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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 514/94

Transfer Application No. ---

Date of Decision : 13-10-85

Ms. S.D. Vaswani

Petitioner

Mr. M.S. Ramamurthy

Advocate for the  
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr. P.M. Pradhan

Advocate for the  
respondents

C O R A M :

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

The Hon'ble Shri ---

(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)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

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O.A.514/94

Ms.S.D.Vaswani

.. Applicant

-versus-

Union of India & Ors.

.. Respondents

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


Appearances:

1. Mr.M.S.Ramamurthy  
Counsel for the  
Applicant.
2. Mr.P.M.Pradhan  
counsel for the  
Respondents.

JUDGMENT:  
(Per M.R.Kolhatkar, Member(A))

Date: 13.10.95.

1. In this O.A. filed under section 19 of the  
A.T. Act the facts are as below:

2. The applicant was directly recruited  
and appointed as U.D.Clerk on 26-10-1962 in the  
office of Accountant General, Maharashtra, Bombay.  
She passed the departmental confirmatory examination  
held in November, 1963 and was confirmed in the post  
of U.D.Clerk on 1-3-1969. One Mrs. Menghrajani was  
also appointed as Upper Division Clerk on 5-12-1962  
i.e. to say <sup>a</sup> little later than the appointment of the  
applicant, in the office of the Senior Dy. Accountant  
General (Commercial), Maharashtra. Mrs. Menghrajani  
passed departmental confirmatory examination  
held in November, 1964 i.e. full <sup>later</sup> one year later than  
the applicant. She was <sup>later</sup> transferred in the same  
capacity to the erstwhile office of Accountant  
General, Maharashtra, Bombay where the applicant  
was working. She was also confirmed on 1-3-1969.  
Thus Mrs. Menghrajani was junior to the applicant  
in the matter of service and her pay  from the  
year 1962 to 1975 was also lower than that of the

applicant. According to the applicant by reason of administrative mistake the said Mrs. Menghrajani was selected as Selection Grade Auditor under office order dated 13-5-1975 which came to the notice of the applicant sometime in June, 1978. Since this promotion was granted on the basis of the seniority and since the applicant was senior to Mrs. Menghrajani, the applicant filed a representation on 17-6-1978 to the Accountant General, Maharashtra, Bombay complaining about her promotion having been overlooked, despite her having a clean record of service. It appears that the said representation was not sent through proper channel. Therefore, the applicant made a second representation dt. 21-8-1978 through proper channel. She kept on reminding the authorities and the authorities promised to set right the anomaly but nothing was done. However, the said Mrs. Menghrajani because of her unmerited promotion began to draw higher salary in the grade of Rs. 425-640 viz. Rs. 485/- as on 20-5-1975 as against Rs. 476/- drawn by the applicant. The applicant renewed her representation on 12-2-1990 and pursued the matter further by filing a representation to the Comptroller of Auditor General of India on 11-2-1992. On 4-1-93 the applicant was advised that she must exhaust the normal official channel of redressal before taking the issue to the court of law. On 29-1-1993 the applicant sent a memorial to the President. Thereafter the applicant received the impugned reply dated 8-4-93 from the Principal Director of Audit (Central) Bombay which is as below:

"With reference to your representation No. Admn/Cent/Rep.SDV/3061 dated 22.2.93, I am directed to state that Head quarters office has furnished a reply rejecting

...3/-

your case stating that there is no point in reopening the issue at this belated stage. As such your petition to the President of India is returned herewith. However, the copies of the letter asked for by you are being obtained from Accountant General(A&E) and the same will be furnished when received."

The applicant has sought the following reliefs:

- "(a) that the Respondents be directed to refix the pay of the applicant in the grade of Selection Grade Auditor as from 20-5-1975, the date from which the Applicant's junior was promoted to the said grade and the Respondents be further directed to carry out consequent refixation of pay of the applicant in the higher grades of Section Officer, Assistant Audit Officer and Audit Officer from the due dates and the Respondents further directed to arrange to pay the applicant the arrears of emoluments flowing from the aforesaid refixation of pay in the different grades;
- (b) that the Respondents be directed to pay interest on the arrears of emoluments which may become payable in terms of prayer (a) above at 12% per annum for such period of from such date as this Hon'ble Tribunal deem just and proper."

3. The applicant has contended that the promotion of the applicant has been overlooked purely because of administrative error, that although the applicant has <sup>since been</sup> promoted to higher grades in due course, there has been a continuing monetary loss to her because of the administrative error, that the applicant had been agitating the matter since 1978 and she received a reply only in 1993 and respondents had <sup>even</sup> taken objection to the

applicant resorting to court of law and, to the extent <sup>the</sup> failure of the respondents to promote the applicant in proper time was due to an administrative error to that extent she is entitled to restoration of her seniority from the due date and her promotion be granted from the date from which her immediate junior has been promoted and to grant all consequential benefits.

4. Respondents have contended that the O.A. is hopelessly barred by time. It would be incorrect to say that the application is filed within limitation only because the O.A. has been filed after the receipt of letters dated 22-2-1993 and 8-4-1993 when in fact what is sought to be challenged is the seniority as between the applicant on <sup>the</sup> one hand and one Mrs. Menghrajani on the other hand, which is a long settled position as the seniority list was duly published long back and the seniority in the cadre of UDC is already settled and therefore the present O.A. having been filed in the year 1993 with a view to unsettle the position which has already been settled in 1969 or 1975, the present application would not be maintainable. It is contended that to the extent the seniority of Mrs. Menghrajani has been challenged Mrs. Menghrajani ought to have been made a party as she is a necessary party. Apart from this it is contended by the respondents that Mrs. Menghrajani was confirmed in her erstwhile organisation w.e.f. 1-3-1966 whereas the applicant was confirmed on 1-3-1969. Hence Mrs. Menghrajani was not junior to the applicant and came to be promoted earlier viz. 13-5-75. Respondents have stated that the dates of confirmation of Mrs. Menghrajani being 1-3-69

shown in the gradation lists as on 1-3-1990, 1-3-1992 and 1-3-1993 are erroneous. In any case the applicant has not suffered in any way because the present applicant was already promoted to higher grade as Section Officer effective from 3-6-1977 and on receipt of her representation especially in response to the departmental letter dated 30-1-1980 the applicant was given notional promotion as Selection Grade Auditor w.e.f. 16-4-1980.

5. In her rejoinder the applicant has stated that even assuming that Mrs. Menghrajani was confirmed earlier, the seniority is required to be based not with reference to the date of confirmation but it has to be determined on the basis of continuous officiation in the grade. By this settled principle, the applicant had to be treated senior to Mrs. Menghrajani. In the rejoinder the applicant has also enclosed a copy showing that Mrs. Menghrajani was declared quasi-permanent on 1-7-1966. According to the applicant this declaration of quasi-permanency w.e.f. 1-7-1966 goes against the averment of respondents that Mrs. Menghrajani was confirmed as UDC w.e.f. 1-3-66.

6. In their sur-rejoinder the respondents have clarified the position relating to this aspect. According to them the note of the said fact of confirmation has been recorded in the service book between the entries dated 18th March, 1967 and 19th May, 1967. The correct position so far as Mrs. Menghrajani is concerned is that Mrs. Menghrajani was initially appointed in the office of the erstwhile Chief Auditor, Commercial Accounts, Western Region,

Bombay, while the applicant joined the office of the erstwhile Accountant General, Maharashtra, Bombay and both of them passed departmental confirmation examination while serving in different office and got confirmed in the respective offices. <sup>further stated</sup> They have/ that their confirmation in the cadre of UDC was subject to availability of permanent post in the respective offices and Mrs. Menghrajani was confirmed on an earlier date in a previous organisation because of the availability of the vacancy and on transfer to this office, she came along with the permanent status that she had enjoyed in the parent office prior to her transfer, and, therefore, she could be placed and shown senior to the applicant herein and, therefore, she came to be promoted to the cadre of Selection Grade Auditor with effect from 20th May, 1975 earlier than the applicant and thus it could not be said that there was administrative mistake in promoting Mrs. Menghrajani to the post of Selection Grade Auditor earlier than the applicant.

7. The counsel for the applicant has argued that her case cannot be rejected on the point of limitation. The department did not give reply to the applicant for 15 years (1978 to 1993) and when the department thought it fit to give a reply, the reply was of a perfunctory nature viz. taking the stand that the old matter cannot be re-opened. So far as the question of Mrs. Menghrajani being confirmed earlier is concerned it is now well settled law that it is the length of regular service and not the fortuitous fact of confirmation <sup>per respondents</sup> of Mrs. Menghrajani, which is the basis for promotion. In this connection the applicant also referred to the circular No.

1206-NGE-III/66-63 dated 27-5-1963 from the Office of the Comptroller & Auditor General of India on the subject of Seniority and confirmation of Upper Division Clerks in which it is clearly stated that seniority of UDCs is to be fixed normally on the basis of total length of service, irrespective of the number of chances taken by them for passing the Departmental Confirmatory examination. On the point of limitation whatever case law is being cited on behalf of respondents does not apply to the case and in any case the limitation does not apply to the present O.A.

8. Learned counsel for the respondents has relied on the following case law to argue that the case should be dismissed from the point of limitation:

(a) J.D. Bhagchandani vs. U.O.I.

(1992) 21 ATC 457. In this case the applicant had prayed for a direction that his pay should be stepped up to Rs.330/- w.e.f. 4-11-1970, the date on which the benefit of stepping up of pay was given to his junior. The Tribunal held that the cause of action arises on the date on which the claim for stepping up of pay becomes due or on the date when the claim for it is denied. The representation of the applicant dated 22-7-1974 was decided after due consideration on 30-12-74 and the cause of action had accrued to the applicant in the year 1974. The applicant had a remedy provided under the law by moving a civil court or by approaching the High Court for the relief claimed. This remedy was not availed of by the applicant. Since the cause of action had arisen more than three years preceding the establishment of the Tribunal, the Tribunal held <sup>that</sup> the O.A. is barred by limitation and dismissed the same. Learned



Tribunal referred to S.S. Rathore v. State of M.P. which is a Supreme Court case (1990 SCC(L&S)50). The relevant paragraphs 20, 21 and 22 were quoted:

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation and where no such order is made, though the remedy has been availed of a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section(1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section(3). The civil court's jurisdiction has been taken away by the Act, and therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representations was made, the right to sue shall first accrue. Submission of just a memorial or representation to the

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head of the establishment shall not be taken into consideration in the matter of fixing limitation."

(b) In *Devi Prasad vs. Union of India & Ors.*, (1993)25 ATC 524, it is observed in para 12 that "cases of appointment/promotions can differ and can be rejected on the ground of delay or laches as there is every possibility of the infringement of the right of the third person who is appointed on the tenure post and who has been promoted on the tenure post."

9. In the instant case the applicant made the first representation in regard to her grievance on 17-6-1978. The first round of representation appears to have ended on 25-3-80 and it was apparently as a result of this representation that the applicant got notional promotion. The applicant thereafter did nothing for ten years and renewed her representation on 12-2-1990. If the applicant was really aggrieved by the unjustified promotion given to Mrs. Mengharajani on 13-5-75 and she was still aggrieved by the notional promotion which she received in 1980 it was open to her to approach the appropriate forum at that time subject to law of limitation then operative. As observed in *Devi Prasad's* case, in cases like seniority and promotions the rights of third person are involved and therefore the conduct of the applicant in approaching the appropriate forum in good time is required to be scrutinised very strictly. I, therefore, follow the ratio laid down in *Devi Prasad* as well as *J.D. Bhagchandani* which latter case has also referred to Supreme Court dicta in *S.S. Rathore's* case.

10. I, therefore, hold that the present

application is barred by limitation and the Tribunal has no jurisdiction to entertain it. In view of this position it is not necessary to examine the case on merits. The application is therefore dismissed with no order as to costs.

*NR to that*

(M.R. KOLIATKAR)  
Member(A)

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*This Judgment has been recalled by  
order dt. 29-8-96  
in RP 33196.  
3/9/96*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

REVIEW PETITION NO:33/96 IN O.A. NO: 514/94

Proounced this the 29<sup>th</sup> day of August 1996

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

Ms. Sheela D. Vaswani  
(BY Advocate Shri M.S. Ramamurty)  
-versus-

.. Review Petitioner  
(Orig. Applicant)

Union of India & Ors.  
(By Counsel Shri P.M. Pradhan)

.. Respondents  
(Orign. Respondent)

ORDER

(Per M.R. Kolhatkar, Member(A))

In this R.P. the Review Petitioner/  
original applicant has sought review of my judgment  
dt. 13-10-95 on the ground that there is error  
apparent on the face of the record. It is contended  
that the Tribunal relying on judgments in Devi Prasad  
vs. U.O.I. & Ors. (1993) 25 ATC 524 and J.D. Bhagchandani  
v. U.O.I. & Ors. (1992) 21 ATC 457 and Supreme Court  
judgment in S.S. Rathore vs. U.O.I. 1990 SCC L&S 50,  
had dismissed the O.A. on the ground of limitation. The Review Petitioner contends that in Devi Prasad's  
case it is laid down that laches or limitation cannot  
apply to cases of fixation of pay where no other party  
is affected thereby. Secondly it is contended that the  
reliance placed on S.S. Rathore's case is also wrong  
because it was <sup>the</sup> case of termination of services and not  
a case of fixation of pay. The Hon'ble Supreme Court  
in M.R. Gupta vs. U.O.I. & Ors. 1995(2) ATJ 567 has ruled  
in para 6 that the claim to be paid the correct  
salary computed on the basis of proper pay fixation  
is a right which subsists during the entire tenure of



service and in para 7 the Apex Court has also explained the ratio in S.S.Rathore's case and its inapplicability to pay fixation claim.

2. In view of these contentions a preliminary hearing to decide the reviewability of the order dt. 13-10-95 was held after giving notice to both the parties. It was made clear that the main question to be considered was whether the judgment dt. 13-10-95 needs review in the light of M.R.Gupta's case.

3. The respondents contended that the S.C. judgment <sup>in M.R.Gupta</sup> was pronounced on 21-8-95 and assuming that ratio of M.R.Gupta's case applies to the instant case, it was the duty of the counsel for the applicant who primarily relies on the case to bring <sup>it</sup> to the notice of the Hon'ble Tribunal. This should not have been difficult because the facilities for instantaneous communication are available at present and because of the measures taken for computerisation, the access to Supreme Court judgments has been improved. The learned counsel for the review petitioner submits that in spite of the progress in computer assisted means of communication, the lawyers primarily rely on the reports and, therefore, in spite of his best efforts he could not have brought the said <sup>SC</sup> judgement to the notice of the Tribunal before Tribunal pronounced its judgment.

4. In my view this Tribunal's judgment

dt. 13-10-95 primarily proceeded on the basis of application of S.S.Rathore's case and the same appears to be misconceived in view of the following observations of the Hon'ble Supreme Court in para 6 and 7 of the judgment in M.R.Gupta's case:

6. "The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Govt. servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and others v. Mattapalli Raju and Ohter, AIR 1950 Federal Court 1).
7. "Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S.Rathore v. State of Madhya Pradesh, (1989) Supp.1 SCR 43. That decision has no application the present case. That was case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to rules throughout the service

giving rise to<sup>a</sup> fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case."

5. Rule 1 under Order 47 of CPC talks of mistake or error apparent on the face of the record or any other sufficient reason as circumstances which warrant an application for review. Rule 4(2) deals with cases where application can be granted. It is well settled that failure to take notice of the law laid down by the Supreme Court is a mistake warranting review. The judgment<sup>was</sup> pronounced on 13-10-95 and M.R. Gupta's case was decided on 21-8-95 and this court was bound to take notice of the Supreme Court judgment especially to the extent that it has distinguished pay fixation cases and ~~it~~ had said that ratio of S.S. Rathore's case does not apply to pay fixation case.

6. I am, therefore, of the opinion that my judgment dt. 13-10-95 warrants a review.

7. The counsel for the respondents have contended that assuming that the court grants the prayer for review, the matter is required to be re-heard and not decided peremptorily. This contention of the counsel for the respondent is supported<sup>in my view</sup> by the observation of the Supreme Court in the case of State of MP & Ors. v. Sadashiv Zamindar, JT 1996(5)SC 111 wherein it is stated that when earlier petition was dismissed on point of limitation and review petition was allowed then the Tribunal is bound to give an

opportunity to argue the case on merits.

B. I, therefore, dispose of the R.P.  
by passing the following order :

ORDER

Review Petition is allowed. The  
order dt. 13-10-95 is recalled  
and it is directed that the case  
may be fixed for re-hearing on  
merits on 3-10-96. Issue notice  
to both the parties.

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(M.R. KOLHATKAR)  
Member(A)

Certified True Copy  
Date .....

Section Officer  
Central Admin. Tribunal,  
Bombay Bench

QC  
3/5/