

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 1100/93

DATE OF DECISION: 29th March 2000

Shri Hanamanthappa Sheshappa Kattimani Applicant.

Shri P.A.Prabhakaran Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri V.S.Masurkar Advocate for
Respondents

CORAM

Hon'ble Shri D.S.Baweja, Member(A)

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to Reo
other Benches of the Tribunal?

(3) Library.

Yes

S.L. Jain
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 1100/93

the 29th day of March 2000.

CORAM Hon'ble Shri D.S.Baweja,Member(A)

Hon'ble Shri S.L.Jain,Member (J)

Hanamanthappa Sheshappa Kattimani
10, Sujata Apartment, Ram Nagar,
Borivli (W), Bombay.

...Applicant.

By Advocate Shri P.A.Prabhakaran.

v/s

1. Union of India
The Ministry of Communication
Through the Secretary of
Telecom Commission Govt. of
India, Sanchar Bhavan,
New Delhi.
2. Chairman,
Department of Telecom
Commission, Sanchar Bhavan,
New Delhi.
3. Chief General Manager
Mahanagar Telephone Nigam Ltd.,
15th floor, Telephone House,
Veer Savarkar Marg.,
Prabhadevi, Dadar, Bombay. ...Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R

{Per Shri S.L.Jain,Member (J)}

This is an application under Section 19 of the
Administrative Tribunals Act 1985 seeking the following reliefs.

1. The respondents may be directed to promote the applicant as Assistant Engineer on regular basis with effect from 6.12.1980.
2. The respondents may be directed to pay the arrears in respect of the claim referred to above including the arrears for the period 6.12.1980 to 4.10.1983 period of local officiation which should also be taken into consideration for fixation of pay.

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3. Consequential seniority in the cadre of Assistant Engineer with effect from 6.12.1980 may be kindly directed to be given.
4. The respondents may be directed to pay arrears from 1.4.1978 to 4.10.1983 or 6.12.1980 once prayers 1 to 3 are granted as the case may be in the cadre of selection grade Junior Engineer.
5. The respondents may be directed to grant consequential promotion to the cadre of Senior Assistant Engineer and further promotion to STS of ITS grade 'A' etc. on the basis of the revised seniority in the cadre of the Assistant Engineer. as a result of prayer (1) above.
6. The respondents may be directed to prepare a fresh 40 Point Roster 1 from 17.8.1989, the date on which the Applicant's community was recognised as S.C. (P-12) as per circular dated 22.4.1970 and they may therefore, be directed to fill in the gap retrospectively in the cadre of senior Assistant Engineer and grade of Senior Time Scale of I.T.S. Grade 'A' as per sub-rule III in Appendix 'A' in chapter 4 under the heading 'Roster' in the Brochure of Reservation for SC and ST specially so when the juniors of open category have superseeded him in these promotions.

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2. The applicant was superannuated on 11.8.1977 which was revoked on 16.2.1983 and an order under FR 54 is passed on 6.1.1984.

3. The applicant was acquitted on 30.6.1981 and appeal against the same was rejected by the Hon'ble High Court on 24.8.1982.

4. D.P.C. was held in the year 1980 and juniors to the applicant were promoted on 6.12.1980 while the applicant was promoted with effect from 31.1.1986.

5. The Seniority list of Assistant Engineers was issued on 1.4.1989, revised seniority list was issued on 20.1.1993 of group 'B' Officers in which the date of promotion of the applicant was wrongly shown as 31.1.1986.

6. The applicant claims that he was due for promotion on 6.12.1980 as he was eligible on account of the fact that he has passed the qualifying examination of Telecom Engineering service group 'B' in the year 1974 and his seniority ought to have been fixed with reference to the items for which he passed the departmental examination and the officer who passed the departmental examination for the first time becomes seniormost for the purpose of promotion.

7. The applicant represented the matter about his non-promotion vide representation dated 12.6.1989, 30.9.1989, 31.10.1989, reminders dated 19.12.1989 17.1.1991, 12.5.1992 which is said to have been rejected on 18.6.1993.

8. The applicant was promoted on 4.10.1983 as Assistant Engineer on local basis and he was promoted on regular basis with effect from 31.1.1986.

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9. On perusal of letter dated 28.7.1992 which was in reply to applicant's representation dated 23.7.1992 which was a request for local officiating promotion in STS in ITS group 'A'. The respondents have replied " the case has been taken with DOT to examine the question of revising the seniority of Assistant Engineers cadre based on earlier representation forwarded by this office to DOT. Until and unless the order of seniority is revised by DOT, I have been directed to inform that this office will not be in a position to consider you for local officiation promotion in STS of ITS cadre 'A'.

10. The present OA has been filed by the applicant on 5.10.1993 for the above said reliefs.

11. The respondents resisted the claim of the applicant on the ground of limitation and also on merits.

12. If we examine the relief claimed at para 8.1, 8.2, 8.3, 8.4 (Partly), 8.5, 8.9(partly), 8.10 (partly). The reliefs can be said to be reliefs arising on account of relief as mentioned at serial No. 8.1 and are consequential one. About the relief at para 8.6 is said to be consequential one. The learned counsel for the applicant states that he does not want to press the same. Hence other reliefs arising from the same which are consequential one also need not to be examined.

13. The learned counsel for the applicant submitted that when the DPC of 1980 was held consequent to which juniors to the applicant were promoted, since 6.12.1980 he was under suspension and was not able to agitate the matter till 6.1.1984. It is true that the applicant was under suspension from 11.8.1977 till 16.2.1983 and since his suspension was revoked on 16.2.1983 he

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was entitled to represent the matter or agitate the matter in respect of his promotion to the post of Assistant Engineer. We do not agree with the learned counsel for the applicant that till 6.1.1984 when orders under FR 54 were passed the applicant was not entitled to agitate the matter for the reason that the said order do not de-bar or in absence of the said order the applicant was not competent to agitate the matter as the said order was only in respect of treating the suspension period in particular manner.

14. The seniority list is being prepared on the basis of the orders passed in respect of promotion of the officers concerned and revised seniority list is prepared after considering the representations of the officers. It is true that seniority list was published on 1.4.1989 and revised seniority list was published on 20.1.1993 but publishing or circulating the seniority list may give cause of action to the applicant, if his seniority is not properly fixed or arranged but it does not give cause of action to the applicant in respect of his non-promotion in the year 1980.

15. Keeping in view the said fact the representation of the applicant dated 12.6.1989, 20.9.1989, 31.10.1989, reminders to the same of 19.12.1989, 17.1.1991, 10.5.1992 which is said to have been rejected by the respondents on 18.6.1993 does not help the applicant or does not give a fresh cause of action to the applicant.

16. On perusal of para 3 of the OA, the applicant has averred that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act 1985.

17. The learned counsel for the respondents relied on 1994 (26) ATC 228 R.C.Samanta and others V/s Union of India and others with Writ Petition No. 323/93 Sanat Pakhira and others V/s Union

of India and others decided by the Apex Court which laid down the proposition that delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well.

18. The learned counsel for the respondents relied on 1995(30) ATC 635 Secretary to Government of India and others V/s Shivram Mahadu Gaikwad decided by the Apex Court of the land which lays down the proposition regarding limitation as under:

The learned counsel for the Union of India raised a preliminary contention, namely, that the application was filed almost after about four years from the date of discharge and, therefore, it was clearly barred by Section 21 of the Administrataive Tribunals Act, 1985. He pointed out that this question was squarely raised in the counter filed in answer to the respondent's application in the following terms:

These respondents state that the applicant herein is challenging the order dated 7.10.1986 discharging him from the service and has filed the application on 14.9.1990, as such this application is barred by the provisions of limitation under Section 21 of the Central Administrative Tribunals Act, 1985.

When we turn to the judgement of the Tribunal we find that there is no mention about the question of limitation even though it stared in the face. It would immediately occur to anyone that since the order of discharge was of 7.10.1986 and the application was filed in 1990, it was clearly barred by limitation unless an application for

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condoning the delay was made under Section 21(3) of the Administrative Tribunals Act. No such application was in fact made. Even if it was the contention of the employee that he was suffering from schizophrenia, that could have been projected as a ground for condonation of delay under sub-section (3) of Section 21 of the said statute. Even otherwise without insisting on the formality of an application under Section 21(3) if the Tribunal had dealt with the question of limitation in the context of Section 21 we may have refrained from interfering with the order of the Tribunal under Article 136, but it seems that the Tribunal totally overlooked this question which clearly stared in the face. Even the employee made no effort to explain the delay and seek condonation. We find no valid explanation on record for coming to the conclusion that the case for condonation of delay is made out. In the circumstances, there is no doubt that the application was clearly barred by limitation. It is also difficult to understand how the Tribunal could have awarded full back wages even for the period of delay for which the employee was solely responsible. However, since application itself is barred by limitation under Section 21 of the Administrative Tribunals Act, it deserves to be dismissed.

19 The learned counsel for the respondents relied on 1994(2) A1SLJ 177 Ex.Capt.Harish Uppal V/s Union of India and others decided by the Apex Court of Land regarding limitation which states as under:

It is a well settled policy of law that the parties should their rights and remedies promptly and not sleep

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over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.

20. The learned counsel for the respondents relied on AIR 1992 SC 1414 Bhoop Singh V/s Union of India and others which lays down the proposition that relief of reinstatement granted to diligent, relief refused to person applying 22 years late, his challenge cannot be allowed merely because others similarly situated had been reinstated, refusal of relief cannot be said to be discriminatory. It further held that grant of relief would be discriminatory.

21. The learned counsel for the respondents relied on 1997(2) SC SLJ 383 Union of India and anr. V/s R.Swaminathan and others for the proposition that for stepping up it is not sufficient that the junior is drawing higher pay, when he is drawing the same on account of his adhoc officiating or regular service rendered by him in the higher post, short term local promotions are due to administrative policy and this does not affect seniority.

22. The learned counsel for the applicant relied on 1998 SCC (L&S) 226 K.C. Sharma and others V/s Union of India and others for the proposition that in case of judgement in rem- benefit of a judgement to others similarly situated after expiry of limitation period, condonation of delay laches deserves

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consideration. In our considered opinion the applicant has not come before the Tribunal on account of relief which he acquired in view of the judgement in rem. Hence he is not entitled to have assistance of this judgement.

23. The learned counsel for the applicant relied on Writ Petition No. 27139 of 1981 decided by the Allahabad High Court on 20.2.1985. On perusal of the same we find that the Junior Engineers in Telecommunication Circles prayed for a writ of certiorary quashing the notification dated 11.5.1981 by which a selection list for promotion to the post of Assistant Engineers were drawn excluding the names of the petitioners and including the names of Juniors alongwith writ of mandamus for not issuing posting orders in pursuance of the same and that the petitioners be declared promoted before the candidates who qualified subsequent to them but were promoted earlier and to pay allowances and pay and fix their seniority accordingly. The same judgement came into existence since 20.2.1985. If the applicant claims on the basis of the same judgement, assuming it that the applicant is entitled to the claim on the principle of judgement in rem, still as he filed the OA on 5.10.1993, his claim is barred by limitation.

24. While the applicant was under suspension his case for promotion was considered and kept in sealed cover. He was not found fit.

25. In result, we do not find that the application is within the prescribed period of limitation, hence it is not necessary to examine the case on merits. Therefore, the OA deserves to be dismissed and is dismissed accordingly with no order as to costs.

J.S.Jain
(S.L.Jain)
Member (J)

D.S.Bawej
(D.S.Bawej)
Member (A)

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