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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA No. 2050/2002 and
OA No. 497/2003

New Delhi, this the 6th day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member(A)

OA No. 2050/2002

Shri Nand Kishore
S/o Shri Mohan Lal
Under Secretary
Department of Fertilizer
Ministry of Chemicals & Fertilizers
Shastri Bhavan, New Delhi .. Applicant
(Shri B.Krishan, Advocate)

versus

1. Union of India, through
its
Secretary,
Ministry of Personnel, Public Grievances
and Pensions ..
Department of Personnel & Training
Lok Nayak Bhavan, Khan Market
New Delhi-110003.
2. The Director
Department of Personnel
Lok Nayak Bhavan, Khan Market
New Delhi-110003.
3. The Under Secretary
Ministry of Chemicals & Fertilizers
Shastri Bhavan, New Delhi .. Respondents
4. The Secretary
Ministry of Finance (Expenditure)
North Block
New Delhi. Respondents

(Mrs. R.O. Bhutia, Advocate)

OA 497/2003

Shri Beer Singh
S/o Late Shri Chhidda Singh
working as Under Secretary in the
Ministry of Law, Justice and Company Affairs
Department of Legal Affairs
Law Commission of India

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Shastri Bhawan,
New Delhi.

.... Applicant

(By Shri B.Krishan, Advocate)

vs.

1. Union of India, through its
Secretary
Ministry of Personnel
Public Grievances & Pensions
Department of Personnel and Training
Lok Nayak Bhavan
Khan Market, New Delhi.
2. The Director
Department of Personnel and Training
Lok Nayak Bhavan
Khan Market, New Delhi.
3. The Secretary
Ministry of Finance
Department of Expenditure
North Block
New Delhi.
4. The Under Secretary
Ministry of Law, Justice and Company
Affairs
Department of Legal Affairs
Law Commission of India
Shastri Bhavan
New Delhi.

.... Respondents

(By Mrs.R.O.Bhutia, Advocate)

ORDER

Justice V.S. Aggarwal

OA Nos.2050/2002 and 497/2003 raise similar questions of law and fact. They are, therefore, being disposed of by this common order. For the sake of convenience, we take the facts from OA No.2050/2002 (Nand Kishore v. Union of India and others).

2. Applicant (Nand Kishore) joined the Central Government service in the capacity of a

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direct recruit Assistant in the year 1976 on basis of his selection through the Union Public Service Commission. He belongs to the Central Secretariat Service borne on the cadre of Ministry of Chemicals and Fertilizers. The seniority of the applicant in the Assistant Grade had been fixed by the Department of Personnel in accordance with the rank given to him by the Union Public Service Commission.

3. The applicant contends that after completion of eligibility period of five years, he was supposed to be included in the Select List of Section Officers for the year 1981. The seniority once assigned to an Assistant in the Central Secretariat Service cannot be varied to his disadvantage. Instead of listing the applicant in the Select List of Section Officers' Grade for the year 1981, he was listed in the Select List for the year 1982. The applicant was promoted to the post of Section Officer in accordance with the position of his name in the Select List for the year 1982 vide notification issued on 12.10.1983. The pay of the applicant was also fixed in the revised pay scale. It has further been pleaded that the seniority list of Section Officers was circulated on 3.12.1997. The applicant even had represented but without

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any avail.

4. By virtue of the present application, the applicant seeks a direction to include him in the Select List of Section Officers of seniority quota for the year 1981 with effect from the date his immediate junior had been included with consequential benefits.

5. The representation of the applicant in this regard had been rejected pointing out that his name could not be included in the Select List of Section Officers for the year 1981 because of non-availability of vacancies in their cadre.

6. The application has been contested. A plea has been raised that the application is highly belated and is barred by time. The applicant admittedly joined the Central Secretariat Service as a direct recruit as Assistant. It comprises of four grades. While the grades of Deputy Secretary and Under Secretary are centralized, the other two grades, namely Section Officer and Assistants are decentralized into 33 cadres comprising one or more Ministries/Departments. The Department of Personnel and Training maintains a common Secretariat Seniority list of all 33 cadres as per the directions contained in the Central

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Secretariat Service Preparation of Common Seniority List) Regulations 1970. It has been pointed in terms that the grounds on which the representation was rejected, no rightful claim of the applicant had been refused.

7. The first and foremost question that came up for consideration was as to whether the application is within time or not. The learned counsel for the applicant urged that the cause of action should be taken from the date the representation had been decided. In the facts of the present case, the plea is totally without merit. The Supreme Court in the case of **S.S.Rathore v. State of Madhya Pradesh, AIR 1990 SC 10** held that repeated representations do not provide or extend the period of limitation. The precise findings read:-

"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."

Herein the applicant seeks seniority from 1981. If he had chosen to represent in the year 2000 only and allowed the period of limitation to lapse, it is too late in the day to rake up such a plea because the representation could only be decided when made. The belated representation in

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the facts will not extend the period of limitation.

8. The law has always been that there should not be inordinate delay in seeking the relief. In the case of **K.R.Mudgal and Others v. R.P.Singh and Others**, (1986) 4 SCC 531, the Supreme Court was concerned with somewhat similar situation. It was concluded that the promotion should not be disturbed after a long lapse of time and the petitions should not be entertained after inordinate delay. In the said case, the seniority was challenged after 18 years. The Supreme Court held that in such like cases, interference is not called for and referred to the facts:-

"The first draft seniority list of the Assistants was issued in the year 1958 and it was duly circulated amongst all the concerned officials. In that list the writ petitioners had been shown below the respondents. No objections were received from the petitioners against the seniority list. Subsequently, the seniority lists were again issued in 1961 and 1965 but again no objections were raised by the writ petitioners, to the seniority list of 1961, but only petitioner 6 in the writ petition represented against the seniority list of 1965. We have already mentioned that the 1968 seniority list in which the writ petitioners had been shown above the respondents had been issued on a misunderstanding of the Office Memorandum of 1959 on the assumption that the 1949 Office Memorandum was not applicable to them. The June 1975 seniority list was prepared having regard to the decision in **Ravi Varma case, AIR 1972 SC 670** and the decision of the High Court of Andhra Pradesh in the writ petitions

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filed by respondents 7 and 36 and thus the mistake that had crept into the 1968 list was rectified. Thus the list was finalised in January, 1976. The petitioners who filed the writ petition should have in the ordinary course questioned the principle on the basis of which the seniority lists were being issued from time to time from the year 1958 and the promotions which were being made on the basis of the said lists within a reasonable time."

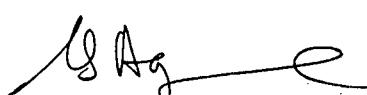
The principle which we have referred to in brief was thereupon stated to be:-

"The facts of this case are more or less similar to the facts in R.S. Makashi V. I.M. Menon, (1982) 1 SCC 379. In the said decision this Court observed at page 100 of the Reports thus: (SCC p.400, para 30).

"In these circumstances, we consider that the High Court was wrong in overruling the preliminary objection raised by the respondents before it, that the writ petition should be dismissed on the preliminary ground of delay and laches, inasmuch as it seeks to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents during the period of eight years that had intervened between the passing of the impugned resolution and the institution of the writ petition. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the government Resolution of March 22, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed."

8. We are in respectful agreement with the above observation."

Same was the position in the case of Prafulla Kumar Swain v. Prakash Chandra Misra and Others,



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1993 Supp. (3) SCC 181. There was inordinate delay in challenging the seniority list and the Supreme Court rejected the claim holding:-

"44. There have been laches on the part of the direct recruits in seeking the remedy. When the list was published in 1985 nothing prevented them to approach earlier. This is the point to be put against them.

45. That this position was known to the direct recruit (Prakash Chandra Mishra) is clear from paragraph 18 of his petition before the Tribunal. It reads thus:-

"18. Therefore, placement of respondents 42 to 94 as per Civil List corrected up to 1982 published in the year 1985 by the State Government who are promotees from amongst the Forest Rangers in Subordinate Service to Class II Service as Assistant Conservator of Forests in the year 1980 when this applicant was undergoing training at Burnihat, Assam, is patently illegal and an act without jurisdiction by the State Government of Orissa.

46. We do not want to unsettle matters which will lead to several complications."

9. Before venturing further, we must take note of the decision of the Supreme Court in the case of A. Sagayananthan and others vs. Divisional Personnel Officer, S.B.C. Division, Southern Railway, Bangalore, 1992 SCC (L&S) 665. Perusal of the facts clearly shows that the cited judgement was confined to the peculiar facts. The juniors of the said person had been promoted. The claim was that the juniors were promoted for justifiable reasons. The Supreme Court held that the said person had a genuine grievance so far as

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the supersession by the juniors is concerned. It was on these facts that it was held that the merits of the matter should be gone into. This is not so in the present case.

10. In addition to that, it must be mentioned that under Section 21 of the Administrative Tribunals Act, 1985, the period of limitation provided is one year from the date when the final order had been made. It has to be remembered that the Central Administrative Tribunal is the creation of the statute and draws all its powers from the provisions of the Act. The important words for the purpose of the present application are "from the date on which such final order has been made". The final order in the present case had been made in 1983 when the applicant's name was not included in the select list, but was included in the select list of 1982. He did not raise any grievance at the relevant time. Therefore, once he allowed the limitation period to lapse, the stale claim cannot be entertained.

11. The learned counsel urged that the seniority list had only been issued in the year 1997 (3.12.1997). Though this is not the claim of the applicant in the relief but if the even if the limitation was to be counted from that date, the net result is the same. The applicant had

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only represented almost three years thereafter.

12. There is even no application for condonation of delay and, therefore, the plea so much thought of and eloquently put forward must be rejected.

13. Confronted with that position, the applicant's learned counsel urged that this was a recurring cause of action and the application should be taken to be within time. We have no hesitation in rejecting the said claim. The recurring cause of action is one which is a continuing one. Here once the applicant's claim was ignored in the year 1983, the things had to settle. It cannot, there be termed that this is a recurring cause of action.

14. The net result of the aforesaid would that the applications, namely OA 2050/2002 and OA 497/2003 are barred by time. There is even no application for condonation of delay. Resultantly both the applications, on this short ground must fail. The same are dismissed. No costs.

S. A. Singh
(S. A. Singh)
Member (A)

V. S. Aggarwal
(V. S. Aggarwal)
Chairman

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