

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

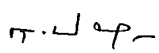
05.03.2014

OA No. 291/00124/2014


Applicant present in person.

Heard the applicant present in person.

The OA is disposed of by a separate order.


(M. Nagarajan))
Member (J)

ahq


(Anil Kumar)
Member (A)

**Draft order in OA No. 291/00124/2014
(Mahipal Yadav vs. Union of India & Others)
is submitted herewith for consideration.**

Anil Kumar
**(Anil Kumar)
Member (A)**

Hon'ble Member (J)

I agree
with the draft

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 291/00124/2014

Jaipur, the 05th March, 2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

Mahipal Yadav son of Late Banwari Lal by caste Ahir (Yadav) aged 57, resident of 13, Yadav Nagar, Nine Shop Panipech, Jaipur -17. Presently working as Superintendent (S&I) Central Excise Division-II, Vidhyadhar Nagar, Jaipur.

... Applicant

Applicant in person.

Versus

1. Union of India through the Revenue Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairperson, Central Board of Excise and Customs, North Block, New Delhi.
3. The Chief Commissioner, Central Excise, Jaipur Zone, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur.
4. The Commissioner, Central Excise, Jaipur-1, NSRB, Statue Circle, Jaipur.
5. Ms. Dolares M Durando, Joint Commissioner, New Customs House, Mumbai.

... Respondents

ORDER (ORAL)

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

"In view of the facts and grounds mentioned above, it is humbly prayed that this Hon'ble Tribunal may graciously be pleased to quash the order dated 20.01.2014 (Annexure A/1) and to allow this Original Application by directing the respondents Department to promote the applicant and place in seniority list above Ms D.M. Durando promoted as Joint Commissioner vide order dated 31.12.2013 issued vide F.No. 32012/46/2011-Ad-11 Ministry of Finance Department of Revenue, CBEC New Delhi and pay all consequential financial benefits with interest and cost."

Anil Kumar

2. The applicant submitted that he is senior to private respondent no. 5. That the applicant was appointed as Inspector on 02.11.1981 and was promoted to the post of Superintendent on 02.07.1997.

3. That private respondent no. 5, Ms. D.M. Durando, was recruited as Examiner on 18.11.1983 and she was promoted Appraiser (Analogous to Superintendent of Central Excise) on 01.01.1993. That private respondent no. 5 was further promoted to the post of Assistant Commissioner (Group A Service) way back on 18.12.2002. Since then she has got two more promotions and presently working as Joint Commissioner.

4. The claim of the applicant is that he is senior to private respondent no. 5 and, therefore, he should have been promoted earlier to private respondent no. 5 irrespective of the fact that the applicant and private respondent no. 5 are posted at different geographical region of the same department.

5. The applicant being aggrieved by the action of the respondents in promoting his junior sent a notice for demand of justice on 04.01.2014 (Annexure A/8), which has been rejected by the respondents vide letter dated 22.01.2014. Being aggrieved by the decision of the respondents, the applicant has filed the present OA.

Anil Kumar

6. From the perusal of the OA, it appears that it is hopelessly time barred. The applicant himself has stated that the applicant was promoted to the post of Superintendent on 02.07.1997 whereas the private respondent no. 5 was promoted as Appraiser (Analogous to Superintendent of Central Excise) w.e.f. 01.01.1993.

7. The Hon'ble Supreme Court in the case of **P.S. Sadasivaswamy vs. State of Tamil Nadu**, AIR 1974 SC 2271, observed as-

"Where a Government servant slept over the promotions of his juniors over his head for fourteen years and then approached the High Court with writ petition challenging the relaxation of relevant rules in favour of the juniors, the writ petition is liable to be dismissed in limine. Such an aggrieved person shall approach the Court at least within six months or at the most a year of promotion of his juniors.

It is not that there is any period of limitation for the Courts to exercise their powers under Art. 226, nor is it that there can never be a case where the Courts can not interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Art. 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to un-settle settled matters."

On the above principle, we observe that admittedly respondent no. 5 was promoted to the cadre of Appraiser (Analogous to Superintendent of Central Excise) w.e.f. 01.01.1993 whereas the applicant was promoted to the post of Superintendent on 02.07.1997. It is clear that respondent no. 5 has taken a march over the applicant on 01.01.1993 itself and the

Anil Kumar

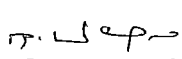
cause of action for the applicant to claim promotion to the cadre of Superintendent arose on 01.01.1993. As such as per the above principle laid down by the Hon'ble Supreme Court in the case of **P.S. Sadasivaswamy vs. State of Tamil Nadu**, AIR 1974 SC 2271, the applicant should have approached this Tribunal on expiry of six months from 01.01.1993 or at the most a year after the promotion of respondent no. 5, which falls on 01.01.1994. Unfortunately, the applicant raised his claim of promotion to the cadre of Superintendent on the ground that his junior was promoted after the expiry of 21 years. If the claim of the applicant were to be entertained at this belated stage, the same will result in unsettling the settled things which is not permissible in law.

8. The Hon'ble Supreme Court in the case of **Union of India & Others vs. M.K. Sarkar**, 2010(1) SCC (L&S) 1126 has held that when a stale or dead issue/dispute is considered and decided, date of such decision cannot furnish a fresh cause of action for reviving dead issue or time barred disputes. The issue of limitation or delay and latches has to be considered with reference to original cause of action and not with reference to day on which the order is passed in compliance with the Court's directions.

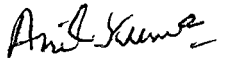
9. The applicant has not even filed any Misc. Application for condonation of delay. Therefore in view of the law settled by the Hon'ble Supreme Court, the present OA is dismissed at admission stage as having been filed after long delay and after the period of

Anil Kumar

limitation. The Registry is directed to send a copy of this order to the respondents.


(M. NAGARAJAN)
MEMBER (J)

AHQ


(ANIL KUMAR)
MEMBER (A)