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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 29.07.2004

Original Application No.87/2003.

K. P. Singhal S/o Late Shri G. M. Gupta, aged about 61 years, R/o 49, Patel Nagar, Bais Godam, Jaipur, Retired IAS Officer from the post of Special Secretary, Department of Relief, Government of Rajasthan, Secretariat, Jaipur.

... Applicant.

v e r s u s

1. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, New Delhi.
2. State of Rajasthan through Chief Secretary, Government of Rajasthan, Secretariat, Jaipur.

... Respondents.

Mr. S. C. Gupta counsel for the applicant.
Mr. H. C. Bairwa, Proxy counsel for
Mr. Bhanwar Bagri counsel for respondent No.1.
None is present for the other respondents.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R (ORAL) :

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

"(i) The Hon'ble Tribunal would be pleased to quash and set aside the impugned order dated 21st January 2003 (Annexure A/14).

(ii) To direct the respondent to allot the year 1987 instead of 1988 as year of allotment in the IAS cadre for the purpose of seniority and other consequential benefits.

(iii) To direct the respondents to place the applicant in the seniority of IAS cadre at appropriate place considering his year of allotment as 1987 instead of 1988.

(iv) To direct the respondent to give the applicant all the consequential benefits of year of allotment as 1987 in the IAS Cadre including the benefit of Selection Scale with effect from 01.01.2000 and of fixation of pay

and payment due from 01.01.2000.

(v) Further direct the respondent to give him the post retiremental benefits of re-fixation, pension, gratuity etc. on the basis of the allotment of the year 1987 and on the basis of the Selection Scale with effect from 01.01.2000.

(vi) Any other order which is just and proper in the facts and circumstances of the case, to which the applicant could not make a specific prayer due to oversight, slip or omission, may also be granted in his favour."

2. The facts of the case are that the applicant was appointed to the IAS on 20.02.1996 on the basis of his inclusion at Serial No.7B of the 1993-94 Select List for Rajasthan based on the recommendation of the Review Selection Committee Meeting for Rajasthan held on 09.01.1996. He was given deemed date of appointment of 31.12.1993, the date on which his junior in the year 1993-1994 Select List Shri R. N. Arvind was appointed. Accordingly, seniority of the applicant in the service was determined as per Provision of Rule 3(3)(ii) of the IAS (Regulation of Seniority) Rules,1987 as amended on 18.01.1988 and he was assigned 1988 as the year of allotment. Feeling aggrieved on account of his assigning the year of allotment as 1988, the applicant made representation to the Secretary to Govt. of India, Ministry of Personnel, PG & Pensions, Department of Personnel & Training, New Delhi, on 02.11.1996 (Annexure A/8) thereby stating that he should be granted 1987 as the year of allotment. The said representation was rejected on 15.03.1997 (Annexure A-9). Thereafter the applicant made further representation dated 20.12.2001 (Annexure A/12) regarding his claim for allotment of cadre seniority in the year 1987 in the IAS. Since no relief was given to the applicant, he subsequently filed OA No.623/2001 before this Tribunal. When the matter was fixed for hearing before this Tribunal on 21.11.2002, the only contention raised by the learned counsel for the applicant was that his representation dated 20.12.2001 has not been decided by the respondent No.1 and learned counsel for the applicant agreed that the applicant will be satisfied if the respondents are

directed to consider his representation dated 20.12.2001 sympathetically and pass a reasoned and speaking order within a specified time frame.

2.1 This Tribunal vide its order directed Respondent No.1 to consider the representation of the applicant submitted by him vide his letter dated 20.12.2001 and pass a reasoned and speaking order under intimation to the applicant within a period of two months from the passing of order. It was further observed that in case the applicant is aggrieved against the order so passed he is given liberty to approach the Tribunal once again by filing a fresh OA. Persuant to the order passed by this Tribunal, respondent No.1 vide impugned order dated 21.01.2003 (Annexure A/14) dismissed the representation of the applicant. It is under these circumstances the applicant has filed the present OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. Two sets of reply have been filed on behalf of respondent No.1 and 2 respectively. In the reply filed by respondent No.2 it has been specifically pleaded that the application filed by the applicant is hopelessly barred by limitation prescribed by Section 21 of the Administrative Tribunals Act, 1985, as the cause of action in favour of the applicant has arisen on 15.03.1997 when his representation dated 2.11.1996 was rejected and subsequent representation including the representation dated 20.12.2001 will not extend the period of limitation. At this stage it will be useful to quote Para 3 of the reply filed by respondent No.2 which will have bearing on the decision of this case, which thus reads as under :-

"3. That the contents of Para 3 of the Application are not admitted. It is stated that the main grievance of the applicant in this OA is about assignment of 1988 as his year of allotment vide the Government of India, Department of Personnel & Training order dated 10.06.1996, Annexure A/1, as the applicant claims that his Year of Allotment should be 1987. It is stated that against

the said order dated 10.06.1996, the Applicant had submitted his first representation on 2.11.1996, Annexure A/9, to the Department of Personnel and Training, New Delhi, which was rejected vide letter dated 15.3.1997, Annexure A/9. He had submitted another representation after more than three and half years on 6.12.2000, Annexure A/10, to the Department of Personnel and Training, New Delhi and had submitted reminder thereto on 2.2.2001, Annexure A/11, and thereafter, on 20.12.2001, Annexure A/12, which has been styled by him as a notice for demand of justice. No doubt, this Hon'ble Tribunal, vide its order dated 21.11.2002 passed in OA No.623/2001, was pleased to direct the Respondent No.1, the Union of India, to consider the said representation dated 20.12.2001 and pass a reasoned and speaking order thereon within a period of two months and the said speaking order has been passed by the Union of India vide order dated 21.1.2003, which is challenged by him in this OA. It is, however, submitted that the cause of action has originally arisen to the Applicant when his first representation dated 2.11.1996 was rejected vide letter dated 15.3.1997. The subsequent representations including the said representation dated 20.12.2001, which has been decided on 21.1.2003 as per the direction of this Hon'ble Tribunal will not have the effect of extending the time which has started running from 15.3.1997 and will not also have the effect of extending the period of limitation. However, this OA has been filed by him sometime in January, 2003. This OA is, therefore, hopelessly barred by limitation prescribed by Section 21 of the Administrative Tribunals Act, 1985 and, as such, the same, being not maintainable deserves to be dismissed at the stage of admission."

4. The applicant has filed rejoinder to the reply filed by respondent No.2. The averment made by the applicant regarding the limitation as can be seen from Para 1 of the rejoinder is that it does not lie in the mouth of the respondent to urge that this OA is time barred, particularly, when the earlier OA was entertained by the Hon'ble Tribunal and vide order dated 21.11.2002, this Tribunal was pleased to direct the respondent to consider the representation of the applicant submitted by him vide his letter dated 20.12.2001. However, it has been admitted that the

earlier representation was rejected by respondent No.2 on 15.03.1997 on wrong and misconceived premises taking as if the applicant was a member of armed forces which he never was. In fact, there was complete non-application of mind on the part of the respondent while rejecting the representation on 15.3.1997. Therefore, the applicant rightly gave further representations to the respondents which was never decided by the respondents. The representation of the applicant was decided by the respondent in view of the order of the Tribunal vide impugned order dated 21.01.2003 which has been communicated on 05.02.2003 and this OA has been filed on 24.02.2003, hence within limitation.

5. We have heard the learned counsel for the applicant on the question of limitation as no finding on merit is warranted unless the application is within limitation.

6. The fact that the applicant was given deemed date of appointment of 31.12.1993 in the IAS and he was assigned 1988 as the year of allotment persuant to the Review Selection Committee Meeting held on 09.01.1996 is not disputed. Further it is also not disputed that the applicant made representation dated 02.11.1996 (Annexure A-8) against assigning 1988 as the year of allotment, As according to the applicant he should have been assigned 1987 as the year of allotment. Admittedly, the representation was rejected on 15.03.1997 as can be seen from Annexure A-9 which was conveyed to the applicant. Thereafter the applicant did not take any step in the matter and after a period of about 3½ years he submitted another representation dated 06.12.2000 (Annexure A-10) followed by reminders dated 02.02.2001 and 20.12.2001, Annexure A-11 and A-12, respectively. Thereafter he filed OA against the representation dated 21.11.2002 which was registered as OA No.623/2001 and the said OA was disposed of by the Tribunal on the reequest of learned counsel for the applicant that he will be satisfied if a direction is given to Respondent No.1 to decide his representation dated 20.12.2001

sympathetically. The copy of this order has been placed on record as Annexure A-13. From the perusal of order of this Tribunal passed in earlier OA, it is clear that attention of the Tribunal was not invited to the fact that earlier the applicant has also filed representation against the year of allotment and the said representation was rejected in the year 1997. The Tribunal proceeded only on the basis that the applicant has made representation on 20.12.2001 which has not been replied and then issued directions to respondent No.1 to decide the representation of the applicant by passing a reasoned and speaking order. Thus, the contention made by learned counsel for the applicant that in view of the order dated 21.11.2002 rendered by this Tribunal, the application is within limitation cannot be accepted. Further contention raised by the applicant in the rejoinder that the respondents are estopped from raising this objection in view of the earlier decision of this Tribunal can also not be accepted. As can be seen from Para 3 of the order dated 21.11.2002 (OA No.623/2001) learned counsel for the respondent No.2 has specifically stated that earlier representation of the applicant in regard to the year of allotment had already been decided by the Government of India and communicated to the applicant way back in 1987. However, the latest representation given by the applicant, which is also on the same subject, has not been decided and no reply issued. On the basis of such contentions noticed in para 3 of the order it cannot be said that respondents No.2 has waved the objection regarding limitation. Further it can not also be legally construed that simply because this Tribunal in earlier OA has directed the respondents to consider the representation dated 20.12.2001 and pass speaking and reasoned order, this act will ipso facto amount to condoning the past delay. In fact this Tribunal in earlier OA has not given any finding regarding the fact that the OA was filed within limitation nor attention of the ~~Respondent~~ was invited to the fact that earlier the ~~Applicant~~ has made representation on 02.11.1996 and same has been rejected on 15.03.1997. As already stated above, the earlier application was decided on the basis of the statement made by the applicant that he will be satisfied if

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direction is given to the respondents to decide his representation dated 20.12.2001 and it was on this aspect that the Tribunal has given finding. Had finding of the Tribunal being invited to the fact regarding filing of earlier representation on 02.11.1996 against 1988 as the year of allotment in IAS and its rejection vide order dated 15.03.1997, the Tribunal would have definitely gone into the question of maintainability of this OA after a period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985, and this Tribunal could not have entertained the same.

6.1 That apart, matter can also be looked into from another angle. The applicant in earlier OA confined his argument to the effect that his representation dated 20.12.2001 which has not been decided by the respondent, be decided by giving time bound direction by speaking and reasoned order. Can he be legally granted the relief regarding 1987 as the year of allotment instead of 1988, when his representation on the same subject has been rejected in the year 1997 without praying for quashing the said order simply because he has filed another representation almost 4 years after such rejection ? If such a course is allowed to happen, then a person may file subsequent representation after a lapse of so many years, may be in a given case after 10 to 20 years and subsequently approach the Court/Tribunal for giving direction to the authorities to decide the same afresh. If such a course is permitted, it will amount to abuse of the process of court and employee can argue that since the Court/Tribunal has given direction to decide the representation, second case has been filed within limitation, as contended in the instant case. According to us such a course is not legally permissible.

7. On this aspect, the matter is no longer res-integra and the Hon'ble Supreme Court in the case of State of Orissa vs. Chandra Sekhar Mishra 2003 SCC (L&S) 838, has specifically held that where the employee has not approached the Tribunal within a period of

limitation, the Tribunal could not have entertained the application after the limitation period as prescribed under Section 21 of the Administrative Tribunals Act, 1985. The ratio as laid down by the Apex Court in the case of Chandra Shekhar (supra) is squarely applicable to the facts of this case. In the case before the Apex Court, the respondent therein was appointed as Homoeopathic Medical Officer and he was issued a notice dated 13.12.1977 informing him that his services would be terminated w.e.f. 31.01.1978. The respondent chose to challenge the order of termination by filing an OA in 1992. The Tribunal by order dated 23.11.1995 directed that a representation be filed with the State Government. The said representation was filed and the same was rejected. The respondent again approached the Tribunal and the Tribunal purporting to follow orders which had granted relief to other claimants allowed the OA and directed the appellant herein to appoint the respondent as a Homoeopathic Medical Officer with retrospective effect with all service benefits. The Apex Court held that there were two fundamental errors in that relief being granted to the respondent. Firstly, the services of the respondent were terminated w.e.f. 31.1.1978 and the respondent did not approach the Tribunal within the period of limitation provided by the statute. On this ground alone, the Tribunal should not have entertained the appeal. Secondly, the respondent was appointed on 1.12.1972 on contract basis for a period of three years. This period of contract was extended up to 31.1.1978. When the respondent was only a contractual employee, there could be no question of his being granted the relief of being directed to be appointed as a regular employee and ultimately the Apex Court allowed the appeal and the order of High Court and Tribunal were set aside.

8. In the instant case also, the representation of the applicant dated 02.11.1996 (Annexure A-8) against 1988 as the year of allotment instead of 1987 was rejected on 15.03.1997. Admittedly the applicant had not take any steps to challenge that order within the

time prescribed under Section 21 of the Administrative Tribunals Act, 1985. The contention raised by the applicant is that the representation dated 02.11.1996 was rejected on wrong and misconceived premises taking as if the applicant was a member of armed forces which he never was is of no consequence and shows complete non application of mind on the part of the respondents. Therefore, the applicant rightly gave further representation to the respondents which was never decided. According to us this will not be a sufficient cause for entertaining the application. Admittedly, the applicant took no steps in filing the application within one year when the representation was rejected on 15.03.1997 as prescribed under Section 21 of the Administrative Tribunals Act, 1985. No explanation has been given as to why he has not exhausted the remedies available to him under the Act within the prescribed period. That apart, in case the version of the applicant is accepted that the representation dated 15.03.1997 was rejected on wrong and misconceived premises, why the applicant slept over the matter for about 3½ years and made another representation only on 06.12.2000 (Annexure A/10) followed by subsequent reminders and another representation dated 20.12.2001 (Annexure A/12). Thus in the absence of satisfactory explanations ipse dixit of the applicant for condonation of delay cannot be accepted. Further the order obtained by the applicant from this Tribunal in earlier OA will not extend the period of limitation especially when the attention of the Tribunal was not brought to the facts regarding making of representation in the year 1996 and its rejection on 15.03.1997. Had these facts brought to the notice of the Tribunal and finding of the Tribunal invited on this point, the earlier application of the applicant could have been entertained. In the earlier OA the applicant has not made any grievance regarding rejection of his representation on 15.03.1997. The applicant was satisfied only with the disposal of his representation dated 20.12.2001 and it was in the light of his representation dated 20.12.2001 the Tribunal has given its finding to dispose of that representation.

Thus according to us, the present application of the applicant cannot be entertained as the applicant did not approach this Tribunal within a period of limitation provided by the Statute, in view of the ratio laid down by the Apex Court in the case of Chandra Sekhar Mishra (supra).

9. At this stage we may also notice some of authoritative pronouncements given by the Apex Court which will have bearing on the facts of this case. The ambit and scope of Section 21 of the Act was first considered by a 5-Judges Bench of the Supreme Court in S. S. Rathore v. State of Madhya Pradesh, AIR 1990 SC 10 ; [1989 (5) SLR 779 (SC)] in the backdrop of the dismissal of the appellant's suit as barred by time. Their Lordships of the Supreme Court referred to the provisions of the Limitation Act, 1963 and Sections 20 and 21 of the Act and held as under :-

" 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 of 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 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.

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.

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 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 just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

10. In Y. Ramamohan and Others vs. Government of India and others, (2001) 10 SCC 537 :[2001 (2) SLR 36 (SC)], the Supreme Court held that disposal of repeated representations made by the employee would not justify condonation of delay in filing the application. In that particular case, the appellant had approached the Tribunal in 1990 for quashing Common Gradation List which was communicated to him on 3.5.1983. The Tribunal rejected the application as barred by time. Their Lordships of the Supreme Court upheld the order of the Tribunal and observed as under :-

"In the case in hand, when the Tribunal has recorded a finding in the year earlier case that the gradation list had been duly communicated in the year 1983, we must assume that the applicants knew of the gradation list assessing them the year of allotment as 1976, in 1983, and therefore the so-called representation filed by the appellants to the Central Government after disposal of the 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. That apart, the gradation list of the year 1983 allotting 1976 as the year of allotment to the appellants has almost settled the seniority list, which need not be disturbed after this length of time."

11. In Director of Settlement and others v. D Ram Prakash, 2002 (2) RSJ 582 : [2002 (1) SLR 306 (SC)], the Supreme Court reversed the order of Andhra Pradesh Administrative Tribunal and held that the Tribunal should not have entertained the application ignoring the period of limitation. The facts of the case were that seniority of the respondent in the cadre of Surveyor was

determined taking his entry into service w.e.f. 1.2.1978. In the year 1985, he filed representation claiming that the period of training from 1.10.1971 to 1.2.1972 shall be counted for the purpose of fixation of seniority. The same was rejected. In 1996, he made fresh representation which was rejected on 17.10.1998. Thereafter, he filed an application before the Tribunal. The Tribunal accepted the application and directed the non-applicants to count the period of training for the purpose of fixation of seniority of the respondent. Their Lordships of the Supreme Court reversed the order of the Tribunal and held that it should have rejected the claim on the ground of limitation as provided under Section 21 of the Act.

12. In Secretary to Govt. of India v. Shivram Mahadu Gaikwad, 1995 Supp. (3) SCC 231 : [1995 (6) SLR 812 (SC)], the Supreme Court held that an application filed in the year 1990 questioning the order of discharge from service passed on 7.10.1986 was liable to be dismissed as barred by limitation. Their Lordships further held that in the absence of an application for condonation of delay, the Tribunal cannot entertain the application filed after the expiry of the period of limitation prescribed under Section 21 (1) of the Act.

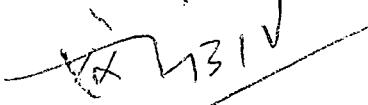
13. Yet for another reason the present application cannot be entertained. In Para 3 of the OA, the applicant has stated that the application is within limitation and has made the following averments :-

"3. That the applicant declares that the application is within limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 (in short Act of 1985), inasmuch as it is being filed within 30 days of the impugned order dated 21st January, 2003, which has been received by the applicant through proper channel on 5th of February, 2003, as stated herein above."

14. The respondent No.2 in Para 3 of the reply has categorically stated that the ~~application~~ ^{relevant} application is beyond the period of limitation, the ~~relief~~ part of which has been

extracted above. Despite the fact that the application is beyond limitation, the applicant has not chosen to file any application for condonation of delay as per provisions contained in Section 21 of the Administrative Tribunals Act, 1985. Even on this ground, the application cannot be entertained and the same is required to be dismissed in view of the law laid down by the Apex Court in the case of Ramesh Chand Sharma vs. Uddham Singh Kamal and Others 2000 SCC (L&S) 53. That apart, even if the reason as given by the applicant in the rejoinder is to be considered as the ground for condonation of delay, even then the same does not constitute a sufficient cause, as in the rejoinder the applicant has pleaded that his earlier representation has been rejected by the respondents on 15.03.1997 on wrong and misconceived premises. Therefore, the applicant gave further representation to the respondents which was never decided. According to us this cannot constitute a sufficient cause for condonation of delay. As already stated above, even the representation was filed after about $3\frac{1}{2}$ years of rejection of first representation dated 02.11.1996. In case the applicant was interested in pursuing the matter, what prevented him from taking steps immediately after the rejection of representation dated 15.03.1997, has not been explained at all. It is for the first time he filed OA in the year 2001 and in that OA, the applicant has only made submissions regarding disposal of his subsequent representation dated 20.12.2001. Thus according to us even the judgement rendered by this Tribunal in earlier OA will not extend the period of limitation especially when the earlier OA was filed much after the period prescribed under the Statute. Further the applicant has not filed any application for condonation of delay as required under Section 21 (3) of the Act. Even on this ground, the OA cannot be entertained in view of law laid down by the Apex Court in the case of Ramesh Chand Sharma (supra). That apart, if we ignore the statutory requirement of filing an application for condonation of delay, the reasons given by the applicant in rejoinder does not constitute sufficient grounds to entertain this

application at this belated stage. Further repeated representations will not extend the period of limitation as held by the Apex Court in cases reproduced in earlier part of this judgement. Accordingly, the OA is dismissed with no order as to costs.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)