

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 7th day of February, 2005

ORIGINAL APPLICATION No.24/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

K.C.Meena
s/o Shri Har Sahai Meena,
a/a 45 years r/o village and
Post Bhanokher, District Alwar,
presently working as Assistant
Commissioner of Income Tax,
Circle-I, Ajmer.

.. Applicant

(By Advocate: Shri P.P.Mathur)

Versus

1. Union of India through
the Secretary, Ministry of Finance,
(Department of Revenue),
North Block,
New Delhi.
2. The Chairman,
Central Board of Direct
Taxes, North Block,
New Delhi..
3. The Chief Commissioner
of Income Tax Rajasthan,
Central Revenue Building,
Statue Circle, Jaipur.

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4. The Commissioner of Income Tax (Central),
Central Revenue Building,
Jaipur.

.. Respondents

ORDER (ORAL)

The applicant who was initially appointed as Income Tax Inspector in the year 1986 was promoted to the post of Income Tax officer in the year 1993 and further promoted to the post of Assistant Income Tax Commissioner on 17.10.2002. Earlier, he filed OA No.327/2003 thereby praying that the respondents be directed to grant him promotion to the post of Income Tax Officer w.e.f. 1.11.1991, the date from which Shri V.P.Meena was granted such promotion. As can be seen from the judgment dated 13.8.2003 rendered by this Tribunal in OA No.327/2003 and also the pleadings made in this OA, the grievance of the applicant was that on the directions given by this Tribunal in OA No.476/88 decided on 5.8.1993, the respondents changed the date of promotion of Shri S.K.Meena and Shri B.R.Meena vide order dated 12.6.97, but they have not changed the date of promotion of the applicant on the post of Income Tax Officer. It was further stated that the applicant made representation to the respondents in 1997 (Ann.A1 in that OA) but the same has not been decided and it was further pleaded that number of representations were sent from 1997 to 2003 but no

action has been taken by the respondents. However, it was further pleaded that the respondents have rejected the representation of the applicant vide order dated 26.2.2003 (Ann.A3) addressed to the Director, National Commission for SC/ST State Office, Jaipur who has exposed the cause of the applicant and a copy of the same was also made to the applicant which was subject matter of challenge in the earlier OA. This Tribunal after noticing the aforesaid facts, dismissed the OA as barred by limitation. At this stage, it will be useful to quote para 3 to 6 of the order dated 13.8.2003 passed in OA No.327/2003 which will have bearing in the present OA and thus reads:-

"3. It is manifest that the cause of action did not arise to the applicant within the period of limitation when the instant O.A. was filed. Admittedly, the applicant had been given promotion in 1993 on the post of Inspector. If according to him, the promotion ought to have been accorded to him from an earlier date he should have preferred representation and should have been taken legal steps permissible under law. Nothing was done.

4. In any case, the applicant has not filed this O.A. even within 6 months from the date of representation dated 11.8.97 (Ann.A1). It is significant to point out no application for condonation of delay has been filed by the applicant.

5. The contention of Mr. Mathur, learned counsel for the applicant that the limitation should be counted from the letter Annex. A.3 i.e. 26.2.2003, cannot be accepted. This letter was not addressed to the applicant and not even a copy was sent to him. In any case, repeated representations to the respondents directly or through some authorities do not extend the period of limitation. The O.A. being

barred by limitation is liable to the dismissed.

6. Consequently, the O.A. is dismissed in limine."

Now the applicant has filed this OA on the similar facts with additional averments that the respondents vide letter dated 13.7.2004 has conveyed that the matter was examined in consultation with Department of Personnel and Training who is of the view that no reservation issue is involved in the case of Shri K.C.Meena, Income Tax Officer. Thus, according to the applicant, the OA is within limitation as his representation has been rejected by the CBDT vide letter dated 6th July, 2004 which was conveyed to him vide impugned order dated 13.7.2004. The applicant has also filed application for condonation of delay alongwith this OA.

2. We have heard the learned counsel for the applicant at admission stage. We are of the view that the present OA is not maintainable and amounts to abuse of process of law in view of the findings given in the earlier OA, as such the same deserved to be dismissed. As can be seen from the order dated 13.8.2003 passed in earlier OA, relevant portion of which has been extracted in the earlier part of this order, it is clear that this Tribunal in earlier OA has given categorical findings that repeated representations to the respondents directly or through

some authority do not extend the period of limitation. The OA being barred by limitation is liable to be dismissed in limine and thus, it was accordingly, dismissed in limine. Now to entertain the present OA solely on the ground that the respondents vide letter dated 13.7.2004 conveyed the decision arrived at by the CBDT vide letter dated 6th July, 2004 is nothing but abuse of process of law especially when categorical finding has been given by this Tribunal in earlier OA that repeated representations to the respondents directly or through some authority do not extend period of limitation and the contention of the learned counsel for the applicant that limitation should be counted from the letter Ann.A3 i.e. 26.2.2003, copy of which was also made ^{available} to the applicant, was rejected by the Tribunal. Thus, once the Tribunal has given categorical finding in the earlier OA that the cause of action did not arise to the applicant within the period of limitation when that OA was filed and also that the applicant was given promotion to the post of Income Tax Officer in the year 1993 and if according to the applicant promotion ought to have been accorded to him from an earlier date, he should have preferred representation and should have taken legal steps permissible under law but nothing was done, it is not permissible for the applicant to re-agitate the matter again. This Tribunal in earlier OA has also categorically observed

that the applicant has not filed earlier OA even within six months from the date of representation dated 11.8.97 and no application for condonation of delay has been filed by the applicant. Thus, the aforesaid finding has remained unchallenged and we are of the firm view that the second OA on the same cause of action is not maintainable once the earlier OA was dismissed by this Tribunal on the ground of limitation.

3. Further, from the pleadings made in this OA and the material placed on record, it is evident that the applicant is claiming his promotion to the post of ITO w.e.f. 1.11.91 which promotion was granted to his junior Shri V.P.Meena. The applicant has not impleaded Shri V.P.Meena as one of the respondent in this OA who will admittedly be affected in case relief is granted to the applicant as in that eventuality the applicant will be senior to Shri V.P.Meena. Even on this count also, the applicant is not entitled to any relief. The matter on the point is squarely covered by the decision of the Apex court in the case of Arun Tewari and ors. Vs. Zila Mansavi Shikshak Sangth and ors., AIR 1998 SC 331 whereby the Apex Court in para 12 of the judgment after relying on the earlier decision of the Supreme court has held that it was not proper for the Tribunal to decide the application without making selected/appointed persons as parties, which would be directly affected by the outcome of the application.

In the instant case also, the persons who have been promoted as Income Tax Officer w.e.f 1.11.1991 till the promotion of the applicant on 8.6.1993 on the said post will be adversely affected in case the relief is granted to the applicant as they will become junior to the applicant in the seniority list of Income Tax Officer which may adversely affect their promotional avenues for higher posts.

4. In fact, the applicant want to unsettle the settled position whereby promotion has been granted to certain persons in the year 1991 as against the applicant who was granted such promotion on the post of Income Tex Officer in the year 1993. Thus, viewing the matter from any angle, we are of the firm view that the present OA is abuse of process of law and no relief can be granted to the applicant more particularly, when the earlier OA has been dismissed though on the ground of limitation but the net result of dismissal of the earlier OA was that the applicant was not held entitled for promotion to the post of Income Tex Officer w.e.f. 1.11.1991, the date from which Shri V.P.Meena was granted such promotion, as can be seen from the prayer made in Para 8(a) of the earlier OA.

(b)

5. Accordingly, the OA is dismissed with no order as to costs. Similarly, Misc. Application No.31/2005 for condonation of delay is also dismissed.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)