

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 561/2001
T.A. No.

199

*May kindly see
Gupta
21/1/03*

DATE OF DECISION _____

Smt. Kanta Mathur	Petitioner
Mr. C.B. Sharma	Advocate for the Petitioner (s)
Versus	
Union of India & Ors.	Respondent
Mr. U.D. Sharma	Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P.Nagrath, Adm.Member

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 ?

(A.P.Nagrath)
Member (A)

(G.L.Gupta)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 22/11/2003

OA 561/2001

Smt.Kanta Mathur, Head Clerk O/o DRM, W/Rly, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager, W/Rly, Ajmer Division, Ajmer.
3. Shri Mohan Lal, Chief Clerk through IOW (NG), Gandhidham, W/Rly.
4. Kum.Neelma, Chief Clerk through ASstt.Engineer, Abu Road, W/Rly.

... Respondents

CORAM:Rs

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

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

For the Applicant

... Mr.C.B.Sharma

For the Respondents

... Mr.U.D.Sharma

O R D E R

PER MR.A.P.NAGRATH

The applicant, Smt.Kanta Mathur, is a Head Clerk in the pay scale of Rs.5000-8000, who has filed this OA seeking the following relief :

"That the impugned order dated 28.8.2001 (Ann.A/1), rejecting her claim of benefits under restructuring/upgradation scheme, may be declared illegal and the same may be quashed and the respondents No.1 & 2 may be directed to extend the due benefits of restructuring/upgradation of the post of Chief Clerk as per her seniority/the law laid down by the Apex Court, to the applicant with all consequential benefits at par with his next junior."

2. Primarily, it appears that the applicant seeks quashing of the letter dated 28.8.2001 (Ann.A/1). A careful perusal of this letter at once brings us to this conclusion that the applicant has no locus-standi as far as this letter is concerned. It relates to placement of some of the employees in the pay scales of Rs.6500-10500 & 5500-9000. Apparently, the applicant submitted some representation dated 25.6.2002 in which she appears to have raised certain doubts about the order of seniority assigned to certain individuals belonging to reserved category and general category. Copy of the representation, in response to which the impugned order Ann.A/1 has been written to her, has not been brought to record. Since the applicant is only a Head Clerk, her concern regarding seniority of employees in the next two higher grades is beyond comprehension. However, we do find from the relief clause that the applicant has also made a prayer that the respondents be directed to extend the benefit of restructuring/upgradation

in her favour on the post of Chief Clerk.

3. In so far as her claim for being promoted to the post of Chief Clerk under the restructuring scheme, the relevant facts as stated by the applicant are that she was duly considered and promoted under the modified procedure adopted at the time of implementation of cadre restructuring scheme which became effective from 1.3.93. She was duly promoted as Chief Clerk in the then scale of Rs.1600-2660 and was granted the benefit of promotion vide letter dated 28.6.93. The date of effect of promotion in her case was indicated as 'from the date of taking over charge of the post', while some others in the said order were given the benefit w.e.f. 1.3.93 i.e. the date from which the restructuring scheme came into effect. It is stated that she was issued with a show-cause notice on 5.4.94 calling upon her to explain as to why her name should not be deleted from the panel of promoted persons for the reason that two persons senior to her had been mistakenly adjusted against the vacancies reserved for SC though they were senior as per general seniority. Consequently, another two persons belonging to SC were required to be promoted against the reserved vacancies and her name was required to be deleted by the respondents. She submitted her representation against the said notice on 11.4.94. After taking into account her response, the respondents deleted her name from the panel of Chief Clerk dated 15.6.93, by order dated 24.11.94. The applicant has submitted that she was continued on the post of Chief Clerk upto May, 1995 after which next selection was conducted. She participated in that selection but could not find place in the panel. Yet another selection was held in which also she was not successful and has been continuing to work as Head Clerk. Her plea is that the cause of action in her favour has arisen for her promotion under the restructuring scheme effective from the year 1993 for the reason that Hon'ble the Supreme Court in V.K.Sirothia's case had held that in the case of upgradation of posts reservation does not apply. This principle was followed by Jodhpur Bench of the Tribunal in the case of Y.C.Pathak v. Union of India, OA 157/97, decided on 24.1.2001. Having come to know of this development, she submitted a detailed representation alongwith a copy of the said judgement vide letter dated 10.8.2001. According to her, this representation was rejected vide impugned letter dated 28.8.2001 without considering the contents thereof.

4. In so far facts of the case are concerned, the respondents are not disputing these. However, they have raised an objection on the ground of limitation and have stated that this application is not maintainable. The final order, which affected her in this case, was issued on 24.11.94. However, she was permitted to continue on ad hoc basis as Chief Clerk till her reversion vide order dated 12.5.95 (Ann.R/1). The applicant did not

challenge these two orders. The cause of action, if any, can only be stated to have accrued on 15.6.93 or the latest on 24.11.94. Respondents' plea is that mere disposal of her belated representation cannot revive the cause of action and the same has necessarily to be reckoned from the date the final orders were passed reverting her.

5. The learned counsel for the applicant, Mr.C.B.Sharma, argued at length to stress that even though the applicant had been reverted in 1995 but the fact remains that that reversion was illegal because the same was done to accommodate two SC candidates thereby giving them excess representation in the cadre. He referred to the law laid down by the Apex Court in regard to the reservation as applicable to posts in the cadre and submitted that by promotion of two more SC candidates under the restructuring scheme, their representation exceeded the required quota. While admitting that the applicant had not challenged the orders when her name was deleted from the panel of Chief Clerk in 1994 and latter when she was reverted from the post of Chief Clerk (which she was occupying on ad hoc basis vide order dated 12.5.95) he, however, maintained that since legal position crystalised only after the law laid down by the Hon'ble Supreme Court in V.K.Sirothia's case that cause of action accrued afresh in favour of the applicant. He vehemently stressed that reservation should not have been applied at all while implementing the restructuring as has been sated by the Supreme Court in the case of V.K.Sirothia. His plea was that when the law laid down in Sirothia's case was also followed by Jodhpur Bench of the Tribunal in Y.C.Pathak's case, the applicant learnt of this development and immediately submitted her representation claiming her promotion to the post of Chief Clerk under the restrucruting scheme of 1993. In the said representation the applicant had also challenged placement of employees belonging to reserved categories in the grades of Chief Clerk and above. Since this representation came to be decided only on 28.8.2001, the OA cannot be stated to be barred by limitation.

6. Repelling the contentions raised on behalf of the applicant, the learned counsel for the respondents, Shri U.D.Sharma, stated that the Full Bench of the Tribunal in the case of M.L.Rajaram Naik & Ors. v. The Additional Director CGHS & Ors., 2001 (2) SLJ (CAT) 215, had held that in the matter of upgradation reservation principle is required to be followed. While taking the said decision, the Full Bench was fully cognigant with the decision of the Apex Court in V.K.Sirothia's case. The Full Bench decision has also been followed by ^{Jodhpur} ~~Jodhpur~~ Bench of the Tribunal in the case of M.C.Pandey v. Union of India & Ors., in OA 71/98, decided on 26.8.2002. The learned counsel for the respondents strongly urged that in this case the Tribunal is not required to go into the merits as the OA is hit by the

provisions of Section-21 of the Administrative Tribunals Act, 1985 (for short, the Act, 1985) inasmuch as the cause of action had arisen only in the year 1994 or latest in May, 1995 when the applicant was reverted from the post of Chief Clerk. Since the said orders were not challenged, the position became final and the applicant obviously accepted the same. Merely because some decisions have been delivered by the Apex Court or by some Benches of the Tribunal cannot give rise to a fresh cause of action to the applicant, whose matter remained finally settled much earlier. The learned counsel referred to the case of Union of India v. Arun Kumar Sharma, 1994 (4) SLR SC 557, wherein the Supreme Court had set aside the orders of the Tribunal for the reason that the Tribunal had directed consideration of the respondent for his regularisation even though his services had been terminated and the termination order had not been quashed. Shri Sharma submitted that similarly in the instant case the reversion order of the applicant remained alive and she cannot claim any benefit of promotion prior to that date as her reversion from the post of Chief Clerk is of a latter date and remains unchallenged.

7. To buttress his contention that any decision in some similar cases rendered by the Tribunals and Courts cannot become a basis for over-coming the delay which have occurred in the applicant's own case, he referred to the judgement of the Supreme Court in the case of State of Karnataka & Ors. v. S.M.Kotrayya & Ors., 1996 (6) SLR SC 664. Another case referred to by the learned counsel is Y.Ramamohan & Ors. v. Government of India & Ors., 2002 SCC (L&S) 911. In this case the applicant was duly apprised of his gradation list in 1983 showing his year of allotment as 1976. The appellant filed a representation before the Central Government years later and after the same was rejected, he sought legal remedy from the Tribunal. The Tribunal dismissed the claim on the ground of limitation and this order was upheld in appeal by the Supreme Court.

8. As we have observed in the beginning, there is no dispute on the facts. The only issue to be considered by us is whether the applicant, under the given circumstances, has a legal right to agitate for the benefit under the restructuring scheme for the post of Chief Clerk in the year 2001. The restructuring scheme became effective from 1.3.93 and the applicant is claiming that she had a right to be promoted to the post of Chief Clerk in that year. She was in fact promoted initially but later only her name was removed from the panel in April, 1994 for the reason that two of the SC candidates, who had been adjusted earlier against the reserved vacancies, were found to be senior to her in general seniority. Thus, against the reserved vacancies another two SC candidates were accommodated and her name got deleted. The final order deleting her name was passed on 24.11.94.

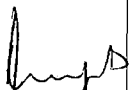
She was of course permitted to continue on ad hoc basis as a Chief Clerk till May, 1995 when by order dated 12.5.95 she was reverted. In the face of these facts, it is very clear that the cause of action had arisen actually in April, 1994 when her name was removed from the panel of regular Chief Clerks. There is no doubt that in the subsequent years the legal position in respect of reservation was elaborately defined by the Supreme Court in R.K.Sabharwal's case followed by Ajit Singh Januja-I & Ajit Singh Januja-II but such a latter development would not result into giving fresh cause of action in respect of those rights which had become final between the parties before the decision of the Supreme Court. V.K.Sirothia's case is a much latter development, wherein the Apex Court held that in upgradation reservation will not apply. The facts reveal that this judgement was followed by the Jodhpur Bench of the Tribunal in Y.C.Pathak's case and the applicant is taking shelter of that judgement to say that she came to know of Jodhpur Bench decision in the year 2001 and soon after she putforth her claim of getting similar benefits as she had been deprived of her promotion to the post of Chief Clerk because of applying reservation in upgradation.


9. We see no merit in this argument. Any person aggrieved of any order has to seek legal remedy within time as prescribed under Section-21 of the Act, 1985. Having failed to do that, no person can take a plea that in similar cases some law has been laid down by the Courts which would redetermine the rights of the applicant. In fact, in S.M.Kotrayya's case, the applicant before the Tribunal had sought the relief on the ground that he had filed the petition immediately after coming to know of the relief granted by the Tribunal in similar matter. The Tribunal had accepted the plea and allowed the application. Hon'ble the Supreme Court, while going into this question, set aside the order of the Tribunal and observed as under :

"8. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not proper explanation at all. What was required of them to explain under Sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay." (emphasis supplied)

10. We find in the instant case action of the applicant is similar to what the Apex Court had the occasion to observe in Y.Ramamohan's case. In that case, after the cause of action had arisen, the applicant filed a case in the Tribunal. The same was dismissed. The matter came up for consideration by the Apex Court. Their Lordship of the Supreme Court observed that; "the so-called representation filed by the appellants to the Central Government after disposal of their earlier application filed by the direct recruits is nothing but a subterfuge to get a period of fresh limitation. This method adopted by the appellants disentitles them to any relief" (emphasis supplied). In the case before us also, the applicant was clearly aware of her name being deleted from the panel of regular Chief Clerks as that had been done after serving due show-cause notice. Now by filing another application years later she is attempting to have the same cause of action revived. It is totally unacceptable, more so when she had also participated in two subsequent selections to the post of Chief Clerk and failed to find her place in the panel. In the facts of this case, we find considerable force in the contention of Mr.U.D.Sharma that this OA is hopelessly barred by limitation and that the Tribunal is not required to go into the merits of the case. Their Lordship of the Supreme Court had clearly held in Ramesh Chand Sharma v. Udham Singh Kamal & Ors., 2000 SCC (L&S) 53, that if an application is time barred and if no application is filed praying for condonation of delay u/s 21 (3) of the Act, 1985, the Tribunal should not decide the matter on merits. In view of this clearly settled legal position and taking note of the fact that the applicant has not filed any application for condonation of delay, we are not inclined to go into the merits of the case.

11. Consequently, this OA is dismissed but with no order as to costs.


(A.P.NAGRATH)
MEMBER (A)


(G.L.GUPTA)
VICE CHAIRMAN