

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 181/91
T.A. No.

198

DATE OF DECISION 2-1-1992Ambaram B. Masih PetitionerMr. H.J. Acharya Advocate for the Petitioner(s)

Versus

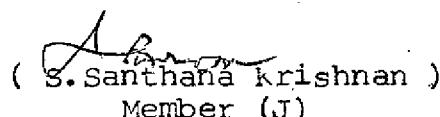
Union of India & Ors. RespondentMr. S.C. Dhawan Advocate for the Respondent(s)

CORAM :

The Hon'ble Ms Usha Savara, M(A)

The Hon'ble Mr. S. Santhana Krishnan, M (J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
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?



(S. Santhana Krishnan)
Member (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
* * * * *

Original Application No.181/91

Ambaram B. Masih ... Applicant

v/s

Union of India & Ors. ... Respondents

CORAM : Hon'ble Member (A), Ms. Usha Savara
Hon'ble Member (J), Shri S.Santhana Krishnan

Appearances:

Mr. H.J.Acharya, Advocate
for the applicant.

Mr. S.C.Dhawan, Counsel for
respondent No.1.

Respondent No.3 in person.

JUDGMENT:

Dated : 2-4-1992

(Per. S.Santhana Krishnan, Member (J))

The applicant in this application claims that he has been appointed as Assistant Chemist on 14.5.1968 and then promoted to the post of Chemist in December 1986 with retrospective effect from 1.1.1984 and to the post of Laboratory Superintendent on 1.5.1988 in officiating capacity. When the applicant joined his duty the second respondent was working as Lab. Assistant and he had joined duty in that post on 8.7.1960. On completion of specific training he was promoted to the post of Assistant Chemist on 8.7.68. Thereafter he was selected as Chemist in or about May 1972. The applicant's claim was not considered for the above said post at that time as he was not within the zone of consideration. He has sent several representations by himself and through the Union. In the mean while he was also removed from service in March 1982 and his punishment was converted. Thereafter he was reinstated and into penalty of reduction of two increments without future effect. Again he was removed from service with effect from 4.7.86 and the same

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was set aside by this Hon'ble Tribunal directing the appellate authority to consider the applicant's appeal which thereupon decided to impose the penalty of reversion to the lower post of Assistant Chemist for a period of one year ending April 1988. Thereafter he has made several representations and ultimately he received a reply on 7.3.1991. According to him he ought to have been given promotion as per seniority in view of para 302 of Indian Railway Establishment Manual which states that the seniority of a post in the grade is governed by the date of appointment to the grade. Incidentally, he also claims that the third respondent was also appointed on regular basis in or about July 1979. His grievance is that he ought to have been promoted as from the date his junior was promoted Chemist and Laboratory Superintendent and hence claims in this application the following reliefs:-

i) The applicant should be deemed to have been promoted to the post of Chemist & Lab. Supdt. from the date his junior was promoted.

ii) The applicant be given pay and allowances attached to the post from the date his junior was promoted and be paid arrears of pay and allowances.

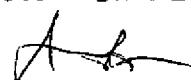
2. Respondents 1, 2 & 3 have filed their written reply resisting the claim of the applicant. The first respondent further contend in their reply that the application is barred by limitation, latches and also on the point of jurisdiction.



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3. Heard counsel for the applicant as well as for the respondents ~~1&2~~. Heard third respondent in person. Necessary records have been perused.

4. The fact that the applicant was appointed as Assistant Chemist on 14.5.68 and that he was promoted as Chemist in December 1986 with retrospective effect from 1.1.84 is not disputed. So also the contention of the applicant that he was promoted to the post of Lab. Supdt. on 1.5.1988 in officiating capacity is also not in dispute. His further contention that the second respondent joined as Lab. Assistant on 8.7.1960 and on completion of training he was promoted to the post of Assistant Chemist on 8.7.68 is also not disputed. It is the contention of the applicant respondent No.2 that ~~1~~ is not entitled to be promoted to the post of Assistant Chemist as ~~as~~ at that he did not complete 10 years service as Lab. Assistant. If the applicant had got any grievance about the promotion of the second respondent as Assistant Chemist on 8.7.68, he ought to have made a representation to the competent authority and he ought to have filed an application before the competent ~~court~~ challenging the above said appointment. The applicant failed to take any action on all these aspects. On the other hand the 1st respondent points out in their reply that when the second respondent was promoted as Assistant Chemist, the rule prescribing ten years of service as Lab. Assistant was not in force and the rule itself was brought in existence by the letter dated 10.1.1974. Hence the contention of the applicant that the second respondent was not properly promoted as Assistant Chemist is ~~also~~ without any basis.



5. The applicant's further contention is that the second respondent was selected as a Chemist in or about May 1972 and at that time his claim for that post was negated on the contention that he was not within the zone of consideration. Admittedly the post of Chemist is a selection post and the second respondent was admittedly selected in May 1972. If the applicant had got any grievance upon this selection, he ought to have ~~been~~ made a representation to the competent authority and he ought to have filed an application before the competent court authority within the period prescribed. The applicant neither challenged the selection nor the procedure adopted by the Committee selecting the second respondent to the post of Chemist. Though the applicant claims in his application that the third respondent was also promoted as Lab. Supdt. in July 1979 he has not said specifically as to what is his grievance against the third respondent.

6. It transpires from the arguments advanced by the learned counsel for the applicant that the applicant is senior to the second respondent and hence he ought to have been given promotion on the date when the second respondent was given promotion as Chemist ~~xxx xxxx xx xx xx xx~~ and he should be given all the necessary arrears on the ground that he is entitled to the same from the date of his junior was promoted.

7. The respondents rightly contended that the present application is barred by limitation, latches and on the ground of jurisdiction. If the applicant had got any grievance about the promotion of second respondent as Assistant Chemist in 1968 and then as Chemist in May 1972 he ought to have filed an application not before this

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Tribunal but before the competent court then in existence. So also if the applicant had got any grievance about the promotion of the third respondent as Lab. Supdt. in July 1979 he ought to have filed an application questioning the same before the competent forum and not before this Tribunal, within the time prescribed. The applicant cannot file this application questioning these appointments and seniority which arose long before the constitution of this Tribunal. Hence the application filed by the applicant questioning the seniority ~~list~~ and selections made long prior to 1982 is not only barred by limitation and latches but also on the point of jurisdiction.

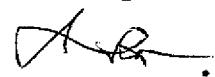
8. On these aspects the learned counsel appearing for the applicant placed reliance on a decision reported in 1973(1) SLR page 1053, Vishwanath Verma v. State of Madhya Pradesh & Ors. Even in this case Their Lordships of Madhya Pradesh High Court only pointed out that the request of the applicant for quashing the order will have to be granted and it is for them to decide how to give promotion to the applicant over respondents 4 to 9. The applicant before us has not even challenged either the seniority list or the selection of either the second respondent or ^{not} the third respondent even now. Hence this decision is of any help to the applicant.

9. Again the applicant's counsel brought to our notice ATR 1986 (2) CAT page 162, Smt. Vina Sanyal & Kasi Nath Saha v. Union of India & Ors. wherein the Delhi Bench of the CAT found that the procedure by the DPC and non-selection of the applicant is not proper and it can be interferred with. It is not applicable to the facts of this case. Again, our attention was drawn to ATR 1987 (2) CAT page 245, Vishnu Sambhaji Dange v. Union of India & Ors. We are unable to see how this decision is of any

help to the applicant.

10. The learned counsel appearing for the applicant then pointed out the decision reported in 1991 (16) ATC page 28, K.C. Subramanian & Ors. v. Chief General Manager, Telecommunications, Madras & Ors. wherein it has been only pointed out that when the decision was already rendered by the Tribunal, the benefit can be extended to others and this cannot be denied on the ground of limitation. On the otherhand it is seen from a decision reported in 1991 (2) SLJ page 179, V. Vijayan & Ors. v. Director General of Quality Assurance & Ors. which is directly in point wherein the Bench of the Madras Tribunal placed reliance on several decisions of the Supreme Court laid down that ^{when} the applicant has not chosen to challenge the necessary selection or the seniority rules, the application is liable to be dismissed on the ground of latches.

11. As the applicant failed to challenge either the promotion of the second respondent to the post of Assistant Chemist in 1968 or to the post of Chemist in 1972 or the promotion of third respondent to the post of Lab. Supdt. in 1979 the applicant cannot claim any relief in this application. Though the applicant in his relief claims that he should be deemed to have been promoted to the post of Chemist and Lab. Supdt. from the date his juniors were promoted and he should be given the necessary arrears, in effect he is questioning the seniority of the second respondent and the promotion of the third respondent. Hence, the present application is barred by limitation and this Tribunal has also got no jurisdiction regarding the reliefs claimed by the applicant.

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12. The arguments of the applicant's counsel mainly proceeded on the footing that the first respondent ought not to have promoted the second respondent as Assistant Chemist in 1968 and then selected him as Chemist in May 1972. According to him he is senior to the second respondent as he was appointed as Assistant Chemist directly on 14.5.1968, whereas the second respondent was promoted as Assistant Chemist on 8.7.68. The applicant on this aspect produced along with the application Annexure-A-1 letter said to have been written by the Divisional ~~Supdt.~~ stating that he is senior to the second respondent. The applicant has produced only a typed copy of the letter. When the applicant's counsel was asked to produce the original from which the copy was taken he is not able to produce any such original. On the other hand the first respondent pointed out that they are not having any such letter in their file and even if there is any such letter it was not given effect to. It is also contended on behalf of the first respondent that the Divisional Superintendent is not the competent authority to revise the seniority. The applicant produced along with the application only this letter and not any seniority list wherein his name was shown either above the second respondent. On the other hand the first respondent along with their reply produced the original combined seniority list of Laboratory Assistant/Assistant Chemist as on 1.8.1968, wherein the serial number of second respondent is at 6 and that the applicant is at 19. As per this combined seniority list the applicant is junior to the second respondent. They have also produced the seniority list of Assistant Chemist ~~as on~~ 1.12.1970 wherein the name of the second respondent is at serial number 1 and the applicant is at serial number 10. Hence

both in the combined seniority list as well as in the separate seniority list of Assistant Chemist the applicant is far junior to the second respondent. As stated already the applicant has not chosen to challenge any of the seniority lists. The first respondent ~~has also supplied~~ the selection of the second respondent as Chemist in 1972 on the ground that he is senior to the applicant and that the applicant had not come within the zone of consideration at that time. The applicant had not even chosen to challenge the above said selection. The first respondent also pointed out in their reply that originally they were maintaining a combined seniority list and the criteria for determining the seniority was the length of service in any of the posts and not the grade. As the second respondent has joined as Lab. Assistant on 8.7.1960, long before the applicant who joined as Assistant Chemist on 14.5.68 the second respondent was shown senior to the applicant. Again, even in the separate seniority list maintained by them, the second respondent is ~~shown~~ to be senior to the applicant. They have further pointed out that when the third respondent was promoted as Lab. Supdt. in 1989 he was officiating as Lab. Supdt. even prior to that period namely from 1987. The applicant was not entitled to be considered at that time as he was undergoing punishment of reversion to the lower post of Assistant Chemist for a period of one year ending in April, 1988. Hence the applicant cannot compare his case with that of third respondent or claim that he ought not to have been granted promotion or at least he will be given deemed promotion from that date.

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13. The second respondent also further produced the latter dated 16.11.1971 wherein a further combined seniority list was prepared for the post of Lab. Assistant/ Assistant Chemist wherein also the applicant is far below ~~XXX~~ junior to the second respondent. He has also produced the letter dated 30.8.1971 wherein it was decided to maintain a combined seniority list for the above said post and treat the separate seniority list dated 19.12.70 as cancelled. The applicant has not even challenged the seniority list dated 16.11.1971. As the separate seniority list dated 19.12.70 is cancelled, even if the letter relied upon by the applicant namely Annexure-A1 is true the applicant cannot claim any relief on that basis as this letter alleged to have been issued in pursuance of the seniority list dated 19.12.1970. The third respondent has also filed his counter wherein he has stated that he joined service as Assistant Chemist on 4.7.1979 and thereafter promoted to the post of Chemist. The first respondent gave the applicant also promotion with retrospective effect from 1.1.1984 as the third respondent was given promotion from that date ~~and~~ he was junior to the applicant.

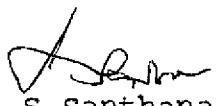
14. The learned counsel for the 1st respondent also brought to our notice the further seniority list published by the first respondent namely seniority list of Chemist grade wherein also the second respondent figures at serial No. 4 whereas the applicant is at serial number 16-A. The contention of the applicant is that there is no question of limitation as there are some administrative error is also without any basis as we find no administrative error to the facts of this case.



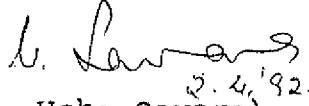
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15. In view of the above discussion it is seen that the present application is hopelessly barred by limitation and latches as the applicant has not chosen to challenge any of the seniority lists or the selection of the second respondent or ~~third~~ respondent. At any time he cannot question the same under the guise ~~of~~ that he should be deemed to be promoted from the date of his juniors who were promoted to the post of Chemist and Laboratory Superintendent. Even on ~~merit~~ the applicant is not entitled to claim any reliefs as discussed already. Hence we find no merit in this application and accordingly the application is liable to be dismissed and the same is dismissed but in the circumstances without any order as to costs.


(S. Santhana Krishnan)
Member (J)

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(Ms. Usha Savara)
Member (A)

v/-