

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of decision: 19/11/2009

OA 134/96

1. S.P.Gokte s/o Late Shri P.K.Gokte, Assistant Commissioner (Technical), Customs & Central Excise, Jaipur.
2. Trilok Chand Dhameja s/o Shri Laxman Das Dhameja, Assistant Commissioner, Central Excise Division, Udaipur.
3. Arjun Tulsani s/o Shri Khetan Mal, Assistant Commissioner (Valuation), Customs & Central Excise, Jaipur.
4. Mohan Meghnani s/o Late Shri Mitandass, Assistant Commissioner (Vig.), Customs & Central Excise, Jaipur.
5. J.S.Dayal s/o Shri Shrichand Dayal, Assistant Commissioner (Custom Tech), Customs & Central Excise, Jaipur.
6. J.P.Mukheja s/o Shri Manga Ram Mukheja, Superintendent, Central Excise & Customs, Jaipur.
7. Nemi Chand s/o Late Shri Gema Ram, Superintendent, Central Excise & Customs, Range Pali.
8. O.P.Bhatia s/o Late Shri Lekhraj Bhatia, Superintendent, Central Excise & Customs, Jaipur.
9. Virendra Narang s/o Shri S.S.Narang, Retd.Asstt. Commissioner, Customs & Central Excise, Jaipur, r/o 33, Sardar Patel Nagar, Ram Mandir Marg, Hawa Sarak, Jaipur.
10. S.C.Saxena s/o Shri M.P.Saxena, Retired Superintendent, Central Excise & Customs, Jaipur, r/o 6/301, Malviya Nagar, Jaipur.
11. Y.P.Malik s/o Late Shri M.D.Malik, Retired



Superintendent, Central Excise & Customs, Jaipur, r/o
Gali No.3, Ganpati Nagar, Jaipur.

12. B.S.Gupta s/o Late Shri Phool Chand, Retired
Superintendent, Central Excise & Customs, Jaipur, r/o
E-67, Shastri Nagar, Jaipur.

... Applicants

V/s

1. Union of India through Secretary, Ministry of Finance,
Department of Revenue, New Delhi.
2. Chairman, Central Board of Excise & Customs, North
Block, New Delhi.
3. Commissioner, Central Excise & Customs, New Central
Revenue Building, Statue Circle, Jaipur.
4. Shri P.S.Gotecha, Assistant Commissioner, Central
Excise Division, C-3, Shastri Nagar, Jodhpur.

... Respondents

CORAM:

HON'BLE MR.S.F.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicants

... Mr.R.N.Mathur

For the Respondents

... Mr.Ehanwar Bagri

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

By filing this OA, the applicants are seeking
redetermination of their seniority as Inspectors,
Superintendents and Assistant Commissioners in Central
Excise & Customs Department and seek to be placed above
those persons who were promoted as Inspectors from the
category of UDCs after 29.10.66. Shri P.S.Gotecha,




respondent No.4, was promoted as Inspector from the category of UDCs on 27.9.67 and the applicants claim to be placed above him in order of seniority as Inspectors and further higher grades. We were given to understand at the time of arguments that the applicants have all superannuated and are seeking benefits retrospectively consequent to re^{te}determination of their seniority.

2. All the applicants were initially appointed on the post of Sub Inspector in the years 1958 to 1963. Promotions from the post of Sub Inspector to the post of Inspector were regulated by a quota, as follows :-

- i) 50% by promotion from Sub Inspectors
- ii) 25% by promotion from the grade of UDCs
- iii) 25% by direct recruitment.


In the year 1966 the department took a decision to upgrade all the posts of Sub Inspectors to Inspectors. The upgradation was done in phases and in the year 1972 the entire cadre of Sub Inspectors was abolished. Sub Inspectors were to be promoted against the upgraded posts subject to clearance of the Departmental Promotion Committee. Main plea of the applicants is that after the decision taken in 1966 to upgrade the posts of Sub Inspectors, promotions from the category of UDCs came to a stop till such time the entire cadre of Sub Inspectors was abolished. They contend that promotion of respondent No.4 was thus in contravention of the rules as he was promoted on 27.9.67, which was not permissible. The applicants were all promoted in August, 1972 consequent to the decision taken by the respondents to abolish the entire category of Sub Inspectors by upgrading the posts to those of Inspectors.



Plea of the applicants is that since the decision of upgradation of the posts of Sub Inspectors to the post of Inspectors had been taken on 28.10.66, no UDC could have been promoted to the post of Inspector till such time all the Sub Inspectors had been promoted as Inspectors. In that view, they contend, the respondents committed an error which could be rectified only by assigning seniority to the applicants above respondent No.4.

3. Learned counsel for the applicants vehemently argued to establish the claim of the applicants on the ground that the controversy involved in the matter had been settled by the Kerala High Court in Writ Petition No.4489/77-A, K.Krishnan v. Union of India, decided on 20.3.79. By this judgement, the High Court had quashed the seniority assigned to the direct recruits and promotees from the cadre of UDCs above the petitioners who belonged to the same category, as the applicants in this OA. The learned counsel stated that based on this judgement of the Kerala High Court, relief was granted by the Calcutta Bench and Chandigarh Bench of the Central Administrative Tribunal in OAs 8/88 and 160 CH of 1988 and decided on 24.7.90 and 23.8.94 respectively. In both these judgements the ratio of the decision of the Kerala High Court in Writ Petition No.4489/77-A has been followed and the OAs have been allowed. Since the applicants belong to the same cadre and are similarly circumstanced, they are entitled to the same relief as granted to the applicants before Kerala High Court, Calcutta and Chandigarh Benches of the Tribunal.

4. The respondents have raised a preliminary objection on



the ground of limitation stating that the applicants are claiming relief w.e.f. 1967 and such a stale claim cannot be entertained by the Tribunal. Learned counsel for the applicants contested this plea of the respondents on the ground that in case a matter has been adjudicated upon by a court or Tribunal then all those in like circumstances are entitled to the same relief as granted to the applicants before the court. It is not necessary for each individual to approach the court and seek separate remedy. The learned counsel emphasised that it was for the department itself to have acted correctly once the decisions in the writ petition by Kerala High Court and in the OAs by Calcutta and Chandigarh Benches of the Central Administrative Tribunal had become final, as the SLP filed against Chandigarh Bench's decision also had been dismissed. In that view, the learned counsel contended that the department should have automatically extended the same benefit to the applicants, as they were similarly placed, and there should have been no need, in fact, for the applicants to come before this Tribunal. In support of his argument, the learned counsel cited a number of cases, which had also been cited in OA 8/88. These are listed below :-

- i) Amrit Lal v. Collector, EEC (Revenue), AIR 1975 SC 538.
- ii) K.I. Shephard v. Union of India, AIR 1988 SC 686.
- iii) The Direct Recruit Class II Engineer Officers Association v. State of Maharashtra, ELJ 1990 (2) SC 400.
- iv) Nripendra Ch. Dey v. Union of India, 1990 (13) AIC 344.



v) M.M.Pathak v. Union of India, AIR 1978 SC 803.

5. We find in this case, after reply filed by the department the rejoinder was filed by the applicants, which was replied to by the respondents. Again, additional rejoinder was filed, which was again replied to by the respondents. The respondents have also submitted written arguments to contest the claim of the applicants.

6. On the ground of limitation, as raised by the respondents, we have perused the cases cited by the learned counsel for the applicants. What comes out of these pronouncements is that when a principle of law has been decided by the courts, the concerned department should themselves apply the same to the employees who are similarly situated and there should be no need for the employees to litigate on the same matter. We also find that in case the employees, who claim to be similarly situated, do not get the benefit by the relief granted to others similarly placed and if they do not approach the courts in time, their petitions cannot be entertained if those are filed after abnormal delay. In this case, the applicants have placed reliance on the observations of Hon'ble the Supreme Court in the case of Amrit Lal v. Collector of Central Excise, Central Revenue, and Others, AIR 1975 SC 538, and the portion referred to by the learned counsel on behalf of the applicants is reproduced below :-

"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 grievance to Court."


We have perused this order of Hon'ble the Apex Court carefully and we find that these observations are preceded by following sentences; "It is evident that he had waited for a considerable period before making his representation in 1965 even if we were to assume that he did make such a representation then.....We do not think that, merely by filing repeated or delayed representations, a petitioner can get over the obstacles which delay in approaching the Court Creates because equitable rights of others have arisen." In para 16 of the same case, Hon'ble the Supreme Court have observed ;

16. Even if we were to assume, as the petitioner would like us to do, that a disregard of seniority determined solely by length of service was the only reason for his failure to get the senior grade in 1961, there is yet another hurdle before the petitioner which was not shown to be present in Ravi Varma's case (1972) 2 SCR 992 = (AIR 1972 SC 670) (supra), and, therefore, not considered or adjudicated upon in that case. There, no objection based on delay in applying to the Court was taken presumably because it could not be taken. But, a number of promotions having taken place between 1959 and the filing of



Amrit Lal Berry's petition in 1971, those who were so promoted and had been satisfactorily discharging, for considerable periods before the filing of the petition, their duties in a higher grade would acquire new claims and qualifications, by lapse of time and due discharge of their new functions so that they could not, unless relief had been sought speedily against their allegedly illegal confirmations and promotions, be equitably equated with the petitioner. The inequality in the equitable balance brought into being by a petitioner's own laches and acquiescence cannot be overlooked when considering a claim to enforce the fundamental right to equal treatment. To treat unequals equally would also violate that right. Although, it may not be possible for the State or its agents to plead an estoppel against a claim to the fundamental right to equal treatment, yet, if a petitioner has been so remiss or negligent as to approach the Court for relief after an inordinate and un-explained delay, he certainly jeopardises his claims as it may become inequitable, with circumstances altered by lapse of time and other facts, to enforce a fundamental right to the detriment of similar claims of innocent third persons."

It is, thus, clear from these observations that any person aggrieved by an order has to move the court in time as by lapse of time other would have occupied senior positions discharging superior functions and would have acquired rights of their own by virtue of such positions, where this



posision cannot be undone by agitating the matter after abnormal delays which cannot be satisfactorily explained. The respondents have referred to the case of Bhoop Singh v. Union of India, (1992) 21 ATC 675, to contend that as per the law laid down by the Hon'ble Apex Court in that case, the present OA is not maintainable on the ground of limitation. We have perused the order of Hon'ble the Apex court in that case, where it was held, as under :-

"It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years.

During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class



as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement."

It is, thus, clear from these pronouncements of Hon'ble the Apex Court that in absence of any convincing explanation such highly belated claims cannot be entertained by the Tribunal. The applicants before us are claiming seniority above respondent No.4 who, undisputedly, was promoted as Inspector on 27.9.67. This OA has been filed in 1996 i.e. after a gap of almost 29 years. By no stretch of imagination there could be any convincing reason to explain away this time lapse. Contention of the learned counsel for the applicants that in the matter of application of a decided principle there could be no limitation, is not acceptable in view of the clear law laid down by Hon'ble the Apex Court in the case of Bhoop Singh, mentioned supra. Kerala High Court had decided the matter way back in 1979 and if the applicants were so vigilant about their own rights, they could have agitated the matter soon after the decision had been pronounced by the Kerala High Court. They slept over their own rights all these while and this application undoubtedly is hopelessly barred by limitation.

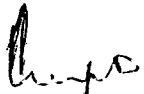
7. Even on merits, we find that the respondents have successfully been able to establish that the case of the applicants in this OA is clearly distinguishable from the cases before the Kerala High Court, Calcutta and Chandigarh Benches of the Central Administrative Tribunal. In all those cases, the applicants belonging to the same category,




as the applicants before us, had been actually promoted as Inspectors before the direct recruits or promotees from the category of UDCs. But the applicants of this OA before us were admittedly promoted almost five years after promotion of respondent No.4. There is absolutely no ground for considering that the applicants are similarly circumstanced as the petitioners before Kerala High Court and before the Tribunal in Calcutta and Chandigarh. We have perused the judgements of Calcutta and Chandigarh Benches of the Tribunal and it is very clear that the respondents made appointment to the posts of Inspectors by; i) direct recruitment, ii) by promotion of UDCs after upgradation of the applicants to the post of Inspectors (emphasis supplied). This is not the case with the applicants in this OA, who were all promoted in 1972, whereas Shri R.S.Gotecha, respondent No.4, was promoted in 1967. We find from the OA, rejoinder and the additional rejoinder filed by the applicants that they have repeatedly emphasised that respondent No.4 could not have been promoted in 1967 as after the order of 1966 to upgrade the posts of Sub Inspectors, the promotions from the category of UDCs or by direct recruitment had been stopped. We have perused the Government orders dated 11.10.1966 and 22.7.1972. There is no mention anywhere in these orders that the promotions from the category of UDCs should be stopped till all Sub Inspectors had been promoted as Inspectors. In fact, the orders clearly state that the Sub Inspectors have to be accommodated against the upgraded posts. Obviously, upgraded posts do not cover the posts of ~~Sub~~ Inspectors already in existence before the order of upgradation. So,

vacancies, we think, in those slots have apparently been filled up by promotion of UDCs. There appears to us no ground to find any infirmity in this action. Notwithstanding this, the fact remains that Shri R.S.Gotecha, respondent No.1, was promoted in 1967. If the applicants felt aggrieved by this order, they could have approached appropriate legal forum for remedy available within reasonable time as permitted by law. They cannot agitate ~~on~~ the same matter in the year 1996, when the grievance relates to 1967, and i.e. 18 years before even the Central Administrative Tribunal came into existence. We find this application, apart from being hopelessly barred by limitation, has no merits at all. The applicants' claim of being similarly circumstanced as the petitioners before the Kerala High Court or the applicants before the Tribunal in Calcutta and Chandigarh has no foundation.

8. We, therefore, dismiss this application as hopelessly barred by limitation as also on merits. No order as to costs.


(A.P.NAGRATH)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)