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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-3158/2003

New Delhi this the 21st day of May, 2004.

Hon'ble Shri Shanker Raju, Member(J)

Sh. K.C. Kohli,
Director(FIN/R&D),
Room No.127, Sena Bhawan,
New Delhi. Applicant

(through Sh. G.D. Rastogi with Sh.S.K. Kapoor,
Advocate)

Versus

1. Union Public Service Commission
through its Chairman,
Dholpur House,
New Delhi.
2. Union of India through
Secretary,
Ministry of Finance,
Dept. of Expenditure,
New Delhi. Respondents

(through Sh. Rajinder Nischal, Advocate)

O R D E R

Hon'ble Shri Shanker Raju, Member(J)

Applicant in this O.A. has sought quashing of order dated 4.6.2003 and grant of two additional increments with retrospective effect. Applicant who has superannuated contends that by virtue of his being second in merit he is entitled for five additional increments. On a representation by an order dated 27.3.1989 U.P.S.C. allowed applicant three additional increments which has been approved by the Ministry of Finance vide order dated 4.4.1989.

2. Applicant's counsel contends that the applicant preferred a representation on 5.1.2001 which

was rejected on 31.5.2001. According to the learned counsel other candidates from 1985 batch have been granted five advance increments being holder of 1st and second position denial to the applicant is violative of Articles 14 & 16 of the Constitution of India.

3. By placing reliance on a decision of Apex Court in Madras Port Trust Vs. Venkatadri (AIR 1979 SC 1144) it is contended that plea of limitation a technical one cannot stand to defeat the legitimate claims of the citizen.

4. On the other hand, respondents' counsel refers to a copy of cadre retention schedule. According to which in UPSC records regarding recruitment by direct selection are only kept for ten years. According to him once the applicant was granted three additional increments on 27.3.1989 the representation preferred after 12 years is an after thought as the grant of three additional increments has been accepted by the applicant without any objection. Accordingly, it is stated that the applicant has waived of his right and has acquiesced. Learned counsel for the respondents submits that he is not in a position to ascertain whether in 1985 batch five additional increments have been grant for want of record.

5. In the rejoinder applicant reiterate his plea.

6. Though limitation being a technical objection plays an important part to establish that one who sleeps over his right loses his remedy as well. Doctrine of waiver has also role to play. Applicant who has been granted three additional increments in 1989 had acquiesced and had accepted without putting an objection till his superannuation. At this belated stage when the records are not available with the U.P.S.C. and destroyed and the fact that applicant has also not established by placing on record any document to show that five batches of 1985 as well as prior to it had been granted five additional increments. The relief in the present case cannot be accorded to the applicant. Moreover, the applicant in a way impugns respondents' order dated 27.3.1989 after a lapse of about 14 years whereas limitation under Section 21 of the Administrative Tribunals Act, 1985 is one year from the impugned order. We are not fortified in our conclusion by a Constitution Bench decision of the Apex Court in S.S. Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10) and also on Ratan Chandra Samanta Vs. Union of India (JT 1993 (3) SC 418). Accordingly, the O.A. is hopelessly barred by limitation and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

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