

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~Non-Work-Do-Exhibit~~

HYDERABAD

O.A. No. 566 of 1987

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DATE OF DECISION _____

Mr. K. Satyanarayana

Petitioner

Mr. N. Rama Mohana Rao

Advocate for the Petitioner(s)

Versus

Ministry of Defence and 2 others

Respondent

Mr. K. Nagaraja Rao- Addl. Cuse

Advocate for the Respondent(s)

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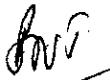
The Hon'ble Mr. B. N. JAYASIMHA: VICE CHAIRMAN

The Hon'ble Mr. D. SURYA RAO: MEMBER JUDICIAL

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Yes.

MGIPRRND-12 CAT/86-3-12-86-15,000


(B.N.J.)
(DSR)

(JUDGMENT OF THE BENCH DELIVERED BY SRI D.SURYA RAO:
MEMBER (JUDICIAL)

The applicant herein is working as Charge Man Grade-I in Defence Research Development Laboratories, Hyderabad. He seeks the following three reliefs:

- (a) To declare that the applicant is entitled to be conferred the same benefits that were conferred on the applicants in T.A.156 of 1986 in the same manner as was done in their case.
- (b) To declare that the applicant is also entitled to have his case considered for further promotion as Assistant Foreman alongwith the applicants in T.A.156 of 1986 in the same manner.
- (c) To declare that the applicant is also entitled to all consequential benefits and reliefs as was in fact directed by this Hon'ble Tribunal in TA 156/86.

On 21-5-1973 the applicant and four others were promoted as Precision Mechanic. While disposing of the TA 156/86 which was a Writ Petition transferred to this Tribunal filed by the four others who were promoted along with the applicant on 21-5-1973, this Tribunal had passed the following orders:-

"Applying the above principles, we must hold that the refusal to grant higher pay scale to the petitioners herein, who had been promoted as Precision Mechanics

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before that post was redesignated as Chargemen, Grade-II, cannot be justified. The petitioners and all such Precision Mechanics who have been promoted as such prior to 3-6-1980 shall be entitled to the higher pay scale of Rs.425-700.✓ Pay scale of Precision Mechanics who were appointed prior to 31-12-1972 was revised with effect from 1-3-1977 and communicated in letter No.F.97037/PM/ RD-24(Part III)/149/S/D/(R&D) dated 13-4-1981, and the pay of the concerned Precision Mechanics was notionally fixed with effect from 1-3-1977, and arrears were held admissible with effect from 1st December 1980. The same benefit will accrue to the petitioners herein also. The petitioners shall also be entitled to all consequential benefits as were allowed to Precision Mechanics who were promoted prior to 31-12-1972.~ The respondents shall calculate the arrears due to the petitioners and pay the same to them within a period of three months from today."

The applicant states that after this Judgment, he made representation dated 7-6-1987 to the respondents for extending similar benefits to him in terms of the Judgment of this Tribunal in TA 156/86. No reply has been given to the applicant by the respondents. Consequent on the Judgment of the Tribunal, the Department on 10-8-1987 reviewed the promotions of the applicants in TA 156/86 ~~as antedated~~^{and} their promotions to the post of Chargemen Grade-I to 15-9-1983 instead of 15-3-1987. The applicant has now filed this application seeking the reliefs mentioned above.

2. We have heard the learned Counsel for the applicant Shri N.Ramamohana Rao and the learned Standing Counsel for

the Central Government Shri K.Nagaraja Rao. It is not disputed that the applicant and the petitioners in TA 156/86 are similarly placed. It follows that the benefits given to the petitioners in TA 156/86 would also have to be given to the applicant. Shri K.Nagaraja Rao however argues that the cause of action arose long prior to the filing of the application and also long prior to the judgment delivered in TA 156/86. Therefore his having made the representation on 7-6-1987 after delivery of the judgment dated 10-11-1986 would not give rise to fresh starting point. The claim for arrears at any rate is barred by limitation. Shri Ramamohana Rao however contends that the Tribunal's order is a declaration that all Precision Mechanics similarly placed would be entitled to the higher scale of pay of Rs.425-700. Therefore the applicant is entitled to the higher scale of pay by virtue of the Judgment in the same manner as the petitioners in TA 156/86 got the relief. While there is no doubt regarding the right of promotion ~~is~~^{being} a continuing one and the applicant has right of promotion retrospectively as was done in the case of others promoted on the same day pursuant to the Judgment dated 10-8-1987 and ~~further promotions~~. The question however is whether the applicant is entitled to arrears of pay.

Insofar as the delay or latches are concerned, admittedly, the applicant had a cause of action in 1984 itself when the Tranferred Application No.156 of 1986 (W.P.No.10609 of 1984) was filed. The applicant did not join them at that time. It is only after the disposal of the T.A.No. 156 of 1986 dated 10.11.1986 that he has filed the present application after bring^{-ing} to the notice of the Department that he is entitled to the same benefit as the petitioners in that case. The question is whether the delay i.e., in waiting for the disposal of that case would be a bar to the applicant in filing the present application. The question of delay has been considered in the various decisions of the Supreme Court and various High Courts. A reference was made to some of them.

In 1970 SLR 616(SC), the petition was filed 15 years after the fixation of seniority. It was held that the delay is a bar in filing the petition. In 1971(2) SLR 532 (Delhi High Court) it was held that where delay in filing the writ petition is more than a period prescribed for the Suit on the basis of the cause of action, the court should declare the delay unreasonable. 1972 SLR 746 (SC) is a case of dismissal from service. In dealing with the question of relevancy of the limitation prescribed under the ordinary law for claiming relief from civil Courts in such cases, ~~the Supreme Court~~ while approving the observations of the Division Bench of the Calcutta High Court in 1970(2) SCR 697 viz.. "promptness on the part of

the aggrieved servant is essential for invoking the extraordinary jurisdiction of a High Court so that the State is not called upon to pay unnecessarily for the period for which the dismissed servant is not employed by it", the Supreme Court held that these are good grounds for refusal to exercise the discretion to interfere with the impugned order of the dismissal.

1973(1) SLR 1068 (SC) was a case where consequent to an advertisement for the posts of Class-I the applicants had applied but were appointed to Class-II posts for want of vacancies. They accepted the appointments to the Class-II posts. A Writ filed 12 years later claiming their right to the Class-I post was held to be stale.

1973(2) SLR 521 (SC) was a case of removal from service. The petitioner~~s~~ therein kept sending memorials for three years which did not lie. The delay was held to be inexcusable. In AIR 1975 SC 536 it was held that in the case of a writ against supersession, the discretion to entertain an application should be so exercised that if the Writ is not filed expeditiously i.e., within six months to one year, the discretion should not be exercised. 1977(2) SLR 255 was the case of filing of repeated representations after rejection of the first representation. The Writ filed after eleven years was dismissed as the delay was not satisfactorily explained.

1981(2) SLR 291 (SC) was the case wherein promotions

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between 1968 and 1975, were challenged in 1975. It was held that the Writ suffers from delay. 1980(3) SLR 18 (SC) was the case of ^{showing} successive applications. It was held that successive applications will not condone delay. These are the decisions mainly relating to seniority and dismissal from service. The ^{unscrupulous} concept of these decisions is that the delay in claiming seniority should not be condoned since the rights of other employees would get crystallised and since acquiescence on the part of the aggrieved employee would be a bar to his coming to the Court. Similarly in the case of dismissal, the acquiescence was held to be a bar apart from the fact that interference long years after the cause of action arisen would give rise to payment of arrears for the periods during which the Government servant had not worked. There are, however, other decisions wherein the delay has not been held to be a bar. In 1968 SLR 291 (Punjab and Haryana), it was held that mere lapse of time which does not result in changing the position of the other party does not constitute latches. 1973(1) SLR 227 (Delhi) was the case wherein it was held that the delay can be tolerated where legality is based on a question of law and not on the facts. It was, however, held therein that delay will not be condoned if there is acquiescence on the part of the petitioner. 1973(1) SLR 359 is a case from Delhi High Court wherein it was

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held that the petitioner awaiting the decision of other officers on a Writ filed on similar grounds cannot be denied the relief on the ground of delay.

1974 (1) SLR (SC) was the case wherein it was held that the rule which says Court may not enquire into belated claims is not a rule of law but a rule of practice. It is further held that where a claim is for enforcement of the right of equal opportunity the Court cannot easily refuse relief on the ground of latches and that each case must depend on its facts.

In 1979 (3) SLR 608 (Kerala) it was held that where matters involving serious consequences, Court will not deny justice unless manifest injustice was resulted from callousness of the petitioner.

3. From a reading of the above decisions it is clear that there can be no doubt that delay in filing an application would be a bar to a claim made by the applicant when the relief sought relates to promotion or even in cases relating to disciplinary action. This is because if a number of promotions or appointments have taken place between the date when the cause of action had arisen and the date of filing the application, those who have been promoted would acquire rights. It is well settled that such rights should not be disturbed

because of the acquiescence or latches on the part of the applicant. It does not however follow that in every case where there is delay the Court should negative the plea or claim of the applicant. As held by the Supreme Court in 1974. (1) SLR 470 (Ramachander Vs. State of Maharashtra) each case must depend on its facts. The facts in the instant case reveal that the applicant is not given an ante-date promotion to the post of Chargeman Grade.I as was done in the case of similarly placed employees. This is despite the Tribunal having specifically ordered that "The petitioners and all such Precision Mechanics who have been promoted as such prior to 3-6-80 shall be entitled to the higher pay scale of Rs.425-700." The emphasis supplied by us discloses that the benefit is not limited to the petitioners in T.A.NO. 156 of 1986. In this context the observations of the Supreme Court in AIR 1975 SC 538 (Amritlal Vs. Collector, C.E.C.Revenue) would be relevant. At Para 24 of the said case it was observed that:

" We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

If this principle enunciated by the Supreme Court were to be applied it would follow that the applicant herein would also be entitled to the same benefit as was available to the applicants in T.A.No.156/86. We accordingly direct the applicant herein will be entitled to the same benefits as granted to the applicants in T.A.NO. 156 of 1986. With this direction the application is allowed. There shall be no order as to costs.

B.N.Jayasimha
(B.N.JAYASIMHA)

Vice chairman

D.Surya Rao
(D.SURYA RAO)
Member (Judl.)

Dt. 20th September 1988.

SQH*

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S. Venkateswaran
Deputy Registrar (S)
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