

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 947/94

Date of Decision : 15th January 2001.

P.S.Bhogal _____ Applicant.

Shri K.Shivramkrishnan _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents.

Shri V.S.Masurkar for R-1 & _____ Advocate for the
Shri R.K.Shetty for R-2. _____ Respondents.

CORAM :

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

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

- (i) To be referred to the Reporter or not ? yes
(ii) Whether it needs to be circulated to other ~~no~~
Benches of the Tribunal ?
(iii) Library yes

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO. 947/94

Dated this the 15th day of January 2001.

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

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

Paramjeet Singh Bhogal, IAS
R/o C/o Globe Travels,
Agra Road, Thane.

... Applicant

By Advocate Shri K.Shivramkrishnan

V/S.

1. The Chief Secretary to the
Government of Maharashtra,
General Administration Deptt.,
Mantralaya, Bombay.

2. The Union of India
Ministry of Personnel,
Training & Public Grievances,
New Delhi.

... Respondents

By Advocates Shri V.S.Masurkar
for Respondent No. 1 and Shri
R.K.Shetty for Respondent No. 2.

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 reliefs as under :-

8.1-81.9 -

..2/-

"(a) That this Hon'ble Tribunal will be pleased to quash and set aside the order contained in GAD DO letter No.AEO-1193/45-93/10 dated 18.8.1993 passed by the Government of Maharashtra.

(b) That this Hon'ble Tribunal will be pleased to declare and hold that the applicant is in the selection grade of IAS with effect from 1st July, 1980 and to direct the Government to pay the applicant the arrears of difference in salary and allowances as applicable."

2. By an amendment the applicant has also sought the reliefs as under :-

"7 (ba) In the alternative this Hon'ble Tribunal be pleased to declare that the decisions of all Departmental Promotion Committees held to consider the promotion of the applicant to the Selection Grade of the I.A.S. and the decisions of Respondent 1 thereon are vitiated as they (took) into account uncommunicated adverse remarks, and quash and set aside all such decisions.

7(bb) The Hon'ble Tribunal may declare that in view of the time that has elapsed it is no longer possible for the applicant to make effective representation against the said uncommunicated remarks if communicated now; and direct Respondent 1 to consider the applicant's case for promotion to the Selection Grade afresh from 1981 onwards without reference to any uncommunicated remark or any remarks not communicated within the time envisaged in A.I.S.(Confidential Rolls) Rules."

3. Para 3 of the OA. is as mentioned below :-

" Limitation : The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act,1985."

S. V. J. 1/..3/-

4. The Respondent No. 1 State of Maharashtra has raised the plea of limitation in it's written statement filed on 7.11.1994 in para 4 which is as under :-

" With reference to para 3 of the application, I say that the application is not within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985."

5. Regarding the amended prayers in reply to M.P.815/99 in para 5 it is stated as under :-

" At the outset, the respondents respectfully submit that the OA. was filed on 8.8.1994, whereas the amendment application is filed on 20.11.1999. In the said amendment the applicant is seeking to add two new prayers. One prayer is considering his promotion with effect from 1981 and therefore the misc. petition is nothing but a systematic attempt to change the face of the application and to bring stale prayers on record and therefore the respondents oppose the grant of amendment on the ground that the misc. petition suffers from delay and laches and hence on this ground alone the M.P. be dismissed."

6. The applicant has filed this OA. on 8.8.1994. On perusal of the reliefs claimed by the applicant, the relief mentioned in para 7 (b) including the alternative relief related to a cause of action arising on 1st July, 1980 or 1st October, 1986. If relief mentioned in para 8 (bb) is looked into, it also relates to cause mentioned in 1981. The relief mentioned in para 8 (ba) is, also the reasons for non selection to Selection Grade of I.A.S., which as stated above as per applicant's own version, cause of action arose either on 1st July, 1980 or 1st October 1986 or in the year 1981. Be it may, the cause as per the applicant has not arisen after 2nd October, 1986.

7. The applicant at para 8 (a) has claimed the relief in respect of an order No.AEO-1193/45-93/Ten dated 18th August,1993 which is annexed at page 77 of the OA. as Annexure-'A-20'. It is necessary to mention the same which is as under :-

" You have been transferred and appointed in the place of Shri K.S.Raut as Deputy Secretary, Law & Judiciary Department. Accordingly, you may hand over your present charge to some other officer in consultation with the Vice President of Mhada and accept the charge of your new post."

8. The perusal of the same makes it clear that it relates to recital of the transfer and posting of the applicant and to whom the charge is to be delivered. The order nowhere recites consideration of the applicant to a Selection Grade or reversion from the said grade.

9. In para 4.13 the applicant has in clear words stated as under :-

" The applicant states that he was deprived of his promotion to the selection grade in 1980 malafidely and now that he has got clean slate in the order passed in the last departmental enquiry whose findings were agreed to by the Government, he is entitled to the said selection grade with effect from 1st July,1980."

10. The recital and perusal of OA. page 24 para 4.14 is necessary which is as under :-

" The applicant submits that there is a delay in praying for this relief but justice requires that the said adverse remarks should not be kept on the file as they smacked of malafides and malice and if retained the further promotion of the applicant will continue to be barred as is the case at present."

11. Thus, it is apparent that even the applicant feels that there is delay in praying reliefs but there is neither an application for condonation of delay nor cause for condonation of delay is mentioned.

12. The learned counsel for the respondents relied on 2000 (2) SLJ 89 Ramesh Chand Sharma etc. vs. Udhamp Singh Kamal and others particularly para 7 which is as under and argued that the OA. deserves to be dismissed as barred by limitation as the cause of action relates to 1st July, 1980, OA. is filed on 8.8.1994 and there is no cause, even to condone the delay.

" It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the OA. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21 (1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see Secretary to Government of India and others v. Shivram Mahadu Gaikwad, 1995 Supp.(3) SCC 231."

13. Mere posting against a post which carries higher scale, when the said pay is not provided to the applicant, he is not promoted to the higher scale, i.e. Selection Grade, it does not presuppose the promotion to a Selection Grade.

14. In the result, we are of the considered opinion, in view of the judgement of the Apex Court cited above that OA. filed by the applicant is barred by time and hence, it requires no consideration on merits.

15. In the result, OA. deserves to be dismissed as barred by time and is dismissed accordingly with no order as to costs.

J.L.JAIN
(S.L.JAIN)

MEMBER (J)

B.N.BAHADUR
(B.N.BAHADUR)
15/01/01
MEMBER (A)

mrj.