been working in that capacity.

4. While the applicant continued to serve as a Stenographer for a long time and as an Office Superintendent from 15.4.1985, a number of officials who had been initially recruited as Lower-Division Clerk-cum-Steno-Typist/Stenographer, but who exercised their options to become Clerks ie., to work in the Ministerial cadre, secured more than one benefit and some of them like respondents 3 to 6 who were juniors to the applicant in the initial cadre have become LEOs at one or the point of time.

5. The unduly lengthy application made before this Tribunal, supported by innumerable documents, is made more complicated in the rejoinder and the longer number of documents produced alongwith the rejoinder filed by the applicant.

6. The applicant had asserted that he made innumerable representations to redress his grievances from time to time and all of them had fallen on the "deaf ears" of the authorities and his real and just grievances to treat him as belonging to the Ministerial cadre as in the case of respondents 3 to 6 and one Shri Mohan Lal who is not made a party, should have been remedied by the authorities and the failure of the authorities to remedy the same, ever since he wrote his letter dated 26.6.1971 (Annexure 3) and the furtherrepresentations made thereafter affords him a cause of action to seek for the reliefs sought in this

application presented on 20.11.1985. On this basis the applicant had pleaded that his application made before this Tribunal on 20.11.1985 was in time under the Act.

7. In their fairly detailed reply, respondents 1 and 2 without admitting the various factual assertions have asserted, that the applicant had at all times slept over the matter and allowed matters to drift and the present application made on 20.11.1985 was barred by time.

8. Respondents 3 to 6 who have been duly served, have remained absent and are not represented.

9. Shri M.S. Ananda Ramu, learned counsel for the applicant passionately contends, that at all stages it was the authorities that had slept over the matter and had failed to do justice to the applicant and, therefore, this Tribunal should come to his succour. Elaborating his contention Shri Ramu has maintained that respondents 3 to 6 who were juniors to the applicant in the initial cadre of Lower Division Clerk-cum-Stenographer and one Shri Mohan Lal had all become LEOs and therefore this Tribunal should grant all the reliefs sought by the applicant. In support of his contention Shri Ananda Ramu strongly relies on the ruling of Supreme Court in DS NAKARA AND OTHERS V. UNION OF INDIA 1983 1 LABOUR LAW JOURNAL PAGE 104 and a ruling rendered by Rama Jois J in M.M. RUBBER COMPANY V. OFFICER ADDITIONAL LABOUR COURT MADRAS 1986 LABOUR AND INDUSTRIAL CASES 1281.

10. Shri M. Vasudeva Rao learned Additional Central Government Standing Counsel appearing for respondents 1 and 2 refuting the contention of Shri Ananda Ramu contends that the applicant had slept over the matter and in any event was always 'sitting on the fence' was not entitled for any of the reliefs and his application was barred by time.

11. In the vary nature of things, it is necessary to first examine whether the application made before this Tribunal is in time or not which we now proceed to do.

12. We have earlier noticed that the authority under whom the applicant was working forwarded a copy of the communication dated 19.5.1971 calling upon him to exercise his option by 30.6.1971 for inclusion either in the cadre of Lower Division Clerks or in the cadre of Stenographers which were treated as separate and distinct cadres before that. From the reply given by the applicant on 28.6.1971, it is clear, that he had received that communication at least on 28.6.1971 if not earlier. We must, therefore, hold that the applicant had knowledge of the communication dated 19.5.1971 on 28.6.1971.

13. In the letter dated 19.5.1971 it is expressly stated by the authorities that a person who does not exercise his option on or before 30.6.1971 shall and will be treated as a Stenographer on and from that day or from 1.7.1971. We have earlier noticed that the applicant did not exercise his option on or before 30.6.1971. If that is so the applicant forfeited all his rights to be treated as a Lower Division Clerk from 1.7.1971 or as an Upper Division Clerk or any other post in that channel of promotion.

14. We are only concerned with the legal effect of not exercising the option and not with the reasons for not exercising the option. On his failure to exercise his option the applicant lost all his rights to LDC/UDC and all other promotions to those open to that cadre from 1.7.1971. From this it also follows that the cause of action or the grievance of the applicant for the posts of LDC/UDC and others arose on 1.7.1971 and not on any later day as pleaded in the application and rejoinder. We cannot by any stretch of imagination hold that the grievance of the applicant on the exercise of his option, which is the very foundation of all other claims arose during the period of three years before the Act came into force i.e., within 3 years before 1.11.1985. From this also follows that this application made on 20.11.1985 is barred by time under Section 21(2) of the Act and calls for rejection on this short ground.

15. Even on merits also, the applicant has no case at all. When the applicant refused to exercise the option given to him he naturally lost all his rights over the posts of LDC and all other superior posts open to him. The applicant had also slept over the matter for over 14 years during which period much water had flown under the bridge. At this belated stage, the applicant cannot justifiably contend to upset and undo many events that had occurred during the last 14 years. We need hardly say that any such attempt, would only upset the applecart in the department and would result in grave injustice to respondents 3 to 6 and others who are not before us. We are also of the view that this is not a case, in which the department had treated him with an evil eye and uneven hand to attract the vice of Article 14 of the Constitution. We are of the view that the principles enunciated in NAKHARA'S case do not really bear on this point.

16. On the foregoing discussion we held that this application is liable to be dismissed. We, therefore, dismiss this application. But in the circumstances of the case, we direct the parties to bear their own costs.

As. Ramaiah
VICE CHAIRMAN

P. S. Iyer
MEMBER

Sl. No 154

D. No. 839/87 Sec. IV.A

SUPREME COURT OF INDIA
NEW DELHI

Dated: 17th August 1987

FROM

The Additional Registrar,
Supreme Court of India.

To

The Registrar, ~~The Central Administrative
High Court of~~ Tribunal, Bangalore Bench.

PETITION FOR SPECIAL LEAVE TO APPEAL (EPVII) NO. 11, 418/1987
(Petition under Article 136 of the Constitution of India for
Special Leave to Appeal to the Supreme Court from the
Judgment and Order dated the 11-9-1986 of the
Court of ~~Central Administrative Bangalore~~
in T.A. No. 138/86.)

G. Ramanchandran, filiat

PETITIONER

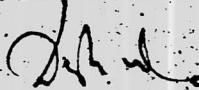
-VS-

The Chief Labour Commr. (as) RESPONDENT

Sir,

I am to inform you that the petition above-mentioned
for Special Leave to Appeal to this Court was filed on behalf
of the Petitioner above-named from the Judgment and Order of
the High Court noted above and that the same was dismissed
by this Court on the 3rd day of August, 1987.

Yours faithfully,


ASSISTANT REGISTRAR

