

(64)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.699/92

DATE OF JUDGEMENT:

26th FEB 1993

Between

K.K. Satyanarayana

.. Applicant

and

1. Secretary
Ministry of Defence,
Defence HQrs
New Delhi-11.
2. Chief of Naval Staff
Naval HQrs
New Delhi-11.
3. The Flag Officer, C-in-C,
HQrs Eastern Naval Command
Visakhapatnam
4. Sri P.Madhava Rao
PA to Gen Manager(Tech.)
Naval Dock Yard
Naval Base, Visakhapatnam

.. Respondents

Counsel for the Applicant :: Mr.S.Sitaramaswamy

Counsel for the Respondents No.1 to 3. :: Mr NR Devraj Sr CGSC

Counsel for the Respondent No. 4: Mr. P. B. Vijaya Kumar.
CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

JUDGEMENT

This is an application filed under Section 19 of the Central Administrative Tribunals Act, to quash the seniority list published by the respondents vide CE/0762 dated 21-12-87 and also to quash the Ministry of Defence OM No.8(1)/76/D/(APPTS) dated 1.3.77 that the same is discriminatory, violative of Article 14 of the Constitution and pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief may be stated as follows:

4. One Sri P.Madhava Rao, the 4th respondent herein, who was also appointed as casual steno-typist like the applicant and competed against the direct recruitment to the post of stenographers, was appointed in that post w.e.f. 2.8.76. Accordingly, in the seniority list that was published on 31.12.80, vide No.CE/0762/80 dated 8.1.81, the applicant had been shown as Senior to the said Madhava Rao. According to the applicant he had remained senior to the said Madhava Rao in all the succeeding seniority lists that were published till 1986. While so, according to the instructions contained in Ministry of Defence OM No.2(13)/74/D/(Civ.I) dated 8/12 August,1975, the ~~xxx~~ seniority of the wStenographers were amended/revised and a revised seniority list was communicated vide CE/0762/SG dated 21/29-12-87 showing the said Madhava Rao, (who was junior to the applicant) as Senior to the applicant. The applicant has submitted his first representation to the Flag Officer, Commanding, ENC, Visakhapatnam on 29.9.89 followed by several reminders. The applicant again~~se~~ submitted ~~a~~ representation to Chief of Naval Staff, Min. of Defence New Delhi on 14.8.90 and 6.5.91. The applicant submits that a final reply was given to him vide FOC, ENC Viskhapatnam letter No.CE/2750/KKS dated 8.12.91 rejecting his representations.

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5. In their letter dated 8.12.91, the respondents have held that the revision of seniority of 4th respondent herein was carried out as per the instructions contained in the Min. of Defence OM dated 8/12/.8.75 and Min. of Defence OM No.8(1)/76/D/(APPTS) dated 1.3.77. It is the case of the applicant that the instructions of the Ministry of Defence letter dated 1.3.77 have been wrongly interpreted by the respondents and respondent no.4 has been shown senior by depriving the applicant's seniority and promotion. The applicant also ^{maintains} prays that ~~if for~~ ^{if this Tribunal holds that} ~~argument sake,~~ the instructions given in Min. of Defence letter 8(1)/76/D(APPTS) dated 1.3.77 are correctly followed by the respondent, then to set aside the same as discriminatory and violative of article 14 of the Constitution. Hence, the present OA is filed for the reliefs as already indicated above.

6. During admission hearing of this OA, Mr NR Devraj, Standing Counsel for the respondents raised the question of limitation. As the point of limitation had been raised in this OA, both sides wanted that the question of limitation be decided at the threshold itself. So, we now proceed to decide whether the OA is filed within time or whether it is barred by limitation.

7. From the facts enumerated above, there is no doubt about the fact that the date of grievance of the applicant was when the revised seniority list ~~is~~ was issued on 21/29-12-87 and the applicant's seniority was disturbed which was maintained till 1986 and the applicant was made junior to the 4th respondent herein in the cadre of Stenographers. In ~~one of~~ his representation, dated 14.8.90, the applicant ^{has} stated as follows in para 8.

"A select list/promotions/transfers of Stenographers Gr.II & III was drawn vide HQENC letter CE/2750 dated 18.1.88 (copy enclosed) and by virtue ..4

of irregular/inadvertant ante-dated conversion of myself and Shri P.Madhava Rao, Shri Madhava Rao could secure a place on top of me in the panel ibid though he is much junior to me. Shri P.Madhava Rao had been promoted on regular basis and I have been promoted on adhoc-basis to Stenographer Gr.II and reverted back to my substantive post of Stenographer Gr.III w.e.f. 21.4.89.....
....."
....."

So, as the applicant had full knowledge about the seniority list as early as 1988 itself, it has got to be seen whether this OA is filed within time.

8. It is needless to point out that from the date of knowledge with regard to the said seniority list, that the cause of action for this OA arose and as a matter of fact, limitation began to run to file this OA from the date of applicant ~~having~~ knowledge about the revised seniority list. In this context, we may point out that once time began to run, no subsequent disability or inability to file ~~the~~ OA can stop ^{running of} the time with regard to limitation. So, in this case, as soon as the applicant became aware of the impugned seniority list, he should have filed this OA within the period of limitation. Section 21 of the Central Administrative Tribunals Act that deal with the question of limitation with regard to the filing of the OA reads as follows:

- "21. LIMITATION:(1) A Tribunal shall not admit an application-
- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made within one year from the date of which such final order has been made;
 - (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made within one year from the date of expiry of the said period of six months.

.....
.....

T - [Signature]

9. So from a reading of the Administrative Tribunals Act, Section 21 it becomes amply evident that if an appeal or representation had been made and if a period of six months expired thereafter without final orders having been made, an aggrieved party has to approach this Tribunal within one year after the expiry of the period of six months.

In this context, we may straightaway refer to AIR 1990 SC 10 SS Rathore Vs State of MP wherein it is laid down as follows:

"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 is made 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 representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S.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 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 until the appeal or representation provided by a law is disposed of accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of justa memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of limitation.

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10. Admittedly, in this case, the OA had been filed on 7.8.92. The OA is filed roughly after 4 years, the applicant had knowledge of the seniority list and after ~~4~~ ^{and for some} years his junior the said Madhava Rao had been promoted to the post of Stenographer Gr.II. As already pointed out, when once the period of limitation begins to run, we have made it clear that no subsequent dis-ability or inability to file the OA can stop the running of time with regard to limitation. So, maximum time limit to approach this Tribunal in the case was before the expiry of the year 1988. But this OA is filed after expiry of more than 4 years of limitation period. So, we do not have any doubt to come to the conclusion that this OA is barred by time.

11. But the learned counsel appearing for the applicant strenuously contended that as the respondents have replied to the ~~xxx~~ representation of the applicant finally on 5.6.92, that the limitation would commence from 5.6.92 onwards. We have already held that the limitation period to file this OA commenced from the early part of the year 1988 and by the end of the year 1988.

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that the remedy of the applicant ^{became} ~~becomes~~ time barred. Even though final orders had been passed on 5.6.92, the learned counsel appearing for the applicant could not show any authority, where the right of action became ^{by time} ~~barred as~~ ^{that the limitation} stated above, would get revived after the final orders on the representation of the applicant had been passed. ^{and hence} the contention of the learned counsel for the applicant ~~that~~ that the OA is filed within one year from ~~5.6.92~~ which ^{from} is the date of passing final order on the representation of the applicant ^{but within time in the circumstances of the case} cannot at all be accepted. No doubt, in the representation of the applicant dated 14.8.90 it is stated that the applicant had been putting repeated representations to the competent authority. But, it is now well settled that repeated representations do not extend the period of limitation.

Even though it is pleaded in the OA that the instructions contained in Ministry of Defence OM No.8(1)/76/D/(APPTS) dated 1.3.77 to be quashed as the same are discriminatory and violative of Article 14 of the constitution of India, we are unable to see what part of instructions is ~~in~~ discriminatory and how any of the provisions in the said OM is violative of Article 14 of the Constitution of India. Besides this, we are also unable to understand how it is open for the applicant to question the wires of the said OM dated 1.3.77 as the remedy of the applicant itself has become time barred. So, the applicant is not entitled to any of the reliefs as prayed for by him.

We may also refer to a decision reported in AIR 1975 SC 1269 Malcom Lawrence Cecil D'Souza Vs Union of India wherein it is held as follows:

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"It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority ~~may~~ should act with due diligence and promptitude and not sleep over the matter.....
.....

Admittedly in this case, the applicant's junior, respondent No.4, had been promoted as Stenographer Gr.II in the year 1988 January itself. This OA is filed in August, 1992. In view of the delay on the part of the applicant to approach this Tribunal, it will not be proper also to disturb the seniority of the 4th respondent that too after promotion of the 4th respondent as Grade II Stenographer ~~at this late hour~~. Seen from any angle, we do not think that this is a fit matter for adjudication and hence, we have no hesitation to reject this OA summarily under section 19(3) of the Administrative Tribunals Act. Hence, the OA is accordingly rejected leaving the parties to bear their own costs.

T. Chandrasekhara Reddy
(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 26 Feb., 1993

mvl

8/5/93
Deputy Registrar(J)

To

1. The Secretary, Ministry of Defence, Defence Headquarters, New Delhi-11.
 2. The Chief of Naval Staff, Naval Headquarters, New Delhi-11.
 3. The Flag Officer, Command-in-Chief, Headquarters, Eastern Naval Command, Visakhapatnam.
 4. One copy to Mr.S.Sitaramaswamy, Advocate, 3-4-498, Barkatpura, Hyd.
 5. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
 6. One ~~space~~ copy to Mr. P.B. Vijaya Kumar, Advocate for Dr. Vijaya Prasad Apartments, Gr-9, D.No. 1-9-32/6/A & B, Vidyanagar, Hyderabad.
 7. ~~one~~ ~~space~~ copy.
- pvm

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TEMPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V. NEELADRI RAO :V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY
:MEMBER(J)

AND

THE HON'BLE MR.

DATE: 26-2-1993

ORDER/JUDGMENT:

R.P./C.P/M.A. No.

in

..A.No.

699/92

T.A.No.

(W.P.No.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs.

