CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 25 JAN 1995

APPLICATION NO: 1182 of 1994

APPLICANTS:- Sri Mohammad Ghouse, Bangalore-65

V/S.

RESPONDENTS:- The Accountant General (Audit-I), Karnataka and two Others,

To,

1. Dr M.S Nagaraja,
Advocate, No. 11,
2nd Floor, 1st Cross,
Sujata Complex,
Gandhinagar
BANGALORE-9

2. Sri M. Vasudeva Rao
Addl. Stng Counsel for Govt of India,
High Court Bldg. BANGALORE-1

Subject:- Forwarding of copies of the Order passed by the Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/ ~~STAY ORDER/INTERIM ORDER~~/ passed by this Tribunal in the above mentioned application(s) on 19-01-95

Issued on 25/01/95

c/c

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.1182/94

THURSDAY THIS THE NINETEENTH DAY OF JANUARY 1995

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

Sri Mohammad Ghouse,
Aged 52 years,
Senior Auditor,
S/o S. Padmanabhan,
382 [SFS-007], New Town,
Yelahanka,
Bangalore-560 065. ... Applicant

[By Advocate Dr. M.S. Nagaraja]

v.

1. The Accountant General
[Adutit-I], Karnataka,
Bangalore.

2. The Comptroller and
Auditor General of India,
No.10, Bahadur Shah Zafar Marg,
New Delhi.

3. Union of India repre-
sented by Secretary to
Government,
Ministry of Finance,
D/o expenditure,
North Block,
New Delhi-110 001. ... Respondents

[By Advocate Shri M. Vasudeva Rao...
Addl. Standing Counsel for Respondents]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant is aggrieved by the rejection of his request to implement the decision of the Supreme Court in P.V. SREENIVASA SASTRY V. COMPTROLLER AND AUDITOR GENERAL [hereinafter referred to as "Sastry's case"] rendered on 11.12.1992. In the departmental

proceeding the applicant who was directly recruited as Upper Division Clerk ['UDC' for short] was reduced to the rank of Lower Division Clerk ['LDC' for short] by an order dated 12.2.1976 [Annexure R-1]. His representation dated 1.3.1989 [Annexure R2] reference was made to the decision of Supreme Court wherein it was held that a person cannot be reverted to a post which he had not held, was rejected on the ground that the instructions issued based on that decision in Annexure A-1 dated 2.2.1989 are prospective and that past cases need not be reopened. Accordingly the representation of the applicant was rejected by memo dated 21.3.1989 [Annexure R3]. When the identical case of the same department came to be decided by the Supreme Court in P.V.SREENIVASA SASTRY V. COMPTROLLER AND AUDITOR GENERAL reported in [1993] 23 ATC 645, another representation dated 11.2.1993 [Annexure A-3] was made. But the Department declined to review and communicated the same to the applicant on 18.8.1993 by memo dated 22.7.1993 [Annexure A-3]. The applicant, therefore, seeks to quash Annexure A-3 dated 18.8.1993 and a direction to apply the ratio of the decision in Sastry's case to him so as to grant consequential benefit.

2. The respondents mainly oppose the application on the ground of limitation and want of jurisdiction besides there being no application even seeking to

condone the delay.

3. We have heard Dr. M.S. Nagaraja, learned counsel for the applicant and Shri M. Vasudeva Rao, learned Standing Counsel for the respondents.

4. Dr. Nagaraja referred to several decisions of the Supreme Court and various Benches of this Tribunal and contended that the relief granted in a particular case should be extended to similarly situated persons and that the denial of such benefit would amount to discrimination and violation of Articles 14 and 16 of the Constitution. He further contended that the question of limitation does not arise as the decision in Sastry's case rendered by the Supreme Court in the year 1992 was required to be extended to the applicant as his case is identical with that of the said Sastry. He also contended that there is no delay in making this application inasmuch as the department had declined to treat the applicant on par with Sastry in the year 1993 and this application came to be filed within one year therefrom. On the other hand Shri Rao, appearing for the respondents, contended that the applicant who was aggrieved by the order passed in the year 1976 had slept over the matter for nearly two decades and that such a person cannot seek any remedy at this length of time particularly when there is no application even for condonation of delay.

Besides this tribunal cannot entertain the application inasmuch as the cause of action had arisen for the applicant more than 3 years prior to coming into force of the Administrative Tribunals Act, 1985 ['the Act' for short] and, therefore Section 21[2] of the Act disentitles him to approach this Tribunal.

5. Before proceeding to consider various contentions raised by the learned counsel and the decisions from which he had sought support it is necessary to state succinctly the relevant facts in chronological order.

6. The applicant was proceeded against departmentally and was imposed the penalty of reduction of rank to LDC from that of UDC to which post he was not recruited and this order came to be passed on 12.2.1976. The applicant did not take any steps challenging this penalty immediately thereafter. But only in the year 1989, he made a representation requesting the department to reconsider the penalty of reduction in rank in view of the decision of the Supreme Court reported in 1988 ATC 226. The representation is dated 1.3.1989. The department had informed the applicant by memo dated 21.3.1989 that according to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, OM No.11012/2/88--Estt[A] dated 2.2.1989 the ruling given by the Supreme Court should be kept in view while passing the orders in future cases and that past cases need not be reopen-

ed and enclosed a copy of the said OM dated 2.2.1989. Even thereafter the applicant did not move his little finger. He had kept quiet and again started to agitate the matter only when another decision relating to a person of the same department came to be rendered by the Supreme Court in the year 1992. The applicant made another representation dated 11.2.1993 as in Annexure A-2 seeking to apply the decision of Sastry's case to him and grant all the consequential benefits. The review thus sought by the applicant was not considered by the department and they have rejected the claim again by memo dated 22.7.1993 along with which they had enclosed another memo dated 20.5.1993 informing the applicant that as per the clarification, the decision communicated to the office of the Accountant General, Karnataka, Bangalore, the Hqrs office has reiterated the decision that was taken earlier thereby intimating the applicant that his representation seeking review could not be entertained. Aggrieved the applicant has made this application on 1.8.1994.

7. The important question which arises for consideration is as to when the cause of action arose for the applicant to agitate the matter and claim the relief which he is now seeking. According to Dr. Nagaraja the cause of action arose to claim similar relief granted in the case of Sastry decided by the Supreme Court in 1992 which came to be reported in the year 1993 and that the applicant expected the department

to extend the same benefit to him also inasmuch as he is similarly placed like that of Sastry and because the representation made in that connection was not granted the same it amounted to discrimination and violation of fundamental right guaranteed under Articles 14 and 16 of the Constitution and, therefore, he is entitled to seek a redress similar to the one granted to Sastry.

8. The fact that this Sastry who was also working in the same department viz., Accountant General and who was also reduced to the level of LDC from UDC to which he was not recruited though he was imposed the penalty, the final order of which came to be passed on 30.11.1976, this Sastry was agitating his grievance before the competent court since then and the matter came up for final decision before the Supreme Court during the year 1992. In other words this Sastry was diligent throughout. Ultimately following the decision rendered by the same court in NYADAR SINGH V. UNION OF INDIA reported in 1988[4] SCC 170 it was held that the expression reduction in rank occurring in Article 311[2] of the Constitution of India covers only such reversions which are by way of punishment and the expression in the context means reduction from a higher to a lower rank or post. Further even while imposing punishment of reduction in rank the order must have nexus with the post held by the delin-

quent officer concerned from which he had been reverted. Because Sastry was not promoted from the post of LDC, it was observed that he could not have been reverted to the said post. However, he having been restored to the post of Auditor after a lapse of five years on 1.2.1981 after the expriy of penalty only seniority as Auditor was restored but not consequential benefits.

9. The applicant's case stands entirely on different footing. While Sastry was diligent and was pursuing his remedy since the imposition of penalty, the applicant did not have such a recourse. He did not take any steps after he was imposed the penalty of reduction in rank to the level of LDC to which he was not recruited. This was in the year 1976. He had opened his eyes for the first time when the decision rendered in the case of Nyadar Singh came to be reported in Swamynews and had made a representation as in Annexure R-2 in the year 1989 which was duly considered and replied rejecting the request during the same year mentioning that the past cases would not be reopened and the decision rendered was apparently a prospective one. Thereafter the applicant had kept quiet without taking any further steps and he had again started to agitate the matter only in the year 1993 when he made his subsequent representation as in Annexure A-2 on 11.2.1993. This representation was also duly considered and was replied informing the earlier decision to the applicant by memo dated 22.7.1993 as in

Annexure A-3. What the learned counsel for the applicant wants to make out is that the applicant who stands on similar grounds with that of Sastry of the same Department, should have been extended the same benefit as was extended to Sastry and that the applicant expected the department to take such action on its own and because no such action was taken, he had approached the tribunal for necessary redress. He also contended that the applicant only wants monetary benefits and not consequential seniority or its fixation. It is his further contention if the benefit of the decision rendered in Sastry's case is not extended to the applicant it would amount to discrimination and violation of fundamental right under Articles14 and 16 of the Constitution.

10. Before considering these contentions it is necessary to examine whether the applicant had or had not lost his right to agitate the matter at this distance of time inasmuch as it is the contention of the learned Standing Counsel that the applicant having slept over the matter has lost his right and just because the decision came to be rendered in the case of Sastry who was diligent, the applicant is not entitled to the relief sought in this application. The learned Standing Counsel referred us to Section 21[2] of the Act and contended because the cause of action for the applicant to agitate the matter arose during the

year 1976 when he was imposed the penalty of reduction in rank, he could not have approached the Tribunal and this Tribunal cannot exercise jurisdiction over such a claim at this distance of time particularly when the grievance had arisen for the applicant more than three years prior to coming into force of the Act in the year 1985. Under Section 21[2] of the Act, the Tribunal can entertain any grievance, in respect of which the application is made, had arisen at any time during the period three years immediately preceding the date on which the jurisdiction, power or authority of the Tribunal became exercisable under the Act. In the instant case because the cause of action arose for the applicant during the year 1976 ie., long prior to three years before 1985, the year in which the Act came into force, this Tribunal cannot exercise jurisdiction is the contention of Shri Rao. We must agree with this contention of Shri Rao and say that the same is well taken.

11. Shri Rao next contends that just because the applicant had made a representation during the year 1993 and the same was replied to, the same will not have the effect of extending the limitation and he cannot claim that the cause of action had arisen only during 1993 as is now sought to be made out. Relying on the decision in S.S. RATHORE V. STATE OF MADHYA

PRADESH reported in 1989[4] SCC 582 it was contended that successive memorials do not have the effect of extending the limitation. Even assuming for the purpose of argument that the cause of action for the applicant to agitate his grievance arose when the decision in Nyadar Singh's case was rendered, he ought to have had recourse before the competent authority immediately after his representation in Annexure R-2 dated 1.3.1989 came to be rejected by reply dated 21.3.1989 drawing his attention to OM dated 2.2.1989 as in Annexures R-2 and 3 respectively. The applicant having received such a reply wherein his claim was rejected, did not approach the proper forum for necessary redress. Because of the contention that the applicant's case stands on the same footing as that of Nyadar Singh he ought to have approached the competent forum immediately after his request for reconsideration of the penalty imposed was turned down by the department. Having failed to take any action, the applicant cannot be allowed to agitate his lost right in this application filed during the year 1994.

12. Learned Standing Counsel referred us to the decision in BHOOP SINGH V. UNION OF INDIA reported in 1992[21] ATC 675 wherein the claim of reinstatement into service was rejected on the ground of laches because he had approached the Tribunal more than two decades later. Drawing support from this decision

learned Standing Counsel contended that even the applicant's claim is barred by delay and laches as he approached the Tribunal nearly two decades later.

On the basis of decision in P.S. SADASIVASWAMY V. STATE OF TAMIL NADU reported in AIR 1974 SC 2271 it was contended on behalf of the respondents that because of the delay the settled matters cannot be unsettled and on this ground also it was contended that the application is devoid of any merit and consideration particularly because the applicant has not even made an application for condonation of delay. The applicant at the latest should have approached the proper forum immediately after his representation as in Annexure R-2 was rejected during the year1989 and because he did not take any action at that point of time the present application is clearly barred by delay and laches and the same cannot be entertained.

13. The learned counsel for the applicant sought to make out that his application seeking extension of benefit similar to the one that was given to Sastry which was in the year 1993, the present application is well within time and there is no question of applicant seeking to make any application for condonation of delay. This contention was controverted to by the learned Standing Counsel stating that the applicant

who had slept over the matter has lost his right, if any, and just because Sastry who was diligent and pursued his remedy was granted relief, the applicant cannot seek such a relief which was lost. In our view the applicant who did not pursue his remedy after the same was rejected in the year 1989 cannot put forth a claim at this distance of time solely on the ground that the benefit granted to Sastry also be granted to him onthe ground that he is similarly placed with Sastry. The applicant has lost his right when he did not pursue his remedy since the year 1989. Such a remedy cannot be agitated to be granted solely on the ground that Sastry is also of the same Department and his pay has been refixed in accordance with the decision of the Supreme Court. Because the remedy came to be given to Sastry by the Supreme Court he got the benefit and the applicant who has slept over the matter cannot claim the benefit on the ground that not extending such benefit would amount to discrimination.

14. Dr. Nagaraja referred us to number of decisions wherein similar benefit was directed to be extended to similarly placed persons by various Tribunals. These cases are in respect of either fixation of pay or giving the benefit of FR 22C revision of pay scale or stepping up of pay or grant of higher scale and the like. Because the extension of benefit of fixation of pay in respect of similarly placed persons without

driving such persons to competent court or Tribunal is a necessary consequent, the applicant cannot seek to place any reliance on such decision to support his contention in this case. We have to remark that the ratio of these decisions cannot be made applicable to the facts of the present case. In fairness to the learned counsel we may just make a mention of the various decisions cited by the counsel

[1] T.K. PANDAREESH V. REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION reported in 1989[2] SLJ [CAT] 59;

[2] SUNILENDU CHOWDHURY & OTHERS V. UNION OF INDIA & OTHERS reported in [1993]23 ATC 461;

[3] G.S. ELIAS AHMED AND OTHERS V. UNION OF INDIA & OTHERS reported in [1993]24 ATC 181 [F.B.];

[4] M.L. MOULIK V. UNION OF INDIA & OTHERS reported in [1993] 24 ATC 721;

[5] DEVI PRASAD V. UNION OF INDIA & OTHERS reported in [1993]25 ATC 524;

[6] BYOMKESH GHOSH V. UNION OF INDIA & OTHERS reported in [1993] 25 ATC 552;

[7] P.S. SUBRAMANIAN & ANOTHER V. UNION OF INDIA & OTHERS reported in [1994] 26 ATC 187;

[8] RAJ BHUSHAN GANDHI V. SECRETARY, HARYANA STATE ELECTRICITY BOARD reported in [1994] 27 ATC 67.

The learned counsel representing the applicant, drawing our attention to the observation of the Supreme Court in INDER PAL YADAV & OTHERS V. UNION OF INDIA & OTHERS reported in 1985 SCC [L&S] 526. At page 530 of the reported judgment it was observed --

> "...There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore,some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court."

Dr. Nagaraja contended that the applicant should not have been expected to knock at the door of Court and the Department itself ought to have granted the remedy when Supreme Court had decided the case of Sastry. This is a case of a Railway workman and some consideration was shown to him because of the indigent nature of such person. Such a liberty cannot be made applicable to the applicant who had allowed his right to be lost by his own indifference and laches.

15. In A.K. SHARMA V. GENERAL MANAGER, SC RAILWAY, SECUNDERABAD & OTHERS reported in [1993]23 ATC 235,

the delay was condoned and it was in respect of departmental proceedings whereas in the present case there is enormous delay and there is no application for condonation of delay.

Learned Counsel for the applicant next referred us to the decision in R.K. AGGARWAL [DR.] V. UNION OF INDIA & OTHERS [1993] 23 ATC 266. This was a case in which the applicant who was appointed as a Assistant Medical Officer, was subsequently appointed on regular basis and the benefit of upgradation was not given to him ignoring his past ad hoc service that was extended to his juniors and, therefore, such benefit was extended to the said Aggarwal also. Even the ratio of this decision cannot be applied to the present case because the applicant had lost his right.

16. In view of what is discussed above none of the contentions advanced on behalf of the applicant can be stated to be tenable and, therefore, we see no merit in this application.

17. In the result the application fails and the same is hereby dismissed with no order as to costs.

TRUE COPY

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

Sd-
MEMBER [J]

Sd-
MEMBER [A]

bsv