

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 8TH DAY OF SEPTEMBER, 1986

Present : Hon'ble Justice K.S. Puttaswamy, .. Vice-Chairman

Hon'ble Shri P. Srinivasan .. Member

Transferred Application No. 5/86

B.V. Venkatasubbaiah,
Asst. Director Gr. I (Mech),
Small Industries Service Institute,
Government of India,
Rajajinagar, Bangalore-44

.. Applicant

(Shri H. Subramania Jois .. Advocate)

Vs.

1. Union of India represented by
its Secretary, Ministry of Industry
Nirman Bhavan,
Rafi Marg, New Delhi-11.
2. The Development Commissioner
(Small-scale Industries)
Government of India,
Nirman Bhavan, New Delhi-11.
3. The Director
Small Industries Service Institute
Rajajinagar Industrial Area,
Bangalore-44.
4. Sri C.R. Shiva Prasad,
Dy. Director (Mech)
Small Industries Service Institute
Government of India,
Rajajinagar, Bangalore-44.
5. Sri Niwas Sharma,
Dy. Director (Mech) C/o the
Development Commissioner (SSI)
Nirman Bhavan, New Delhi-11.
6. Sri S.C. Gulati
Dy. Director (Mech)
Small Industries Service Institute,
Industrial Estate, Naini, Allahabad.
7. Sri R.K. SenChowdhary
Dy. Director (Mech)
Small Industries Service Institute,
No.10, Industrial Estate, Pologround,
Indore-452 003 (M.P.).
8. Sri L. Gunashekar
Dy. Director, Production Centre, Manjadi,
Tiruvalla - Kerala-689 105.

9. Sri V.S. Bavishi,
Dy. Director (Mech)
C/o D.C.(SSI) Nirman Bhavan,
New Delhi.
10. V.P. Bansal, Dy. Director (Mech),
Small Industries Service Institute,
Kareemnagar, Srinagar-190010.
11. Sri Krishna Kumar, Dy. Director (Mech),
Small Industries Service Institute,
Industrial Area 'B',
Ludhiana-Punjab.
12. B.C. Day, Dy. Director (Mech),
Small Industries Service Institute,
Kusla Andheri Road, Sakinaka,
Bombay-72.
13. Sri A.N. Ganatra, Dy. Director (Mech)
S.I.S.I. Industrial Extn. Centre,
Industrial Estate, Shed No. A1/A2,
Kota-324007 - Rajasthan.
14. Sri B.M. Goyal, Dy. Director
C/o The Dev. Commissioner (SSI)
New Delhi-11.
15. Sri Lalith Krishna, Dy. Director
in-charge, S.I.S.I. (Branch)
Govt. of India, Hiranagar,
Maldwani, U.P. Nainital.
16. Sri G.R. Wadhwan, SISI
107, Industrial Estate,
Kalpi Road, Kanpur-208 012.
17. Sri Guruswamy, Dy. Director,
Office of the Dev. Commissioner, SSI
Nirman Bhavan, New Delhi-11.
18. Sri A. Gosh Dastidar, Dy. Director,
SSI Harisiddh Chambers, 4th Floor,
Ashram Road, Ahmedabad-14.
19. Sri G.P. Pothadia, Major, Dy. Director
SISI Kurla Andheri Road, Bombay-72.
20. Sri M.K. Bhat, Dy. Director, (Mech)
Office of the Dev. Commissioner,
(SSI) Nirman Bhavan, New Delhi-11.
21. Sri B.C. Garg, Dy. Director (Mech),
Office of the Dev. Commr. (SSI)
Nirman Bhavan, New Delhi.
22. Shri K.S. Krishna Rao, Dy. Director
SISI Extension Centre, CTR B-2 Unit,
Indl. Estate, Vijayawada-520 007.
23. Sri P.P. Kowe, Dy. Director
Office of Dev. Commr. (SSI),
Nirman Bhavan, New Delhi.

... Respondents

(Shri M. Vasudeva Rao ... Advocate)

The application has come up for hearing before Court today.

The Vice-Chairman made the following:

O R D E R

In this transferred application from the High Court of Karnataka, the applicant has sought for quashing his ranking in the seniority list of the Assistant Directors (Grade I) in Mechanical Engineering Section of Small Industry Development Organisation (AD Grade I)(Annexure H) and for promotion to the post of Deputy Director Mechanical (DD) from the very date respondent No.12 was promoted to the said post.

On 5.11.1957 the applicant joined service in the Department of Industries, Government of India, as Small Industrial Promotion Officer (SIPO). On 31.10.1968 the applicant was promoted as AD Gr. I on an officiating basis with effect from 19.9.1968 until further orders (Annexure B). But respondent No.12 who is stated to be his junior in the initial cadre of SIPO and also the cadre of AD Gr. II had been promoted as AD Gr.I earlier to the applicant. On that basis, respondent No.12 also secured promotion to the cadre of DD on 10.3.1977 which is very much earlier to the applicant. On the above basis, respondent No.12 had been assigned rank No.37 as against Rank No.52 assigned to him in the seniority list of AD Gr.I (Annexure H) .

On 1.1.1982 the applicant was promoted as DD on an ad hoc basis which he declined for reasons with which we are not concerned. On 3.12.1983 the applicant was promoted as DD which he accepted on 24.2.1984 and on attaining superannuation on 30.4.1984, he retired from service.

The applicant has urged that the earlier promotions accorded to respondent 12 to the cadres of AD Gr.I and DD who happened to be his junior in the very initial cadre of service, without properly examining and deciding his innumerable representations presented before the authorities was illegal, arbitrary and is violative of Articles 14 and 16 of the Constitution. On this basis, the applicant has urged for remedying


the injustice caused to him from time to time and for issue of appropriate directions to respondents 1 to 3 to place him above respondents No.12 in the seniority list of AD Gr. I (Annexure H), extend to him the promotions he was entitled to in the cadres of AD Gr. I and DD, from the very dates on which respondent No.12 was promoted to these ~~these~~ cadres and accord him all monetary benefits to which he was entitled to in law.

In their reply filed before this Tribunal respondents 1 to 3 have justified the seniority list drawn by the authority, the promotions accorded to the applicant and respondent 12 from time to time. At the oral hearing of the case, Shri M. Vasudeva Rao, learned Central Government Standing Counsel appearing for respondents 1 to 3 also sought to urge that all the claims made by the applicant were very stale and suffered from unexplained and unreasonable delays on which ground this Tribunal should decline to examine all of them on merits at this stage.

Sri M. Narayana Swamy, learned counsel for the applicant contends that in a transferred application or proceeding under the Administrative Tribunal Act, 1985 (Central Act 13 of 1985) ('the act') delays, if any, in approaching the High Courts cannot at all be examined by this Tribunal and, therefore, this Tribunal was bound to examine the merits of the claims of the applicant and grant him relief if he was otherwise entitled to them in law.

Shri Vasudeva Rao refuting the contention of Shri Narayana Swamy contends that in a transferred proceeding under the Act, this Tribunal exercises all the powers the High Courts were exercising prior to their transfer and this Tribunal was competent to refuse to adjudicate belated or delayed claims.

Section 29 of the Act provides for transfer of proceedings



before the High Courts and other Courts immediately before the Act came into force. In pursuance of that provision and the notification issued thereto by the Central Government, the High Court of Karnataka had transferred to this Tribunal this proceeding as one pending as on 1.11.1985 (vide certificate No.HCE 358/85 dated nil).

The Tribunals constituted under the Act replace the High Courts that were earlier exercising their jurisdiction under Article 226 of the Constitution over service matters and takes over their jurisdiction, of proceedings pending on the appointed date. The Act completely excludes the jurisdiction of High Courts and the other civil courts of the country over service matters of the Central Government and exclusively confers that jurisdiction on Tribunals constituted under the Act on and from the appointed date, however, preserving the powers of the Supreme Court over them under Articles 32 and 136 of the Constitution. From this analysis it follows that in respect of transferred proceedings, the Tribunal really steps into the shoes of the High Courts. If that is so, the Tribunals cannot be denied the very powers the High Courts were exercising over the original proceedings that were pending before them. We are not concerned with the further powers that are conferred on Tribunals over such matters. But, what we are now really concerned is whether the Tribunal could reject challenges on grounds of delay and laches of the applicants as the High Courts could have undoubtedly done, if the Act had not been enacted and the Tribunals had not been constituted thereunder.

We are of the view that in respect of transferred proceedings the Tribunals can exercise every one of the powers the High Courts could have exercised over them, when they were pending before them. By this we should not be understood as saying that the Tribunals are competent to issue prerogative writs under Article 226 of the Constitution. We are certain that Tribunals cannot exercise those powers of the High Courts. But, that is not the same thing as saying that the Tribunals

cannot exercise the powers the High Courts were exercising when the proceedings were pending before them and must adjudicate all belated or stale claims as urged by Shri Narayana Swamy. The Act does not compel us to do so. We are of the view that Section 29 of the Act or any other provision of the Act does not lend itself to such an extreme contention at all. We are, therefore, of the view that Tribunals are competent to dismiss a transferred application on grounds of delay, laches and conduct on which grounds the High Courts were free to dismiss them when they exercised their jurisdiction under Article 226 of the Constitution. We see no merit in the contrary contention of Shri Narayana Swamy and we reject the same.

We will now examine whether we should decline to examine the merits on grounds of delay and laches.

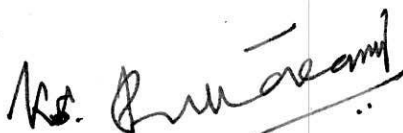
In their reply the respondents have not urged this objection is not disputed by Shri Vasudeva Rao. But, he contends that this objection which is apparent should be permitted to be urged by us, which is naturally opposed by Shri Narayana Swamy.

We are of the view that the objection of Shri Narayana Swamy is without any merit. We are also of the view that this Tribunal is competent to permit either of the parties to urge a ground that is not specifically pleaded in their pleadings and do substantial justice, however, affording a full and fair opportunity on such ground. We are also of the view that this Tribunal can suo motu consider a new ground. For all these reasons, we reject the objections raised by Shri Narayana Swamy.

We have earlier set out the facts in their proper sequence. An examination of those facts themselves reveal that the claims made by the applicant before the High Court on 14.12.1983 on the eve of his retirement, suffered from gross delays and laches. Every one of the explanations offered by the applicant in his application

and also at the hearing are far from satisfactory to ignore the unreasonable delays in challenging the actions of by gone times. After all this Tribunal should not take up the role of a bull in a China shop and unsettle all settled matters of by gone times and create problems to administration which will find it extremely difficult to remedy situation of by gone times. We should not also overlook the fact that the applicant had retired from service once refusing a promotion and on another occasion accepting the promotion. We are clearly of the view that this is a fit case in which we should decline to exercise our jurisdiction on grounds of delay and laches without examining the merits.

In the light of our above discussion, we decline to examine the merits of the claims of the application and dismiss this application. But, in the circumstances of the case we direct the parties to bear their own costs.



VICE-CHAIRMAN



MEMBER (A)

D.NO. 520/87 IVA

SUPREME COURT OF INDIA
NEW DELHI

Dated 29/7/88

From:

The Additional Registrar
Supreme Court of India
New Delhi

To

~~The Central~~ The Registrar
Central Administrative Tribunal
Bangalore Bench Bangalore (Karnataka)

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 14234/1987

(Petition Under Article 136 of the Constitution of India

for Special Leave to Appeal to the Supreme Court from

the Judgment and Order dated 3-9-86 of the

High Court of Central Administrative Tribunal

Bangalore Bench, Bangalore In Transfer App. NO. 8/86

B. V. Venkatasubbiah

....Petitioner

vs

Union of India is an...

....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/were
dismissed by this Court on the 28-11 day of April

1988.

Yours faithfully,

[Signature]
for ADDITIONAL REGISTRAR