

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 731 of 1994.

Dated the 6th day of August, 1999.

L. V. Subbarao, _____ Applicant.

Shri S. P. Saxena, _____ Advocate for the
applicant.

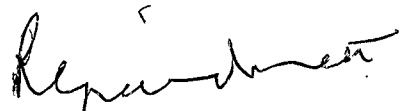
VERSUS

Union of India & Others, _____ Respondents.

Shri R. K. Shetty, _____ Advocate for the
Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? NO
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? NO


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

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Hon'ble Shri B. N. Bahadur, Member (A).

L. V. Subbarao,
Superintending Engineer (S.G.),
Office of the Chief Engineer,
Pune Zone, Pune - 411 001.

Residing at P-156, Sarvatra Vihar,
Bombay-Pune Road, Kirkee,
Pune - 411 003.

... Applicant.

(By Advocate Shri S. P. Saxena)

VERSUS

1. The Union of India through
The Secretary,
Ministry of Defence,
DHQ PO, South Block,
New Delhi - 110 011.
2. The Engineer-in-Chief,
Kashmir House,
DHQ PO,
New Delhi - 110 011.
3. The Chief Engineer,
Southern Command,
Pune - 411 001.
4. The Chief Engineer,
Pune Zone,
Pune - 411 001.
5. Shri G. N. Iyengar,
Chief Engineer.
6. Shri Manjit Singh,
Chief Engineer.

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7. Shri S. S. Gulati,
Additional Chief Engineer.
8. Shri K. Vishwanathan,
Addl. Chief Engineer.
9. The Secretary,
U.P.S.C.
Dhawalpur House,
New Delhi - 110 011. Respondents.

(By Advocate Shri R. K. Shetty).

O R D E R

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard the Learned Counsel appearing on both sides.

2. The applicant has filed this application challenging the correct position of his seniority. He appeared in the Engineering Services Examination conducted by the U.P.S.C. in 1961 and he was selected on merits. He was appointed as Assistant Executive Engineer in the Military Engineering Services. He joined the post on 15.02.1963. A seniority list was published in 1967 in which many of the batchmates of the applicant and who were juniors to him were shown far above the place assigned to the applicant. For instance, his five batchmates were given sl. nos. 115 to 119 whereas the applicant was placed at sl. no. 607. The applicant was confirmed on 15.02.1965 and some of his batchmates were confirmed subsequently. The seniority position of sl. no. 607 given to the

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applicant is wholly wrong and incorrect. He should have been placed at sl. no. 114-A. It is stated that presumably the mistake has occurred since the respondents have treated the applicant ~~has~~ being appointed against a temporary vacancy and therefore not given him appropriate place in the seniority list. Many juniors, including respondent nos. 5 and 6 were promoted as Executive Engineers by superseding the applicant. Then there was a reference to the case of one Vidya Bhushan who approached the Allahabad High Court and later ^{transferred to} Allahabad Bench of this Tribunal, where he succeeded. Therefore, the applicant has approached this Tribunal for a direction to the respondents to assign him proper place in the seniority list as Assistant Executive Engineer and then give him promotion to higher post of Executive Engineer, Superintending Engineer and other posts from the date his junior came to be promoted, by holding a review D.P.C. and for all consequential monetary benefits, etc.

3. The respondents in their reply have taken the stand that the application is hopelessly barred by limitation, delay and laches. It is stated that the seniority list of 1967 has been properly prepared and position assigned to the applicant is correct. They have stated that they have adopted the principle of continuous officiation in a post in preparing the seniority list. That G. N. Iyengar, Manjit Singh, B. M. Gupta and Vidya Bhushan were senior to the applicant both by the year of

examination and dates of appointment. The applicant was superseded for next promotion long back in 1967 or 1968 and granting any relief now to the applicant would unsettle the settled seniority position after 27 years. This Tribunal has no jurisdiction to go into the seniority position of 1967, since it was a cause of action which occurred about 18 years prior to the constitution of the Tribunal. The seniority list has been drawn by taking into consideration the year of examination and the order of merit in the examination. Respondents have fully justified the seniority position given to the applicant as per rules. That there is no merit in the application.

4. As far as merits of the claim are concerned, we find that applicant's case is not free from doubt. He has not produced the merit list of the examination in which he was selected. He has not produced the seniority list of 1961 or 1967 to show as to how and why he was placed below many of his juniors. In the absence of these two documents it is very difficult to accept the case of the applicant about wrong position given in the seniority list. It is quite likely that promotees might have been interpolated between direct recruits. All these things cannot be ~~the~~ decided in the absence of relevant documents like the select list, the seniority list of 1967, the names of promotees which came to be interpolated between the names of direct recruits subject to their seniority, etc.

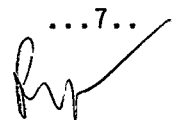
More than the merit, the claim of the applicant on the face of it appears to be stale and hit by the law of limitation besides being hit by the principles of delay and laches. The Learned Counsel for the applicant submitted that his client has been making repeated representations and one of his letter has been recently rejected by the department in 1994 and, therefore, the present O.A. filed in 1994 is well within time. On the other hand, the Learned Counsel for the respondents contended that sending repeated representations will not save limitation and further submitted that applicant should have approached this Tribunal when the first cause of action arose, namely - when his alleged juniors were promoted.

5. It is true that the respondents have replied to applicant by letter dated 03.05.1994 rejecting his contentions. This was in reply to applicant's latest representation given in January, 1994. Mere sending repeated representations and getting one reply to the last representation will not save limitation. According to the law of limitation, when once time begins to run, it cannot be arrested by any subsequent event. According to Section 21 of the Administrative Tribunals Act, one has to approach this Tribunal within one year from the date of cause of action. Even granting for a moment that a representation can be made to the administration, even then one can wait for six months and if no reply is received, he can file an application in this Tribunal as provided under Section 21 of the Administrative



Tribunals Act. When the law has provided a specific period of limitation, it cannot be got over by sending repeated representations over the years. As could be seen from the materials on record, there is one representation dated 12.02.1967 which is at A-5 at page 47 of the application. In this application, the applicant has made a grievance about the correctness of the seniority list published in 1963. Then we have applicant's another representation at page 41 which is dated 27.12.1981, where he has referred to number of earlier representations given in 1975, 1976 and two in 1977. He admits in this representations that many of the juniors were promoted in 1968 as Executive Engineer. Therefore, when in 1968 some of the juniors got promotion by superseding the claim of the applicant, that was the earliest point of time to rush to a Court or Tribunal to challenge his supersession and to challenge the correctness of the seniority list. He has kept quiet from 1963 for about 21 years before filing the present application in 1994. Merely because he got one reply in May, 1994, for his representation sent in January, 1994, this will not give a fresh cause of action to unsettle the things which stood settled for so many years. Particularly, on a question of seniority there must be some finality and certainty. This question cannot be hanging for years together.

6. The Learned Counsel for the applicant has invited our attention to Vidya Bhushan's case. No doubt, Vidya Bhushan, one

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of the colleague of applicant, filed a writ petition in Allahabad High Court in 1983 (Writ Petition No. 893 of 1983) which came to be transferred to the Allahabad Bench of the Tribunal and renumbered as T.A. No. 639/87. There Mr. Vidya Bhushan was challenging his non promotion in 1977 as Executive Engineer. He had filed the writ petition in the High Court six years later in 1983. In the meanwhile there were some representations. We may note that for filing a writ petition there is no limitation at all. It may be that a High Court might decline to grant the relief on the ground of delay and laches but strict rule of limitation will not apply. The writ petition was transferred to the Tribunal and the Tribunal gave some reasons and granted the relief to Vidya Bhushan.

But in the present case, the Original Application, is filed under Section 19 of the Administration Tribunals Act for which the period of limitation is one year, as specifically provided under Section 21 of the Administrative Tribunals Act. The present O.A. is filed in 1994, about ²⁶~~18~~ years after the applicant was superseded and his juniors were promoted in 1968.

7. In this connection we may refer to a recent judgement of the Supreme Court reported in 1996 SCC (L&S) 205 [Administrator of Union Territory of Daman & Diu and Others V/s. R. D. Valand] where the Supreme Court had occasion to consider the question of limitation under Section 21 of the Administrative Tribunals Act. The applicant in that case had approached this Tribunal claiming

promotion retrospectively from 1977. One of the representations came to be rejected in 1986. Then the original application was filed in this Tribunal in March, 1990. This Tribunal allowed the application and granted the reliefs. The Government took the matter in appeal before the Supreme Court. The Supreme Court pointed out that the applicant in that case had been given promotion in 1979 and immediately a cause of action arose to him to claim promotion from 1977. The Supreme Court points that the applicant slept over the matter till 1985 when he made a representation to the administration which came to be rejected on 08.10.1986. Then for four years he took no action. Then he filed the O.A. in 1990. The Learned Counsel for the applicant pressed into service before this Tribunal that applicant has been sending repeated representation and this was accepted by this Tribunal but the Supreme Court rejected that argument with the following words :

"The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in the way."

In our view, therefore, the present application filed in 1994 challenging the seniority list of 1963 and questioning the promotion of juniors ⁱⁿ of 1968 is hopelessly barred by limitation,

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besides being hit by principles of delay and laches.

Respondents' counsel also brought to our notice that in an earlier case in O.A. No. 289/97, a Division Bench of this Tribunal, to which one of us was a party (R. G. Vaidyanatha) in the order dated 10.12.1997 rejected the application on the ground of limitation pertaining to same Military Engineering Services, only on the ground of limitation, delay and laches by observing that the question of seniority cannot be left hanging for years together.

After going through the facts and circumstances of the case, we are constrained to hold that the application is liable to be dismissed ^{due to} on delay and laches.

8. In the result, the application fails and is hereby dismissed. No order as to costs.

B. N. Bahadur
6/8/99
(B. N. BAHADUR)
MEMBER (A).

R. G. Vaidyanatha
6/8/99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.