

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 3 APR 2002

OA 265/97 with MA No. 179/97

1. Ambarish Chandra Chaubey son of Shri P.L. Chaubey aged around 45 years, resident of 67/169, Pratap Nagar, Housing Board Colony, Sanganer Area, Jaipur. Presently posted as Conservator of Forest, H.Q., Department of Forest, Government of Rajasthan, Jaipur.

2. Hari Mohan Bhatia son of Shri S.R. Bhatia, aged around 46 years, resident of II/33 Gandhi Nagar, Jaipur. Presently posted as Conservator of Forest and O.S.D. (Forest), Special Schemes & I.R.D. Department, Government of Rajasthan, Jaipur.

....Applicants.

VERSUS

1. Union of India through Secretary, Ministry of Environment and Forests, Government of India, Paryavaran Bhavan, C.G.O. Complex, Lodi Road, New Delhi.

2. State of Rajasthan through Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur.

3. Shri Arun Sen. Presently posted as Conservator of Forest (Tandu Patta), Department of Forest, Government of Rajasthan, Van Bhawan, Jaipur.

....Respondents.



Mr. P.P. Mathur, Counsel for the applicants.

Mr. Bhanwar Bagri, Counsel for respondent no. 1.

Mr. U.D. Sharma, counsel for respondent no. 2.

Mr. P.V. Calla, Counsel for respondent no. 3.

CORAM

Hon'ble Mr. H.O. Gupta, Member (Administrative)

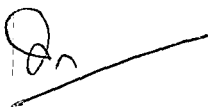
Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

One Shri Ambarish Chandra Chaubey and other Shri Hari Mohan Bhatia have filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 and have sought the following reliefs:-

- (i) That the Communications dated 6.8.96 (Annexure A-1) and 30.8.96 (Annexure A-2) may be set aside and quashed.
- (ii) That the respondents may be directed to place applicants above respondents No. 3 in the seniority/Civil list of the Indian Forest Service.
- (iii) That rule 11 of Indian Forest Service (Probation) Rules 1968 may be declared as ultra vires of the constitution of India being discriminatory, unreasonable, arbitrary and unjust.
- (iv) Any other appropriate order or direction which the Hon'ble Court thinks just and proper in the facts and circumstances of the case even the same has been not specifically prayed for but which is necessary to secure ends of justice may also be passed.



2. The brief facts of the case are that both the applicants have qualified examination conducted by the UPSC to the post of Indian Forest Service (I.F.S.) in the year 1976. Both the applicants were selected and allotted 1977 batch. A total number of 91 persons were recommended by the UPSC for appointment to the post of IFS. The name of the applicant no. 1 Shri Amarish Chandra Chaubey, was placed at sl. no. 19 and that of applicant no. 2, Shri Hari Mohan Bhatia, at sl. no. 88. Both of them were appointed on the post of IFS by separate orders under Rule 6 of the Indian Forest Service (Recruitment) Rules, 1966. They were subjected to the requisite training of Indian Forest College, Dehradun and Lal Bahadur Shastri National Academy of Administration, Mussoorie. After successful completion of the training, both the applicants were put on probation and posted against working posts. They were confirmed as per rules in force. The seniority of the applicant was to assigned as per Rule 11 of the Rules, 1968. The applicants have averred that they came to know that one Shri Animesh Shukla and others have filed an OA No. 567/90 before the Hon'ble Tribunal of Jabalpur Bench, which was allowed vide judgement dated 20.11.93 (Annexure A-8) and the persons from earlier batch were given seniority to the candidates, who passed the training in subsequent batches. This was done by giving harmonious construction to the Rule 11 of Indian Forest Service, 1968. The applicants in that OA belong to MP cadre. The applicants submitted a detailed representation vide letter dated 20.6.96 and claimed seniority over the respondent no. 3 in pursuance of the aforesaid judgement. But the claim of the applicants have been turned down vide communication dated 6.8.96 and 31.8.96 on the ground of limitation as well as on the ground that the aforesaid judgement related to the MP cadre and same can neither be applied nor any benefit of same



could be extended to the applicants. Hence this application.

3. The applicants have also filed a conditional MA qualifying it to be with an abundant precaution, giving the reasons for the delay and with a request to condone the delay. In the application for condonation of delay, the applicants have submitted that the matter was adjudicated by the CAT, Jabalpur Bench and after the adjudication, a Special Leave Petition, was filed, which was rejected by the Hon'ble the Supreme Court. There was delay of about 11 years when case was filed by the Jabalpur Bench and the law position has been settled/decided by the Hon'ble Tribunal at Jabalpur. The respondents ought to apply the same principle of fixing up the seniority of not only in respect of persons who have approached the Hon'ble Tribunal and obtained the orders but also in respect of applicants who were similarly situated persons. It has also been averred that the applicants have a case and identical OA deciding the question of law has been allowed. The Government is a modern employer and is not expected to raise the grounds of limitation. However, it has been said that there was no intentional delay in filing of the OA.


4. The case was heard on admission on 2.9.97 and show cause notices of admission of the OA & MA were issued to the respondents. Reply has been filed on behalf of respondent no. 2 and on behalf of respondent no. 3. No reply has been filed on behalf of respondent no. 1. Respondent no. 3 has filed reply to the MA and has pleaded that inter-se seniority was promulgated vide order dated 9.3.81 and further lists were published



between 1981 and 1996. It has also been objected that the necessary parties have not been impleaded. The judgement of the CAT, Jabalpur Bench cannot give a fresh cause of action and applicants have not shown any sufficient cause of delay. The application is also devoid of merits. The applicants have filed rejoinder to the reply, submitted by second respondent, and have not chosen to file rejoinder against reply filed on behalf of respondent no. 3.

5. We have heard the learned counsel for the parties and have carefully perused the records of this case. The learned counsel appeared on behalf of Union of India submitted that he did not want to file the separate reply and choose to adopt reply filed by the State of Rajasthan. Similarly, learned counsel for applicants declined to file any rejoinder to the reply filed on behalf of respondent no. 3. The learned counsel for the applicant also dropped his prayer No. 3 i.e. relating to declaring Rule No. 11 of Indian Forest Service (Probation) Rules, 1968 as ultra vires to the Constitution of India.

6. Lengthy arguments were held from both the sides on the preliminary objection of limitation. The learned counsel for the applicant has referred to number of judgements in support of his contention and to meet out the contention regarding objection of limitation e.g. (i) Kamlesh Jain (Smt.) & Others vs. Union of India of India & Others, 1994(26) ATC 888 (ii) S.M. Bhatti vs. Union of India & Another, SLJ 1990(1) CAT 474 (iii) Ram Lal Thakur & Others, SLJ 1990(2) CAT 132 (iv) K.C. Sharma & Others vs. Union of India & Others, 1997(6)SCC 721



etc. In these judgements, issues like wrong policy decision is a continuing wrong, well founded cases should not be rejected on ground of delay, provision of limitation should be construed liberally, representation rejected on ground of delay gives a fresh cause of action, order void can be challenged at any time have been dealt with. None of the judgements have any application to the controversy involved in the present case for the reasons brought out in the succeeding paragraphs.

7. The learned counsel for the respondents vehemently argued on the point that the applicant has not explained reasons for the delay for the period from 1977 till 1996. They have also submitted that there was no occasion to implement the decision of the Jabalpur Bench as the same related to the M.P. Cadre. The applicants belonging to Rajasthan Cadre and the said judgement could not have been implemented in respect of Rajasthan IFS Cadre. After all applicants belonged to educated class in the Society and ought to have known that the said judgement had no application in their case. As a matter of fact, we are in agreement of the contention of the respondents that the initial cause of action relating to the said OA arose in the year 1977 and as per Section 21(2)(a), the grievance in respect of which an application is made, the claim relating to any cause of action prior to 1.11.1982 i.e. three years prior to the establishment of this Tribunal cannot be entertained by this Tribunal. The abstract of Section 21(2)(a) is reproduced as under:-

"(2) Notwithstanding anything contained in Sub-Section(1) where -

(a) the grievance in respect of which an application is made has arisen by reason of any order made at any time



during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or as the case may be, Clause (b), of sub Section(1) or within a period of six months from the said date, whichever period expires later."

As per the above observation, the OA suffers on account of want of jurisdiction and well being beyond limitation period. Learned counsel for the applicant countered the position by submitting that their representation have been rejected on dated 6.8.96 and 31.8.96 and thereafter he has filed this OA is within the limitation period. The law is now well settled regarding the limitation and scope of Section 21 of Administrative Tribunal's Act by various Tribunals and by the Apex Court. The issue has been settled by Hon'ble the Supreme court in S.S. Rathore Vs. State of Madhya Pradesh, ATR 1990 SC 10, wherein it has been specifically provided that cause of action shall be taken to arise from the final order passed on appeal or representation where such appeal or representation is provided by the statutes. The extract of the relevant portion of the judgement is reproduced as under :-

"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 have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful 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 of 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."

8. In the present case, there was no provision of filing any representation under these statutory service rules. In any case, even the representation of the applicants have been rejected on the grounds of delay itself and no benefits of the same can be extended to the applicant as per the verdict of Hon'ble the Supreme Court in S.S. Rathore vs. State of M.P.,



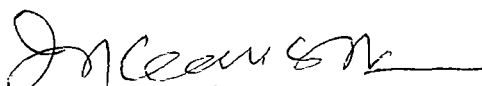
AIR 1990 SC 10. The benefit of limitation could be given from the final order if the said order is passed, deciding the appeal or representation submitted under statutory rules, which is not the case here.

9. The learned counsel for the applicant has stressed that the applicants have been waiting for implementation of the judgement of Hon'ble Tribunal of Jabalpur Bench(supra) in case of similarly situated persons & were also waiting for the decision of the SLP in the same manner. The CAT Jabalpur Bench judgement was published in SLJ 1994(1) CAT 417. It is not the case of the applicants that the said judgement of the Tribunal of Jabalpur Bench relating 30.11.93 did not come to their knowledge. Our attention was invited towards order of the Hon'ble the Supreme Court vide which and the SLP was dismissed as early as on 25.4.94. Even if the applicants wanted to depend upon the verdict of the Jabalpur Bench in Animesh Shukla's case they ought to have approach this Hon'ble Tribunal within the period of one year from the date of judgement i.e. upto 30.11.94. Even for execution of the judgement, the period of limitation is one year, applies as has been settled in Hukam Raj Khinvsara Vs. Union of India & Others, 1997(3) Supreme 555 by Hon'ble the Supreme Court. All the applicants have not even submitted any application in time for grant of the benefits in pursuance of the said judgement. We are not convinced with the reasons submitted for condonation of delay. Once they wanted to take advantage and get implementation of ^{a judgement of a} co-ordinating Bench in case of similarly situated persons, they ought to have taken recourse to the courts of law within the prescribed period as per law of limitation. We cannot congratulates the applicants for making speculations. There was no logic for waiting for



implementation of the judgement when the issue has been settled by the Apex court of the country and the judgement of the Tribunal attained finality, but still the applicants were waiting for the period of over two year. Thus even if the cause of action could be taken to arise as a result of the judgement of Hon'ble Tribunal of Jabalpur Bench in the year 1993 that could only meet the objection of jurisdiction of maintainability of the OA before the Hon'ble Tribunal but it could not satisfy the objection of limitation. We are of the considered opinion that the OA is not filed within the limitation as prescribed under Section 21 of the Administrative Tribunal and OA deserves to be dismissed on the ground of limitation alone. Since we have come to the conclusion that the OA deserves to be dismissed on the ground of limitation, no purpose would be served to examine and adjudicate upon the merits of this case.

10. In view of the above discussions, the OA No. 265/97 and the MA No. 179/97 are hereby dismissed. However, there would no order as to costs.


(J.K. KAUSHIK)

MEMBER (J)


(H.O. GUPTA)

MEMBER (A)