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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:51/95

DATE OF DECISION: 7th June 2000

Shri Moti Chand Ram Shastri Applicant.

Shri S.S. Karkera Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri M.I. Sethna Advocate for
Respondents

CORAM

Hon'ble Shri B.N.Bahadur, 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
other Benches of the Tribunal? *no*

(3) Library. *yes*

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 51/95

the 7th day of JUNE 2000

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

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

Moti Chand Ram Shastri
Flat No.41, Kashi Matha
Bldg. Central Rev. Apartment,
Narayan Dhabolkar Road,
Nepean Sea, Bombay.

... Applicant.

By Advocate Shri S.S. Karkera

V/s

1. Union of India Through
Secretary,
Ministry of Finance
Department of Revenue
New Delhi.
2. The Chairman
Union Public Service Commission
Dholepur House, New Delhi.
3. Chairman
Central Board of Excise & Customs
North Block, New Delhi.

... Respondents.

By Advocate Shri M.I. Sethna.

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 a declaration that communication dated 12th March 1988 and 1st November 1994 are illegal and bad in law alongwith a mandamus to respondents to promote the applicant for the post of Deputy Collector Customs and Central Excise on provisional basis alike others vide order dated 8th August 1988 with all consequential benefits.

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2. The applicant being direct recruit appointed as, Assistant Collector from 1981 batch and belongs to Scheduled Caste. The meeting of the Departmental Committee was held in the month of July 1992 for the purpose of considering adhoc promotions subject to decision in Apex Court to the Grade of Deputy Collector of Customs and Central Excise. Earlier to 1989 the bench mark was "Good" which is changed to "very good" since 1st April 1989. In conformance with the meeting of the Departmental Promotion Committee, the respondent No.3 on 8.8.1992 was pleased to issue the promotion order No. 206/92 promoting various Assistant Collectors to the post of Deputy Collectors with effect from the date on which they take charge and until further orders. The name of the applicant did not find place in the said promotion order. The applicant represented against the said matter on 11.8.1992, marked 'G', a further representation on 11.9.1992, marked 'H' which was replied on 12th March 1993 marked 'A' and the representations of the applicant were rejected. The applicant further represented the matter vide representation dated 19.8.1993 marked 'L', again a representation dated 23rd August 1994 marked as 'K' which were replied and rejected vide letter dated 1st November 1994 marked as 'B'.

3. In para 2 of the OA the applicant has claimed that the application is being filed well within the period of limitation as contemplated under the provisions of Administrative Tribunals Act 1985.

4. In para 3 of written statement it is stated that with reference to paragraphs 1 to 3, 4(1) to 4, 5 to 7 and 8 do not admit the correctness of any statement, averments made in these paragraphs which are not in conformity with the contents of the records maintained by the department.

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5. At the time of hearing, it is noticed that OA is filed on 21st December 1994 and the OA appears to be barred by time. Hence arguments regarding limitation were also heard.

6. The learned counsel for the applicant relied on 1991 (2) ATJ 596 Chander Bhan V/s Union of India and others and argued that once the order of admission of an OA has been passed, the period of limitation cannot be looked into again. Para 3 and 4 of the said order decided by the Principal Bench is worth mentioning which is as under:

“Second contention of Shri S.K. Gupta is that as the OA has admitted by the Tribunal on 22.4.1987 the provision of the limitation provided under section 21 of the Act becomes redundant and once the order of the admission has been passed the point of limitation cannot be looked into again. Without Pressing any opinion upon this contention, we therefore, proceed to examine the case on merits. .

Though this OA has been filed beyond the period of limitation we sustain the arguments of Shri S.K. Gupta that the OA was admitted by this Tribunal. We have therefore, considered the case on merits and allow this OA partly.”

7. The learned counsel for the applicant relied on 1992 (1) ATJ 368 Makod Khodabhai Janjadiya V/s Union of India and others decided by CAT Ahmedabad Bench which lays down the proposition that once an application is admitted without any objection

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regarding limitation - a plea of limitation not allowed to be raised at later stage. Para 6 of the said order is as under:

We notice that the original application was admitted by the order of the Bench dated 19.6.1987. The order does not say that the application is admitted subject to limitation. We therefore do not deem it necessary to go into the question of limitation at this juncture with the observation that the respondent's objection on grounds of limitation has substance.

8. The learned counsel for the applicant relied on 1987 (1) ATJ 117 Manohar Sitaram Nandanwar V/s Union of India which lays down the proposition that limitation commences from date of rejection of representation. Para 6 of the order is as under:

The next question is about the limitation. The defendant's contention is that the impugned order is dated 12.2.1981 and, therefore, the suit filed on 30.8.1984 would be barred by time. It would be beyond 3 years from 12.2.1981. However, one cannot forget that the plaintiff had a right to make a representation against that order. The records show that he has been making representations and ultimately it is on 19.3.1984 that the Director General has rejected the plaintiff's claim. It cannot be disputed that the suit is within time from this dated i.e. 19.3.1984. In our opinion in the peculiar facts of the case and more particularly in the back ground of the plaintiff's representations having remained undecided till 19.3.1984, there would not be any bar to the plaintiff.

We agree to the case of Manohar Sitaram Nandanwar but the said point does not arise for consideration in the present OA.

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9. The learned counsel for the applicant further relied on 1990 (1) ATJ 74 S. Raghuraman V/s Union of India and others. which lays down the proposition that if applicant's second representation was considered at length but rejected, rejection of representation did not involve any reference to earlier representation, limitation will commence from the date when the second representation was rejected.

10. The learned counsel for the respondents relied on A.I.R. 1990 SC 10 S.S. Rathore V/s State of M.P. decided on 6.9.1989 which lays down the proposition that the principle has no application when the remedy availed of has not been provided by law, repeated unsuccessful representations not provided by law are not governed by the principle. The said authority is later in time i.e. 6.9.1989 while 1990 (1) ATJ 74 S. Raghuraman V/s Union of India and others is earlier in time i.e. decided on 21.6.1989. Hence by the decision of the Apex Court of the land, the said authority stands impliedly over ruled.

11. Section 19 (3) of Administrative Tribunals Act 1985 is as under:

On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

12. On perusal of the order sheets of the OA we found that in the present OA there is no specific order regarding admission,

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hence the above referred authorities 1991 (2) ATJ 596 Chander Bhan V/s Union of India and others and 1992(1) ATJ 368 Makod Khodabhai Janjadiya V/s Union of India and others would in any case have no application in the present case.

13. The written statement was filed on 21.9.1995. After filing of written statement, the Tribunal has no occasion to apply it's mind regarding admission and no finding has been recorded by this Tribunal in respect of the fact that the applicant has a fit case for adjudication or trial by it, hence the said authorities also do not apply to the present case.

14. For the first time on 12th March 1993 vide order marked 'A' representations of the applicant were rejected. As OA is filed on 21.12.1994 beyond one year of rejection of representation, OA is barred by limitation under Section 21 of the Administrative Tribunals Act 1985, hence it is liable to be dismissed as barred by time.

15. In such circumstances, it is not necessary to examine the matter on merit. Hence OA is liable to be dismissed as barred by time and is dismissed accordingly with no order as to costs.

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

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B.N. Bahadur
(B.N. Bahadur)
Member(A)