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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 16/90
T.A. No.

198

DATE OF DECISION 17-4-1990

Ramchandra Sakharan Borhade Petitioner


Mr. C. B. Kale Advocate for the Petitioner(s)

Versus

The Sr. Supdt. of Post Offices & Respondent

Mr. S. R. Atre for Mr. P. M. Pradhan Ors. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P. S. Chaudhuri, Member(A) 

The Hon'ble Mr. T. S. Oberoi, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- } No

(3)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.16/90

Ramchandra Sakharam Borhade .. Applicant

vs.

The Sr.Supt. of Post Offices & Ors. .. Respondents

Ceram: Hon'ble Shri P.S.Chaudhuri, Member(A)

Hon'ble Shri T.S.Oberoi, Member(J)

Appearance:

1. Mr.C.B.Kale
Advocate for the
applicant.
2. Mr.S.R.Atre
for Mr.P.M.Pradhan
Advocate for the
respondents.

ORAL JUDGMENT

(Per P.S.Chaudhuri, Member(A))

Date: 17-4-1990

This application under Section 19 of the Administrative Tribunals Act was filed on 15-1-1990. The applicant, who is a postal department employee, is challenging the failure of the respondents to promote him to Higher Selection Grade II cadre in accordance with his correct seniority ~~list~~ position.

2. It is the applicant's case that he was recruited on 7-2-1966. It is his submission that in the gradation list circulated on 21-10-1972 he was wrongly shown at Sr.No.237 while three of his juniors viz. Respondent No.4 and two others were shown at Sr.Nos.200,234 and 236 respectively. It is the applicant's case that he submitted representations on 2-9-1977, 4-8-1979, 12-10-1988 and 9-12-1988. He received a reply under a covering letter dtd. 12-10-1989(at page 7 of the application). Being

aggrieved, he filed this application.

3. We have heard Mr.C.B.Kale, learned advocate for the applicant and Mr.S.R.Atre holding the brief of Mr.P.M.Pradhan, learned advocate for the respondents.

4. Mr.Kale attempted to get over the obvious problem of jurisdiction and limitation, by citing two cases. The first was C.R.Balasubramanian v. Chief Workshop Manager - 1990(1)SLJ (CAT) 344. But the facts in that case are quite different to those in the present case. In that case decided by the Madras Bench of this Tribunal/^{the} respondents themselves by their own order condoned the break in service against/^{all} the applicants, and the Madras Bench were thus of the view that "a contention on the basis of the bar of limitation is mis-conceived, and it ill-behoves the Railway Administration to raise the same." The second case cited by Mr.Kale was B.Kumar v. Union of India & Ors. - ATR 1988(1)CAT 1. In that case the Principal Bench of this Tribunal held that "it would be inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it." Mr.Atre countered this with the submission that, first, it would be

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it was not ^{as if} ~~for~~ the department ^{had on its own} ~~to~~ consider the matter afresh and, secondly, the applicant's

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representation had not been examined afresh on merits. All that had been done was to reiterate the earlier view. ~~In any case~~ We see considerable merits in this submission of Mr. Atre. In S.S. Rathore v. State of M.P. - AIR 1990 SC 13 - a seven-Judge Bench of the Supreme Court has held that "Repeated unsuccessful representations not provided by law are not governed by this principle" and also that "Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

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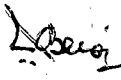
5. We are also ^{conscious} ~~cautious~~ of the view taken by the Principal Bench of this Tribunal, with which we are in respectful agreement, in V.K. Mehra v. Secretary, Ministry of Information and Broadcasting - ATR 1986 (1) CAT 203. In that case the Principal Bench has held that "the Act" does not vest any power or authority to take cognizance of a grievance arising out of an order made prior to 1-11-1982....." The question is not at all one of condoning the delay in filing the petition. It is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 1-11-1982. It further held that "since it relates to a grievance arising out of an order dated 22.5.1981, a date more than three years immediately preceding the constitution

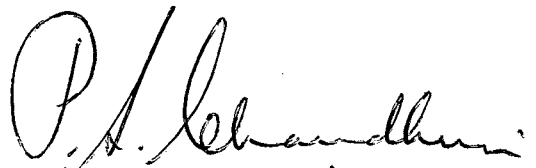
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of the Tribunal, this Tribunal has no jurisdiction, power or authority to entertain the petition."

6. It is beyond ^{doubt} that the cause of action of the applicant arose with the publication of the gradation list on 21-10-1972. He submitted representations in 1975, 1977, 1979 and then in 1988. It is thus conclusively established that he was not diligent in pursuing the matter. Since the grievance arose in 1972 we have no jurisdiction to adjudicate it. We are therefore of the view that this application is hopelessly delayed and barred by limitation.

7. We accordingly reject the application summarily under Section 19(3) of the Administrative Tribunals Act, 1985. In the circumstances of the case there will be no order as to costs.


(T.S. OBEROI)
Member(J)


(P.S. CHAUDHURI)
Member(A)