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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JABALPUR

Original Application No. 601 of 2005

Jabalpur, this the 30th day of August, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Mr. A.K. Gaur, Judicial Member

V.T. Manjwani,
Administrative Officer,
All India Radio, Malwa
House, Indore (MP),
Laxmi Traders, Opposite
Railway Station, Indore.

- APPLICANT

(By Advocate – Shri A.N. Bhatt)

Versus

Union of India, Represented by :

1. The Director General,
All India Radio,
Govt. of India,
Akashwani Bhawan,
Parliament Street,
New Delhi – 110.001.
2. The Station Director,
All India Radio,
Shamala Hills, Bhopal (MP).
3. The Station Director,
All India Radio,
Malwa House, Indore, (MP).

- RESPONDENTS

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(By Advocate – Shri Umesh Gajankush)

ORDER

By A.K. Gaur, Judicial Member –

By means of this Original Application the applicant has claimed the following relief:

“8.1 The Respondents may be directed to extend the advantage benefits as given to Shri Suresh Kumar from the date of actual joining as an Administrative Officer,

8.2 The reply given is marked A/1 may kindly be quashed and the advantages of judgment dated 6.9.2005 in OA No. 269/2000 be extended to the applicant also,

8.3 All the consequential benefits as extended to Shri Suresh Kumar in compliance with the judgment of this Hon’ble CAT may kindly also be allowed,

8.4 Promotion as Sr. Administrative Officer pay fixation from the date of Shri C.L. Thakur as well as Shri Suresh Kumar alongwith arrears and interest may kindly be allowed,

8.5 Any other relief/s as deemed fit to this Hon’ble Tribunal may also kindly be allowed,

8.6 Cost of this OA may kindly be allowed.”

2. It has been contended on behalf of the applicant that he was senior to one Shri C.L. Thakur in the combined zonal seniority of Head Clerks/Accountants/Sr. Store Keeper in Madhya Pradesh Zone as on 1.4.1988. The said seniority list was circulated by the Station Director of All India Radio, Bhopal vide letter dated 3.5.1988. It is further submitted that from this seniority list it is evident that the name of the applicant’s junior Shri C.L. Thakur is appearing at serial

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No. 6, whereas name of the applicant is at serial No. 5 being senior. Copy of the seniority list had been filed as Annexure A-3. The Director General issued eligibility list on 15.10.1989 in which junior to the applicant i.e. C.L. Thakur was included and called but the name of the applicant was left out without assigning any specific reason. On the basis of the said eligibility list, a DPC was constituted by the Department and Shri C.L. Thakur who is admittedly junior to the applicant was promoted as Administrative Officer vide the order dated 6.3.1989. It is also urged on behalf of the applicant that similarly one Suresh Kumar who was also senior to Shri C.L. Thakur, being aggrieved by the promotion of Shri Thakur filed OA No. 562 of 1990 before this Tribunal and the same was decided on 13.5.1999. As per the direction of this Tribunal the respondents considered the promotion as well as the seniority of Shri Suresh Kumar from the date of promotion of his junior Shri Thakur i.e. from 23.7.1989. Shri Suresh Kumar was also given promotion as Senior Administrative Officer from 27.8.1994 i.e. the date from which his junior Shri Thakur was promoted. The copy of the judgment has been filed as Annexure A-4. Since the Department has not paid arrears of wages from 26.3.1992 to 18.11.1999, inspite of repeated representations made by the Shri Suresh Kumar he being aggrieved with the inaction of the department again approached this Tribunal by filing OA No. 269 of 2000 which has been decided on 6.8.2003 and Shri Kumar was granted the benefits of arrears of pay. It is also alleged that the applicant after his retirement finally settled at Indore and came to know that this Tribunal had decided the case in favour of the aforesaid employees and his case is identical and similar to those employees. It

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is also alleged by the applicant without specifying any date that after long persuasion and efforts he could get a copy of the judgment and submitted his representation to the respondent Department but the respondents have not paid any heed to the said representation. The copy of the judgment rendered in OA No. 269 of 2000 – Suresh Kumar Vs. Union of India decided on 6.8.2003 has been filed as Annexure A-5. It is also alleged on behalf of the applicant that the Department while implementing the orders of this Tribunal have considered the case of similarly situated/effectuated employees. Accordingly, the applicant has prayed for implementation of the orders in his case also but the Department declined the same and did not extend the benefits to the applicant. In support of his contention the applicant has also referred to several decisions of various Benches of this Tribunal and of the Hon'ble Supreme Court.

3. The pleas taken by the applicant in his Original Application were completely denied by the respondents by filing detailed reply. The main plea taken by the respondents in their reply is that the Original Application is grossly time barred and no reasonable or plausible explanation has been offered by the applicant in his delay condonation application. The delay condonation application filed by the applicant is also not supported by any affidavit. The delay in filing the Original Application has been explained in a casual manner. It is also argued on behalf of the respondents that Shri Suresh Kumar had timely come to this Tribunal for redressal of his grievances. But the applicant has approached this Tribunal after a number of years without explaining any cogent or plausible reasons in support of the

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claim. It has also been submitted on behalf of the respondents that the judgment of this Tribunal in OA No. 269 of 2000 filed by the Shri Suresh Kumar was specific and in personam and not a judgment in rem and as such the benefit of that judgment cannot be extended to the applicant. The learned counsel for the respondents has cited the judgment of the Hon'ble Supreme Court in 1996 SCC (L&S) 1488, State of Karnataka & Ors. Vs. S.M. Kotrayya & Ors., to buttress his contention that delay cannot be condoned on the ground that some judgment came to the knowledge of the applicant after sometime and as such same benefits should also be granted to him. He has also relied upon another judgment of the Hon'ble Supreme Court in JT 2002 (5) SC 367 E. Parmasivan & Ors. Vs. Union of India & Ors. The Hon'ble Supreme Court in a similar and identical situation declined to grant the benefit of the said judgment to the aggrieved person. In paragraph 4.7 of the reply the respondents have submitted that the applicant has filed OA No. 142 of 2000 before this Tribunal seeking promotion to the post of Administrative Officer and Senior Administrative Officer with effect from the date his junior Shri C.L. Thakur had been promoted. Accordingly, this Tribunal was pleased to direct the respondents to consider the case of the applicant for promotion from the date his junior has been promoted. It was also directed that arrears if any payable on account of any notional promotion would be restricted to three years from the date of filing of that Original Application. In compliance of this order the applicant was given notional promotion from the back date with arrears as restricted by the Tribunal. The respondents have not done anything in violation of the law.

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4. The applicant in turn filed rejoinder reiterating the facts already stated in the OA. Nothing new has been stated in the rejoinder.

5. We have heard Shri A.N. Bhatt, learned counsel for the applicant and Shri Umesh Gajankush, learned counsel for the respondents. We have also considered the plea of delay and laches advanced by the learned counsel for the respondents and we are wholly in agreement with the decision rendered by the Hon'ble Supreme Court in the case of S.M. Kotrayya (supra). No reasonable or plausible explanation has been offered by the applicant, in the application for condonation of delay, in the matter. Moreover, no affidavit has been filed by the applicant in order to support the delay condonation application. The Hon'ble Supreme Court has clearly observed that even in continuing cause of action the OA may be dismissed on the ground of delay and laches. In our view the aforesaid Original Application is also barred by the principle of constructive resjudicata under Section 11, explanation IV of CPC and in view of 1997 SCC (L&S) 135, Commissioner of Income Tax, Bombay Vs. T.P. Kumaran.

6. Accordingly, the Original Application is dismissed in view of the observations made above. No costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member
"SA"

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
पत्तिलिपि अद्योदितः--

- (1) उचित, उच्च न्यायालय वर एवोकिणेशन, जबलपुर
- (2) आवेदन श्री/श्रीमती/शु...के काउंसल
- (3) पक्षधी श्री/श्रीमती/शु...के काउंसल

(4) जंरकाल, को.प्र.अ., जबलपुर न्यायापीठ
सूचना एवं आवश्यक कार्यवाही हेतु

G.C. Srivastava
जय राजेश्वर
11.9.06

A.N. Bhatt
Dr. Bhat
Umesh Gajankush
Dr. Bhat

Issued
on 11/9/06
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