

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 788/97

DATE OF DECISION: 7th Jan., 2000

Shri L.U.Kamble

Applicant.

Shri R.R.Dalvi

Advocate for

Applicant.

Versus

State Comander,Air Force and others.

Respondents.

Shri R.K.Shri R.K.Shetty.

Advocate for

Respondent(s)

CORAM

Hon'ble Shri D.S.Baweja, Member (A)

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

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

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

(3) Library.

yes

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:788/97

the 7th day of JANUARY 2000

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

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

L.U. Kamble
Office Superintendent,
Grade I,
Office of the Station Commander,
Air Force Station
Cotton green, Bombay.

...Applicant.

By Advocate Shri R.R.Dalvi.

V/s

1. Station Comander,
Air Force
Station Cottongreen,
Bombay.
2. Air Officer Commanding-in-Chief
Headquarters South Western
Air Command-IAF, Ratnada -
Jodhpur.
3. Chief of Air Staff Air
Headquarters, Vayu Bhavan
New Delhi.
4. Secretary to the
Government of India,
Ministry of Defence
Mantralaya,
New Delhi.
5. Shri B.L. Maraskole,
PANO 30599
Headquarters, Maintenance
Command(u) IAF
6. Shri Teresa Hansdah
PANO 29670
Air Force Station.
New Delhi.
7. Shri P.T.Yoloo
PANO 30623
No.20 Air Force
8. Shri V.P.Kshirsagar,
Retired
C/o Respondent No.1

JYK/-

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9. Shri Dvvi Dayal
PANO 18742
Air Force Central
Accounts Office, New Delhi.
10. Shri Sughar Sen,
Retired,
C/o Respondent No.1
11. Shri M.L. Kureel,
PANO 18650
No.1 BRD, Air Force.
12. Shri R.A. Razak
PANO 19010,
No.29 ED, Air Force.
13. Shri Badan Singh,
PANO 19295,
Air Force, Central Accounts
Office, New Delhi.
14. Shri Lekh Pal,
Retired.
C/o Respondent No.1.

...Respondents.

By Advocate Shri R.K.Shetty.

O R D E R

(Per Shri S.I.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking the relief of counting his seniority from the date of his initial appointment i.e. 15.12.1961 in the term of office Memorandum of Respondent No.3 as a similarly situated employee on the basis of the order of Principal Bench CAT , New Delhi decision dated 15.2.1996 in case of S.N. Kaushik V/s Secretary Ministry of Defence, New Delhi with all consequential benefits with retrospective effect in the matter of seniority, further promotion.

J.S. /

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2. There is no dispute in respect of the facts that the applicant who was sponsored by the Employment Exchange and belongs to Schedule Caste joined service as Equipment Assistant on 15.12.1961, the post was redesignated as Clerk/LDC with effect from 23.11.1962 and he was finally confirmed in that post on 1.4.1964. He was promoted to the post of U.D.C., Office Superintendent Grade II and Office Superintendent Grade I with effect from 7.8.1991, 29.11.1990 and 3.1.1997 respectively. He represented against his wrong fixation of seniority vide seniority list of 1979 vide his representation dated 27.11.1978 and his representation was turned down vide order dated 1.6.1979. After the order of the Principal Bench in case of S.M.Kaukshik V/s Secretary Ministry of Defence, New Delhi on 15.2.1996, he further represented the matter vide representation dated 30.5.1997 which is turned down vide order dated 17.7.1997.

3. The grievance of the applicant is that his representation dated 27.11.1978 was turned down taking recourse to AF I 25/51 while he is governed by the later provisions of the Office Memorandum dated 11.6.60, as his appointment was made on 15.12.1961. After the order of the Principal Bench, CAT, New Delhi on 15.2.1996 in case of S.N.Kaushik, he being a similarly situated employee, his representation was again rejected stating that "the order of Hon'ble CAT Principal Bench is applicable to him only and not to other similarly situated individuals" Hence this OA for the above said relief.

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4. The respondents resisted the claim of the applicant and alleged that the applicant is challenging his seniority in the grade of LDC and seeks his seniority with effect from 23.11.1962 to 15.12.1961 with all consequential benefits of further promotion on the basis of refixing of seniority. In 1968, the respondents have redesignated all Equipment Assistants as LDC and prepared a common seniority list. The respondents have not given him seniority with effect from the date on which he joined as Equipment Assistant but with effect from 23.11.1962 on the ground that common seniority for Equipment Assistant as well as LDCs became effective from this date. The applicant is not identically placed with Shri S.N. Kaushik, who filed writ Petition No.1117/74 in the year 1974 in Delhi High Court which was transferred to Principal Bench, CAT, New Delhi and registered at No. 43/91 on the ground of question of limitation and latches. The cause of action accrues to the applicant on 26.6.1968 when the seniority list was published and not in the year 1996. The settled seniority position cannot be unsettled since 26.6.1968. Hence the said cause of action cannot be agitated now after a lapse of 30 years and the applicant cannot be placed almost 400 places above he would have otherwise been placed, after a period of 29 years, would create unprecedented chaos in the department and there are 300 similarly placed persons like the applicant who would also rush to the tribunals and open a flood gate litigation. The cause of action of the applicant is barred by time. Hence prayed for dismissal of the OA alongwith costs.

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5. As the limitation commences from the date of rejection of the representation which is 1.6.1979, hence claim is barred by time. (1986 ATC 531 Manohar Sitaram V/s Union of India).

6. The learned counsel for the respondent relied on 1996 SCC (L&S)1488 State of Karnataka and others V/s S.M. Kotragaya and others which deals with condonation of delay in filing OA and it has been held that the explanation regarding delay must relate to failure to avail the remedy within the limitation. The applicant claim that the application is within limitation, hence the said authority does not apply.

7. The learned copunsel for the applicant relied on (1989) 11 ATC 743 Adithavarneswaran V/s Union of India and others decided by CAT Madras for the proposition that consideration of representation in a time barred case revives the limitation.

The learned counsel for the respondents relied on 1999 SCC (L &S) 251 Union of India and another V/s S.S. Kothyial and others for the proposition that repeated representation do not extend cause of action. On perusal of the said authority we find that in a case of promotion which was denied in 1970, 1971 but promoted in 1972 representation rejected in June 1971, November 1974 and July 1977, the said proposition was laid down. In view of the proposition of law laid down by the Apex Court of the land, the precedent cited by the learned counsel for the applicant reported in (1989) 11 ATC 743 stands by implication over ruled. Hence it is hereby held that the cause of action for which the applicant is seeking relief is barred by time.

8. The learned counsel for the respondent relied on

(1) 1998 SCC (L&S) 1656 B.V. Sivalah and others

V/s Addanki Babu and others.

(2) 1998 SCC (L&S) 611 B.S. Bajwa and another

V/s State of Punjab and others.

for the proposition that seniority dispute after a long lapse of time (in first case after four years and in second case after more than a decade) cannot be reagitated. In the second case the Apex Court of the land has held as under:

"The question of seniority should not be reopened in such situations after a lapse of reasonable period, because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case in making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the Writ Petition."

9. The learned counsel for the applicant relied on 1998 SCC

(L & S) 226 K.C. Sharma V/s Union of India and others and argued

that benefit of judgement to others similarly situated must be awarded and delay be condoned. The proposition was laid down in a case of retired guards regarding pensionary benefits. Hence it does not help the applicant.

JPW

10. Law helps the vigilant. A person who has rushed to the Court or Tribunal and a person keeping a watch, sleeping over his rights cannot be said to be similarly situated person. (A.I.R 1992 SC 1414 Bhoop Singh V/s Union of India and others)

11. In the result we do not find any merit in OA, it deserves to be dismissed and is dismissed accordingly with no order as to costs.

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

Member (J)

D.S.BAWEJA
(D.S.BAWEJA)

Member (A)

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