

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1216/1993.

Date of Decision: 04.02.1997.

Shri M. B. Gharat, Petitioner/

Shri A. I. Bhatkar, Advocate for the
Petitioner/

V/s.

Union Of India & Others, Respondent/s

Shri V. S. Masurkar, Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri D. C. Verma, Member (J).

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

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

M.R.Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1216/93.

Dated, this Tuesday, the 4th day of February, 1997.

CORAM : HON'BLE SHRI M.R. KOLHATKAR, MEMBER (A).

HON'BLE SHRI D.C. VERMA, MEMBER (J).

M.B. Gharat,
Lower Division Clerk,
Naval Armament Depot,
Karanja.

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Applicant

(By Advocate Shri A.I. Bhatkar)

VERSUS

1. Union Of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. The Chief of the Naval Staff,
Naval Headquarters,
D.H.Q. P.O.,
New Delhi - 110 011.

3. The Flag Officer Commanding-
In-Chief,
Headquarters
Western Naval Command,
Shahid Bhagat Singh Road,
Bombay - 400 001.

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Respondents.

4. The General Manager,
Naval Armament Depot,
Karanja.

(By Advocate Shri V.S. Masurkar)

: ORAL ORDER :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

In this case, the applicant who was appointed as a Lower Division Clerk on casual basis on 13.04.1974, was given a break on 13.03.1975 and was appointed on regular basis w.e.f. 14.03.1975 and his seniority in the grade of L.D.C. has been counted from that date. The applicant states, ^{that} firstly, he ought to have been adjusted against the regular

vacancy on the principle of date of birth as the basis of seniority when two employees join on the same date. In this connection, he states that Shri K. S. Tare [redacted] and himself joined on the same date on casual basis on 13.04.1974 and the date of birth of Shri K.S. Tare is 02.10.1954 whereas the date of birth of the applicant and is 01.06.1950, therefore, [redacted] a regular post having available from 13.4.74 become [redacted], the applicant ought to have been adjusted in preference [redacted] Shri K.S. Tare. Inspite of this principle, however, Shri K.S. Tare was adjusted against the regular from 13.4.1974 vacancy and the applicant was regularised only from 14.03.1975, as mentioned earlier. The applicant states that he had made representation on 07.07.1988 and the reply was received by him on 29.07.1988 stating that [redacted] the matter of condoning the break of all the employees borne after 01.01.1970 has been taken up with Government and is under consideration. The applicant submits that he therefore awaited the Government decision and thereafter made a detailed representation on 06.08.1992, to which [redacted] reply was given by the respondents on 28.04.1993 which reads as below :

"3. As per the record available in this office, Shri M.B. Gharat has been regularised in the grade of L.D.C. w.e.f. 14.03.1975 and the seniority has been reckoned from that date. The casual service with breaks prior to his regularisation will not be taken into account for fixation of seniority in the grade.

4. The benefits of the CAT judgement has been given only to the individuals who approached CAT and obtained the judgement in their favour and not to others."

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It is this reply, turning down the request of the applicant to count his seniority from 13.04.1974 that is impugned in this O.A. The applicant states that he had relied on the judgement of the Tribunal in O.A. No. 306/88 in D.V. Bhingarde & 164 Others V/s. Flag Officer Commanding-in-Chief, decided on 21.06.1991 appearing at exhibit-6, which after considering the relevant instructions of the Ministry and the earlier judgements of the Tribunal, directed as below :-

- "(i) Respondents shall give all benefits due to the applicants in both the cases as per the Ministry of Defence letter No. 83482/EC-4/Org.4(civ)(d)/13754/D (Civ-II) dated 24.11.1967 as amended by corrigendum No. 13051/OS-SC(ii)/2968/D (Civ-II) dated 27.05.1980, from the dates on which the applicants were initially appointed on casual basis, by ignoring the artificial or technical breaks in their services.
- (ii) Respondents shall fix the seniority of the applicants in their respective grade from the dates on which they are absorbed against regular vacancies.
- (iii) Respondent No. 4 shall give benefit of this order to other employees working in the establishments under him and who are similarly placed like the applicants before us."

The Counsel for the applicant points out that Respondent No. 4 was directed to extend the benefit of the order to other employees working in the establishment under him and who are similarly placed like the applicants and therefore, on the basis of this, the applicant was atleast entitled to the benefits other than seniority to the applicant with reference to the date of his original appointment on casual basis, namely; 13.04.1974. The applicant states that the respondents have since issued a circular No. CP(SC)/4834/Court Case/NHQ/1375/20171/ D(N-II) dated 26.06.1995 on the subject - implementation

of judgement of CAT, New Bombay Bench in O.A. No. 306/88, 516/88 and 732/88 regarding regularisation of casual service and that, in terms of this direction he stands to get the benefits other than the seniority. In the O.A., the applicant agitates the issue relating to seniority and for this purpose he relies on the Full Bench judgement in A. Ramakrishnan Nair & 7 Others V/s. Union of India (Secretary, Ministry of Defence) & 2 Others, reported at page no. 208 of Kalra's Administrative Tribunal Full Bench Judgements 1991-93. This judgement was delivered on 29.11.1990 and lays down as below :

"A. Seniority-Casual Labour-Regularisation-
Applicant appointed on casual basis -
worked continuously with intermittent breaks -
subsequently appointed on regular basis -
claim seniority and regularisation from
the initial date of appointment - Division
Bench allowed the regularisation from
initial date and condoned the intermittent
breaks-Matter relating to seniority
referred to Full Bench-Full Bench allowed
the seniority to be counted from the initial
date of appointment.

B. Seniority-Instruction dt. 24.11.1967 provides that a casual employee is entitled to the benefits of past service from the date of initial appointment on becoming a regular incumbent - Corrigendum of 1980 provides such benefits from the date of regularisation - Held corrigendum of 1980 is in the nature of amendment which will have only prospective operation and it does not effect the Regularisation made prior to 1980."

2. The applicant therefore prays that the respondents be directed to fix the seniority with reference to 13.04.1974. The counsel for the applicant further submitted that he received a negative reply from the department on 25.05.1993 and filed the O.A. on 09.11.1993 and therefore, the O.A. is within limitation.

3. The counsel for respondents has opposed the O.A. on the ground of limitation as well as jurisdiction.

First of all, it is contended that the applicant seeks to unsettle the seniority list of the years 1974 & 1975 when the Central Administrative Tribunal had not come into existence and therefore, C.A.T. ^s has no jurisdiction to entertain the application in which the cause of action arose three years prior to the existence of C.A.T., namely; 01.11.1985. Secondly, even ^{issue of} apart from the jurisdiction, the Counsel could argue that the cause of action had accrued to the applicant every year when the seniority list was published after 1975 and since the applicant is a Group 'C' employee, he is well aware of the position and he ought to have challenged the seniority list at the time when the seniority list was published. The Counsel relies on the Supreme Court decision in Bhoop Singh V/s. Union Of India ^{decided on 29.04.1992} (A.I.R. (1992) SC 1414) wherein it is laid down that when the petitioner challenges termination after 22 years and there is no explanation offered for delay, the challenge cannot be allowed merely because other similarly dismissed had been reinstated and the refusal of the relief cannot be said to be discriminatory because the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. He further relies on Ex.Capt. Harish Uppal V/s. Union Of India & Others (1994(2) SLJ 1988) decided on 30.03.1994 wherein it is observed that it is a well settled policy of law that the parties should pursue the rights and remedies promptly and not sleep over their rights. The respondents also refer to the judgement of this Tribunal in K.A. Bhaskaran V/s. Union of India & Others in O.A. No. 1022/94 decided on 22.07.1994 where the relief was rejected on the ground of

laches as well as on the ground that the matter involves The Tribunal there observed that expenditure. It is unfair to the Government and the tax payers to be asked to incur unbudgeted expenditure after long years when the claimants themselves were there content to remain quiescent. Reliance has also been placed on the Supreme Court judgement in Union Of India & Others V/s. Shri Toj Ram Parashramji Bhombote & Others (Civil Appeal No. 233/91), wherein the Supreme Court observed that no court or Tribunal could compel the Government to change its policy involving expenditure.

4. On merits, the counsel for the respondents states that the loss in seniority is only of a few months and to the extent the applicant is claiming seniority is in relation to Shri K.S. Tare, The applicant ought to have made Shri K.S. Tare and the other affected employees as party-respondents and therefore, the O.A. is also vitiated by non-joinder of parties. In relation to Shri K.S. Tare, attention is also invited to the reply of the respondents that seniority of Shri K.S. Tare has fixed been strictly in accordance with the entry in the service book.

5. We have considered the matter. We are not inclined to deny the relief in this matter on the ground of laches because according to us, there has been no delay. The applicant was making representations atleast since 1988 and the latest representation was made in 1992 and the reply was given by the Respondents in April/May, 1993 and the applicant has filed this O.A. within one year of the receiving the reply. We are, therefore, of the view that the O.A. is within limitation considering the

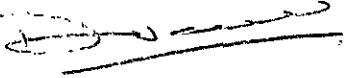
the specific provisions of the Administrative Tribunals Act and the ratio laid down by the Supreme Court in Bhoop Singh & Ex.Capt. Harish Uppal's case is not attracted

6. So far as the contention of the applicant that he ought to have been adjusted in ~~a~~^{regular} ~~vacancy~~ ^{earlier} in preference to Shri K.S. Tare, who has a later date of birth is concerned, the contention is no doubt meritorious but we are not required to decide the matter on this ground in view of the fact that apart from comparison with Shri K.S. Tare, the applicant is entitled to succeed in terms of the Full Bench Judgement in A. Ramakrishnan Nair & 7 Others V/s. Union Of India & Others, which was a judgement relating to the same department. ^{cited at page 4 ante} So far as the judgement of the Ernakulam Bench of the Tribunal in O.A. No. 1022/94 .. K.A. Bhaskaran V/s. Union Of India & Others, is concerned, the facts in that case are not before us but we have already held that the present O.A. is within limitation and secondly, so far as T.R.P. Bhombote's case is concerned, that case related to the direction of the High Court to Government Department to open primary schools, which entailed change of policy involving expenditure. The present case is therefore, not covered by the ratio laid down in Bombhate's case, on which reliance has been placed in K.A. Bhaskaran's case in O.A. No. 1022/94 of Ernakulam Bench.

7. In the light of the above discussion, we are of the view that the applicant is entitled to succeed and we therefore dispose of the same by passing the following orders :

O R D E R

The respondents are directed to regularise the service of the applicant in regular cadre of L.D.C. from the date of his initial appointment, namely; 13.04.1974 and grant him all consequential benefits ^{not} if otherwise granted in terms of the circular dated 26.06.1995 referred to us, to the extent of grant of seniority. If implement this order entails any payment of arrears, we make it clear that the same should be restricted to one year prior to the date of filing of the O.A. following the Supreme Court dictum in M.R. Gupta's case. No order as to costs.


(D. C. VERMA)
MEMBER (J).


(M. R. KOLHATKAR)
MEMBER (A).

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