

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 245/90

Transfer Application No:

DATE OF DECISION: 21-11-94

Moreshwar Shankar Bedekar & ors. Petitioner

Shri G.R. Menghani Advocate for the Petitioners

Versus

The Director General of Posts Respondent
New Delhi and others.

Shri S.S.Karkera, for Advocate for the Respondent(s)
Shri P.M.Pradhan.

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R.Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. Hegde)
Member (J)

(11)
CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 245/90

Shri Moreshwar Shankar Bedekar
and others.

... Applicants.

V/s.

The Director General of Posts
DAK Bhavan, New Delhi.

The Chief Post Master General,
Maharashtra Circle, Bombay.

The Senior Manager, Mail Motor
Services, Worli, Bombay.

... Respondents.

CORAM: Hon'ble Shri B.S.Hegde, Member (J)

Hon'ble Shri M.R.Kolhatkar, Member (A)

Appearance:

Shri G.R.Menghani, counsel
for the applicant.

Shri S.S. Karkera, for Shri
P.M.Pradhan, counsel for
the respondents.

JUDGEMENT

Dated: 21-11-99

{ Per Shri B.S.Hegde, Member (J) }

The present application is made against
the Maharashtra Circle Gradation List of Mail Motor
Service issued by Respondent No.2 dated 1.7.78 and
rejection of representation by the applicants
challenging the said gradation list vide order
dated 7.2.89 by Manager Mail Motor Service, Pune.
Therefore the application is made against the action
of respondents in placing the applicants below their
juniors in the Maharashtra Circle Seniority List
to the post of Drivers in Mail Motor Service.

2. The brief facts of the case are:
The applicants have joined the service in the
office of Senior Superintendent RMS, Pune on
29.9.1964. The applicants were appointed on temporary
basis in the scale of Rs. 110 - 186 with effect
from 1.10.64. The main contention of the applicants

is that they have been continued in that capacity till 29.9.68 without any break in service. Their service has been confirmed as Drivers with effect from 1.3.73 vide letter dated 7.3.74. When a querry was made to the learned counsel for the applicant during the course of hearing, whether the application is barred by limitation, the learned counsel for the applicant urged that they were making repeated representations to the respondents for which they received the reply in 1989. The respondents vide their letter dated 12.10.88 intimated the applicants that the representation dated 17.11.87 regarding fixation of seniority has been rejected by P.M.G. Bombay. Similarly vide letter dated 7.2.89 the respondents have intimated that the case has been examined and considered and the same has been rejected.

3. In reply to the applicant's contention the respondents have taken preliminary objection that the application is hopelessly barred by time and apart from that this Tribunal has no jurisdiction to go into the merits of the case at this stage, as the applicant has challenged the Maharashtra Circle Gradation List on 1.7.78 and published in the year 1978. The present application has been filed in the year 1990, which is clearly barred by time under section 21 of the Administrative Tribunals Act 1985. However, this Tribunal has no jurisdiction to entertain the issue which arose prior to 1.11.82. Since the cause of action arose prior to the constitution of this Tribunal, this Tribunal cannot go into the question of the alleged grievance.

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Further the respondents contended that the repeated representation of the applicant cannot be considered to extend the period of limitation and further they stated that even assuming that the final order was passed on 7.2.89, the present application has been filed on 20.3.90, beyond the period of one year from the date of the said alleged order passed by the respondents which is clearly barred by time under section 21 of the Act.

4. We have heard the rival contention of the parties and perused the pleadings. The learned counsel for the applicant Shri G.R. Menghani has cited the decisions with regard to limitation as well as non-joinder of parties. The applicants were permitted to amend the O.A by impleading the ^{other} parties. They did not comply with the directions and submitted that they are not interested in setting aside the persons who are already been promoted. In support of his contention, the learned counsel for the applicant submitted that the decision of the Tribunal regarding non-joinder of parties, in the case of Abdul Shakoor and Ors. V/s. Union of India and ors. 1992(3) CAT 416. In that case, the intervenor has raised preliminary objections that he was shown senior to the applicants in the impugned seniority list and he, alongwith the other persons who were senior to the applicants, ^{in the impugned seniority list} and above whom the applicants now seek seniority, have not been made respondents to the application. On account of non-joinder of ^{the specified parties} respondents the application is required to be dismissed. In support of that contention the intervenor have cited the Supreme Court decision in the case of Prabodh Verma V/s. ~~State~~ of U.P. AIR 1985 SC 167 in which it was held that High Court ought not to hear and dispose of a writ petition under Article 226 without the

/82

persons who would be vitally affected by its judgement being before it as respondents or at least some of them being before it is respondents in a representative capacity if their number is too large to join as respondents individually and if the petitions refused to do so, then the High Court ought to dismiss the petition for non-joinder of the necessary parties. The learned counsel for the applicants has, on the other hand, referred to the judgement of the Hon'ble Supreme Court in the case of the General Manager South Central Railway Secunderabad V/s. A.V.R. Sidhan~~and~~ and others AIR 1974 SC 1755, in which where the petitioners were impeaching the validity of decisions of Railway Board regarding seniority on account of their being violative of article 14 and 16 of the Constitution of India, it was held that the proceedings are analogous to those in which the constitutionality of a Statutory Rule regulating the seniority of government servant is assailed. It was held that in such proceedings, the necessary parties to be impleaded are those against whom relief is sought and in whose absence no effective decision can be rendered. It was held that the relief ~~was~~ only claimed against the Railway who had been impleaded through its representative and that the employees who were likely to be affected as a result of the readjustment of the petitioners seniority in accordance with the principles laid down in these decision were at the most proper parties and not necessary parties and their non-joineder could not be fatal to the writ petition. This view was subsequently followed by the Hon'ble Supreme Court in the case of A Janardhan V/s. Union of India AIR 1983 SC 769 which reads as follows:

" that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual

against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground."

5. With due respect to the decisions referred to above, which have no bearing with the issue involved in the present case and the facts of the case are distinct from the facts laid down by the aforesaid decisions. Regarding limitation the learned counsel for the applicant has relied upon the decision in the case of G.Ezhil and others V/s. the Government of India and others 1991(3) CAT SLJ 493 and the decision in the case of Makod Khodabhai Janjadiya V/s. Union of India and others 1991(3) CAT SLJ 592. The Tribunal has observed that there was substance in the question of limitation, but as application was admitted not subject to limitation Tribunal preferred to go on merits. The application ~~is~~ filed beyond the time stipulated under the Act. Admittedly, the application is admitted without giving any opportunity to the respondents and thereafter issued notice to the respondents. Therefore, the plea of the counsel for the applicant that unless it is stated that the application is admitted subject to limitation, it is not open to the respondents to agitate the plea of limitation at this stage. This plea is not tenable ~~because~~ the point of limitation is ^a the point of law which can be agitated at any point of time and the application was admitted without hearing the opposite party. Therefore, the respondents while filing the ~~reply~~ have taken the plea of limitation which is in accordance with rules.

6. The respondents in support of the contention that the application is hopelessly barred by time. In this regard they have cited the decision of the Supreme Court in the case of S.S. Rathore V/s. State of Madhya Pradesh AIR 1990 SC 10. Wherein the Supreme Court has clearly held that

" In the case of a service dispute the cause of action must be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen.

This principle has not application when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

However the learned counsel for the respondents draws our attention to the P & T Manual Vol. IV 32 D and E. which reads as follows:

32 D. " Heads of offices will arrange to have all gradation lists received by them circulated among the staff in their offices concerned as soon as received, so as to enable the latter to see at once how they stand in the list. If there be any mistake in a gradation list, the official or officials affected should point them out the authority concerned for rectification within one year of the date of issue of the gradation list, or else his petition will be treated as time-barred. If after the issue of a

(14)

gradation list the seniority of an official is altered to his disadvantage, the authority ordering the alteration will communicate the fact to him. No appeal against such alteration will lie to a higher authority unless it is submitted within the usual time limit of six months from the date of communication of the order appealed against. No such intimation of alteration of seniority will, however, be issued in the cases in which the seniority is altered in pursuance of a general order of the Director-General regulating the fixation of seniority of officials, e.g. when an official failed to pass the efficiency bar on the due date, or cannot be confirmed in his appointment on the due date, owing to inefficiency etc.

32 E. Subject to any special rules prescribed for any particular service, the seniority of an official in the cadre to which he belongs should be fixed according to the date of his permanent appointment to that cadre. When this date happens to be the same in the case of two or more officials, seniority should be determined according to the following principles:

- a) In cadres to which recruitment is made through an examination.
 - i) If the examination is competitive, seniority should be fixed according to the order of merit in the examination. Where recruitment is made partly from departmental candidates and partly from outsiders, the former should always rank senior to the latter.

7. In view thereof, the learned counsel for the respondents contends that even the representation made by the applicant is not within the time the gradation list was circulated. The applicants made the representation on 30.12.82 after a lapse of 4 years, which is contrary to the rules referred to above.

In the circumstances, the application is liable to be

dismissed not only on the grounds of limitation but also for want of jurisdiction. There is considerable force in the contention of the respondents and therefore, we are, inclined to agree with the same.

8. In the result, keeping in view the ratio laid down in Rathore's decision of the Supreme Court, We are constrained to go into the merit of the case, after a lapse of 12 years. This is not the case of the applicants that they are unaware of the gradation list published in the year 1978 and the said list is being challenged in this petition. If that be so, in the light of the above, the application is not only barred by limitation but also for want of jurisdiction and we cannot entertain the O.A. at this belated stage. Accordingly the O.A. is dismissed, but no order as to costs.


(B.S. Hegde)
Member (J)

NS

(Per M.R. Kolhatkar, Member(A))

I agree with the final view being taken by my learned colleague Member(J) but I would like to give my own reasons.

9. In my view it is not necessary to hold that this Tribunal has no jurisdiction to consider this case as it relates to the year 1978

when it is possible to hold that the case is barred by limitation relying on the ratio of Supreme Court Judgment in the case of S.S. Rathore vs. State of Madhya Pradesh, AIR 1990 SC 10. The reason why I hold that this case is barred by limitation is as below :

Admittedly under P & T Manual Vol. IV, Rule 32(D) the applicant was required to challenge the gradation list in respect of 1978 within one year of its publication. The applicant did not do so. He waited for four years and then sent a representation to PMG to which a reply was sent on 20-7-87. He thereafter made a representation to D.G. to which a reply was received on 7-2-89 and the applicant wishes to reckon the cause of action from 7-2-89. But this is not the statutory representation as envisaged in S.S.Rathore's case which has clearly laid down that "the principle has no application when the remedy availed of has not been provided by law." Therefore the remedy availed of by the applicant by making representation to the PMG and DG to which he received a final reply was not legal and therefore, he cannot reckon to case the action from 1989. The O.A. is therefore barred by limitation and is liable to be rejected on this main ground.

O R D E R

O.A. is dismissed.

No order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

B.S.Hegde
(B.S.HEGDE)
Member(J)