
(2001) 08 GUJ CK 0013
In the Gujarat High Court

Case No : Special Civil Application No's. 2600 and 2601 of 2001

Prabhakant Ayodhyaprasad		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Citation : (2002) 22 GLH 452

Hon'ble Judges : N.G. Nandi, J;M.R. Calla, J

Bench : Division Bench

Advocate : S.N Shelat and P.H. Pathak and 2 in Special Civil application No. 2600 of 2001, Mihir Thakore and P.H. Pathak and 2 in Special Civil application No. 2601 of 2001, for the Appellant; Akil Qureshi, for Respondent No.1 and 2 in Special Civil Application No. 2600 of 2001, Girish Patel and Shalin N. Mehta and 6 in Special Civil Application No. 2600 of 2001, M.M. Parmar and 10 in Special Civil Application No. 2600 of 2001, Akil Qureshi, for Respondent No.1 and 2 in Special Civil Application No. 2601 of 2001, Girish Patel and Shalin N. Mehta and 6 in Special Civil Application No. 2601 of 2001, M.M. Parmar and 10 in Special Civil Application No. 2601 of 2001, for the Respondent

Judgement

M.R. Calla, J.—O.A.No. 524 of 1998 with Miscellaneous Application Stamp No. 685 of 2000, M.A.No. 752 of 2000, M.A.No. 670 of 2000 and M.A.No. 59 of 2001 were decided by the Central Administrative Tribunal, Ahmedabad Bench, on 12.3.2001 as have been filed by the 4 petitioners i.e. Mr. Prabhakant Ayodhyaprasad, Mr. Amardeep Kapoorsingh, Mr. O.P.Sharma & Mr. Ranjitsingh Ratansingh. Out of these 4 applicants who were there before Central Administrative Tribunal, 2 petitioners i.e.Mr. Prabhakant Ayodhyaprasad and Mr. Amardeep Kapoorsingh have filed Special Civil Application No. 2600 of 2001 and the other 2 petitioners i.e. Mr. O.P.Sharma & Mr. Ranjitsingh Ratansingh have filed Special Civil Application No. 2601 of 2001 against the very same judgements. Both these petitioners were filed on 10.4.2001 and whereas both these petitions are directed against the same order passed by the Central Administrative Tribunal, it is proposed to decide both these petitions by a

common judgement and order as under.

2. Both these matters came up before this Court on 11.4.2001. The Court (Coram: J.N.Bhatt & A.M.Kapadia, JJ) in view of the caveat entered on behalf of the respondents made the matters to stand over to 16.4.2001 with the order that any change in the present position till the next hearing takes place will be subject to the orders that may be recorded on the next date. Thereafter, on 25.4.2001, the same bench adjourned the matter to 2.5.2001. The matters then came up before us on 22nd June, 2001 on which date in addition to the caveat entered on behalf of the respondent No. 1 & 2, Mr. Akil Qureshi's appearance was also made. Mr. Girish Patel with Mr. Shalin Mehta appeared for the respondents No. 3 to 6. On behalf of all the parties, a request was made that the matters may be finally heard. The notice was then issued in both the petitions and the service was waived on behalf of the respondent nos.1 to 6 by their respective counsel representing them who had entered caveat and by Mr. Parmar who appeared on behalf of respondent No. 9 and 10 in each of these 2 petitions. The notice was therefore issued to rest of the respondents i.e. respondents No. 7 & 8 only stating therein that the hearing of the Special Civil Applications will take place on 11.7.2001 at 11:00 a.m. peremptorily and that if no appearance is made, the petitions will be determined in absence of the parties. It was submitted that the respondent nos.1 to 6, 9 & 10 are duly represented and in fact respondent No. 9 and 10 in Special Civil Application No. 2600 of 2001 are supporting the petitioners and similarly, respondent No. 9 and 10 in Special Civil Application No. 2601 of 2001 are also supporting the petitioners. The respondent No. 7 who is said to have retired belongs to the same class as that of respondent nos.3 to 6 and respondent No. 8 i.e. Indian Revenue Service Association is only a formal party which is supporting the cause of the petitioners in both these matters. Hence on the request of the parties, the notice issued on 22.6.2001 was treated as sufficient for final disposal and as requested by the parties, the matter was taken up for final hearing.

3. The affidavit in reply dated 13.4.2001 was filed on behalf of the respondent No. 1 & 2 and affidavit in reply dated 16.4.2001 has been filed by Shri K.P.Samuel and a further affidavit dated 31.7.2001 has also been filed by the respondent No. 4 i.e. Mr. K.P.Samuel in Special Civil Application No. 2600 of 2001. Similarly, in Special Civil Application No. 2601 of 2001, an affidavit in reply dated 13.4.2001 has been filed on behalf of respondent nos.1 & 2 and affidavit in reply dated 2.5.2001 has been filed on behalf of respondent No. 4, Shri K.P.Samuel and further affidavit in reply has been filed on 13.7.2001 by respondent No. 4 i.e. Mr. K.P.Samuel. On the basis of the pleadings as aforesaid, the parties have proceeded to argue the matter finally before us and the matter has been argued on several dates and arguments were concluded on 14.8.2001.

4. The present cases involve a dispute about the seniority between direct recruits and promotees as Asst. Commissioner of Income Tax under the Indian Revenue Service Rules, 1988 which provides for maintaining the ratio of 1:1 for fixing

seniority of direct recruits vis-a-vis promotees.

5. The grievance of the petitioners is that they had appeared in the Combined Civil Service Examination of 1990 conducted by Union Public Service Commission (hereinafter referred as "UPSC" for short) and on clearing the same, they have been appointed as Asst. Commissioners of Income Tax (Junior Scale) in July, 1991. According to the respondents nos.1 & 2, the Indian Revenue Service has a sanctioned strength of 2800 duty posts and 460 posts of various kinds of reserves. The aforesaid duty posts inter alia include 1986 posts in the Grade of Assistant Commissioner of Income Tax of which 1096 posts are in the Senior Scale (Rs.3000-4500) and 590 posts in the Junior Scale (Rs.2200-4000). Recruitment to the Service at the level of Asst. Commissioner of Income Tax (Junior Scale) is made partly by direct recruitment through the Combined Civil Services Examination and partly by promoting officers from Group-B as per the provisions of the Indian Revenue Service Rules, 1988. According to Rule 7 of these Rules, vacancies are required to be filled up in the ratio of 50:50 through direct recruitment and by promotion of Group-B officer. Vacancies in higher grades of the IRS are filled up by promotion from the lower grades. In this context, it was way back on 5.11.90 that an Office Memorandum marked Confidential and Most Immediate was issued by the Ministry of Finance, Department of revenue on 5.11.90 and it was considered that approximately 500 posts in various grades were vacant, bulk of which are in the Senior Scale of Asst. Commissioners of Income Tax and the Department had been recruiting 150 officers every year through the Combined Civil Services Examination but the actual availability of officers ranged from 110 to 125 during these years. The Department had sent a requisition of 200 to the U.P.S.C. for 1990 examination. It was felt that recruitment of such a large number of officers for the service would create promotional blocks and the Department therefore expressed the view that direct recruitment should be limited to 100 per year or so and in this view of the matter, the existing vacancies cannot be filled up as per the provisions of the IRS Rules, 1988. It was considered that the existence of large number of vacancies in service in IRS is coming in the way of collection of these increased sums of direct taxes as per the estimates of the Union Budget for 1990-91 and therefore in order to improve the performance of the Department and also to meet the demand of the Staff Association, the Department expressed the view that the part of the existing gap in IRS may be filled up, as a one time measure by promoting Group-B officers to the grade of Asst. Commissioner of Income Tax (Junior Scale) in relaxation of the quota rules provided for in Recruitment Rules. Rule 15 of the IRS Rules, 1988 is reproduced as under:-

"Power to relax - where the Govt. is of the opinion that it is necessary or expedient so to do, it may by order for reasons to be recorded in writing in consultation with the Commission, relax any of the provisions of these Rules with respect to any class or category of persons".

It was also considered by the Department of Revenue, Ministry of Finance that

earlier in 1983-84 also 258 vacancies were filled up by promoting officers in relaxation of the quota rules and promotions were made under a separate set of Rules called the Income Tax Officers (Group-A) Junior Scale (Special Departmental Recruitment) Rules, 1983 promulgated in consultation with the Department of Personnel & Training & UPSC. These Rules provided recruitment on the basis of assessment of records of service and an interview by an Assessment Board presided by Chairman/Member, UPSC. This Memorandum goes to show that the matter was considered under meeting taken by the Secretary (Revenue) in his chamber on 31.10.1990 which was attended by the Junior Secretary (Establishment) in the Department of Personnel & Training and Joint secretary and Additional Legal Advisor to the Government of India and the Department of legal Affairs and Ministry of Law and Justice. In this meeting, a decision was taken that:-

i. The proposed recruitment of 200 direct recruits per year through the combined Civil Services Examination is very high and the intake of such a large number of officer is likely to create promotion blocks and consequently cadre management problems in future. The ideal intake for the services as per the norms of the Department of Personnel and Training every year should not exceed 100. A revised requisition may therefore be sent to the UPSC for filling up only 100 posts through direct recruitment on the basis of 1990 examination.

ii. That 250 Group-B officers be promoted in excess of the quota prescribed for them by relaxing the quota Rule as a one time measure as was done in 1983-84.

iii. It was not considered desirable to promulgate separate set of Recruitment Rules for filling up these 250 posts in view of the possible delay involved and also the fact that there is a specific provision for relaxation in the IRS Rules, 1988.

iv. The inter-se seniority of the promotees under the relaxation clause shall be on the basis of their order of selection as determined by the UPSC and these officers will be placed and brought in the seniority list of Asst. Commissioner of Income Tax (Group A) Junior Scale below the direct recruits appointed to this grade during 1990 and also below the promotes who would be adjusted in roster of seniority with such direct recruits under sub-rule (iii) of Rule 9 of the IRS Rules, 1988.

On the basis of these decisions, the Department of Personnel and Training was requested to accord the approval to the proposal to fill up 250 posts of Assistant Commissioner of Income Tax (Junior Scale) as a one time measure, in relaxation of the Recruitment Rules by promoting the eligible Group-B Officers.

6. Through an Office Memorandum dated 27.11.90 issued by the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions in matter of filling up of vacancies in the grade of Assistant Commissioner of Income Tax in relaxation of the Recruitment Rules and the Department of Personnel & Training gave its No Objection to relax the Indian Revenue Service Rules, 1988 for the following 2 purposes:-

- i. to fill up 250 vacancies during 1990 by promotion from Group "B", restricting direct recruitment to 100-125 during the year;
- ii. to regular the interse seniority of direct recruits and promotees during 1990 in the manner proposed in para 4 (iv) of the O.M. dt. 5.11.90.

The concurrence of the UPSC was also directed to be obtained.

7. Thereafter, it appears that the UPSC sent a letter dated 20.3.1991 to the Government of India, Ministry of Finance, Department of Revenue that the Commission agrees for diversion of 176 vacancies from direct recruitment quota in the grade of Asst. Commissioner of Income Tax (Junior Scale) which is the actual shortfall in direct recruitment quota for the last 10 years for being filled by promotion in relaxation of Recruitment Rules as a one time measure. From the contents of this letter dated 20.3.1991 sent by UPSC to the Department of Revenue, it is clear that the UPSC conspicuously remained silent about the decision which was taken with regard to regulating the interse seniority of direct recruits and promotees in the manner as was proposed in Para 4(iv) of the Office Memorandum dated 5.11.90. True it is that the power to relax as per Rule 15 requires consultation with the UPSC but the contents of the Office Memorandum dated 27.11.90 shows that the Department of Personnel, Public Grievances and Pensions itself had agreed to the filling up of the vacancies by promotion in relaxation of the Rules and on the question of regulation of seniority interse of direct recruits and promotees in terms of Para 4 (iv) on the condition that the concerned Department shall obtain concurrence of the UPSC. In case where the power to relax has been given under the Rules subject to the requirement of consultation with the Commission but the Department of Personnel itself decides that such relaxation is to be given on the condition that the concurrence of the UPSC is obtained, notwithstanding the use of the word consultation, the relaxation is agreed on the condition of concurrence by UPSC and infact concurrence of the UPSC was sought through letters dated 18.12.90 and 20.1.91. As mentioned in UPSC's letter dated 20.3.91, it becomes clear that UPSC agreed only to the extent of diversion of 176 vacancies from direct recruitment quota to the post of Asst. Commissioner of Income Tax (Junior Scale) and remained conspicuously silent on the issue regarding seniority. Thus, there was no concurrence by UPSC whereas seeking concurrence by UPSC was a condition coupled with the relaxations proposed by the Department of Revenue.

8. In this background, the Indian Revenue Service Association filed O.A.No. 2404 of 1991 before the Principal Bench of Central Administrative Tribunal at new Delhi on 14.10.91 and obtained an ad-interim exparte order on the same day restraining the respondents from taking any further action in pursuance of the Departmental Promotion Committee meeting which had been held on 9.10.91 for a period of 14 days. In this O.A.No. 2404 of 1991, the prayer made by the Association and one another was as under:-

"A. Be pleased to declare the action of the respondents No. 1 and 2 not following

ratio of 1:1, as per rules to full up the post of Asstt. Commissioner (Jr.Scale) of Income Tax and not fixing the seniority of the applicant as per the above ratio as arbitrary, illegal, unjust and violative of Articles 14 and 16 of the Constitution of India and direct the respondents to fix the seniority of the applicants as per the rules sated above and grant all consequential benefits with 18% interest.

B. Be pleased to declare that respondent No. 1 and 2 were under obligation to implement the ratio of 1:1 between direct recruits and promotes, from the date of appointments of the applicants and further declare that the respondents No. 1 & 2 have intentionally not followed the same and favour the promotes and therefore direct the respondents to fix the seniority of the applicants as per the rule of 1:1 and grant all the consequential benefits to the applicants.

C. Any other relief to which this Hon"ble Tribunal deems fit and proper in the interest of justice."

9. The Principal Bench of Central Administrative Tribunal subsequently modified its order on 29.10.91 by permitting the respondents to make appointment to Indian Revenue Service by promotion subject to the condition that for each promotee a slot of direct recruit be kept in accordance with the rules. However, thereafter O.A.No. 2404 of 1991 was dismissed in default by the Principal Bench of the Central Administrative Tribunal at New Delhi on 1.9.1997. The contents of this order read as under:-

"Order (Oral) Hon"ble Smt.Lakshmi Swaminathan, Member (J)

1. The 1st order dated 26-8-1997 shows that sufficient indulgence has already been shown to the applicants who have again chosen not to be present at the time the case was called out twice today. We also note that by order dated 3.10.1996 the same situation had prevailed and that order had also been passed dismissing the

2. In view of the above circumstances, we have no alternative but to dismiss the case for default.

(R.K.Ahooja) (Smt.Lakshmi Swaminathan)

Member (A) Member (J)

3. Later Shri P.P.Khurana, learned counsel for the applicants appeared. He submits that he came at about 11:40 a.m. and made mention of the case at 12:15 p.m. that he understands that the case has been taken up before 11:30 a.m. when none was present on behalf of the applicants. He, therefore, requested that the case may be restored for hearing. However, the learned counsel for the respondents has left after the above order. It was recalled that Shri Uppal, learned counsel had mentioned before he left that he hoped `history will not repeat itself."

4. In view of what has been stated above, the prayer for restoration of the OA at this stage is not allowed.

(R.K.Ahooja) (Smt.Lakshmi Swaminathan) Member (A) Member (J)

10. Thereafter, the respondent No. 1 & 2 passed an order somewhere in 1997 giving seniority to all the promotee Income Tax Officers who were promoted on 8.11.91 above the petitioners and other direct recruits who were all appointed on 16.9.91. According to the petitioners, in June 1998, they came to know from the grapevine that the respondents No. 1 and 2 were likely to pass an order or had already passed an order assigning seniority to the 176 promotee officers in the cadre of Assistant Commissioner (Junior Scale) above the petitioners and other direct recruits appointed on 16.9.91 despite the fact that they were appointed against the posts not meant for promotes quota and it was only on the basis of relaxation as aforesaid that they were appointed in excess of promotion quota by utilising the quota of direct recruits. Reference is also made to the Civil List of Asst. Commissioner/Asst. Directors of Income Tax of 1995 from Sr.No. 1013 (A.D.Macwan) to Sr.No. 1771 to which the notes as under were appended:

Sr.No. 1013 to 1771

Note: The inter-se seniority of ACsIT (direct recruits vis-a-vis promotes and vice versa) whose name from S.No. 1005 and onwards shall be determined later.

The seniority of these officers vis-a-vis direct recruits is subject to the final outcome O.A.No. 2404 of 1991 filed before the C.A.T., New Delhi.

The inter-se-seniority of these officers vis-a-vis direct recruits shall be determined later.

The inter-se-seniority of these officers vis-a-vis promotes shall be determined later.

Reference is also made to yet another civil list of 1996 of Asst. Commissioner/Asst. Director of Income Tax to which the notes as under were appended:

Sr.No. 1783 to 1792

Note: The inter-se seniority of ACsIT (direct recruits vis-a-vis promotees and vice versa) whose name from S.No. 887 and onwards shall be determined later.

The seniority of these officers vis-a-vis direct recruits is subject to the final outcome O.A.No. 2404 of 1991 filed before the C.A.T., New Delhi.

The inter-se-seniority of these officers vis-a-vis direct recruits shall be determined later.

The inter-se-seniority of these officers vis-a-vis promotees shall be determined later.

Reference is also made to yet another civil list of 1997 of Asst. Commissioner/Asst. Director of Income Tax to which the notes as under were appended:

Sr.No. 1673 to 1676

Note: The inter-se seniority of ACsIT (direct recruits vis-a-vis promotes and vice versa) whose name from S.No. 770 and onwards shall be determined later.

The seniority of these officers vis-a-vis direct recruits is subject to the final outcome O.A.No. 2404 of 1991 filed before the C.A.T., New Delhi.

The inter-se-seniority of these officers vis-a-vis direct recruits shall be determined later.

The inter-se-seniority of these officers vis-a-vis promotees shall be determined later.

Reference is also made to yet another civil list of 1998 of Asst. Commissioner/Asst. Director of Income Tax to which the notes as under were appended:

Sr.No. 1765 to 1771

Note: The inter-se-seniority of these officers vis-a-vis direct recruits shall be determined later.

The inter-se-seniority of these officers vis-a-vis promotes shall be determined later.

11. The 4 petitioners filed Original Application No. 524 of 1998 before the Central Administrative Tribunal, Ahmedabad Bench in June 1998 praying for the following reliefs:-

"A. Be pleased to declare the action of the respondents No. 1 & 2 not following the ratio of 1:1, as per rules to full up the post of Asst. Commissioner (Jr.Scale) of Income Tax and not fixing the seniority of the applicant as per the above ratio is arbitrary, illegal, unjust and violative of Article 14 & 16 of the Constitution of India and direct the respondents to fix the seniority of the applicants as per the rules stated above and grant all consequential benefits with 18% interest.

B. Be pleased to declare that the respondent No. 1 & 2 were under obligation to implement the ratio of 1:1 between direct recruits and promotees; from the date of appointments of the applicants and further declare that the respondents No. 1 & 2 have intentionally not followed the same and favour the promotees and therefore direct the respondents to fix the seniority of the applicant as per the rule of 1:1 and grant all consequential benefits to the applicants.

C. Any other relief to which this Hon'ble Tribunal deems fit and proper in the interest of justice."

The petitioners also sought interim relief against the respondent nos.1 & 2 from giving further promotion to the promotee Asst. Commissioner of Income Tax to the post of Dy. Commissioner (now designated as Joint Commissioner) without finalising the seniority position of the petitioners as per ratio of 1:1 for direct recruits and promotees and further sought a direction that the respondents should give promotion strictly as per the ratio of 1:1 in the cadre of Asst. Commissioner of Income Tax and further promotions. On 5.4.1999, the Central

Administrative Tribunal passed an ad-interim order directing that any promotion made in the cadre of Asst. Commissioner of Income tax on the recommendation of D.P.C. shall be made on condition that they will keep a slot for a direct recruit to maintain a ratio of 50:50 between the promotes and direct recruits. On 4.2.2000, the Tribunal passed a final order directing the respondent No. 1 that promotions to Deputy Commissioner (now designated Joint Commissioners) onwards should be made strictly on the basis of a seniority list of Assistant Commissioners maintaining the ratio of 50:50 between promotes and direct recruits and that all promotions made after filing of Original Application shall be subject to the result of this O.A.No. 524 of 1998. A copy of this order was been annexed to the petition as annexure J at Page 117.

The promotee officers aggrieved from this interim order were joined as respondents and they filed a Special Civil Application No. 11818 of 2000 in the High Court of Gujarat seeking the following reliefs:-

"A. Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned order dated 4.2.2000 passed by the Central Administrative Tribunal in O.A.No. 524 of 1998 preferred by the respondent Nos. 4.

B. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the present respondent Nos.1 and 2 to effect further promotions to the post of Joint Commissioners of Income Tax on the basis of the seniority conferred on the petitioners at the time of their promotion to the post of Assistant Commissioners of (Income Tax in the year 1991 which was subsequently adhered to and followed by the present respondent No. 2 at the time of granting of promotion to the post of Dy. Commissioners of Income Tax in the year 1995.

C. Pending final hearing and disposal of the writ petition, Your Lordships may be pleased to stay the execution and implementation of the impugned order dated 4.2.2000 passed by the Tribunal; and

D. Your Lordships may be pleased to pass any other appropriate order in the interest of justice."

12. The Division Bench of this Court on 6.12.2000 disposed of the said Special Civil Application without interfering with the order passed on 4.2.2000 by CAT and directed the Tribunal to dispose of the O.A.No. 524 of 1998 within a period of 30 days.

13. The respondent No. 1 & 2 in the reply before the CAT relied upon the Office Memorandum of the Department of Revenue, Ministry of Finance dated 5.11.90 to contend that they had rightly given the seniority to the promotees promoted on 8.1.91 above direct recruits appointed on 16.11.91. The petitioners then moved a Miscellaneous application seeking amendment to the Original Application whereby they challenged the Office Memorandum dated 5.11.90 and

in particular Clause 4(iv) thereof.

14. On 12.3.2001, the CAT at Ahmedabad rejected O.A.No. 524 of 1998 and also rejected the Misc. Application seeking amendment to the Original Application by detailed judgement holding that the Original Application was barred by limitation and also on the ground that the petitioners were precluded from bringing a fresh O.A.No. 524 of 1998 on the same cause of action as the O.A.No. 2404 of 1991 filed by the IRS Association was dismissed for default by the CAT, New Delhi on 1st September, 1997. It may be pointed out that the petitioners had also moved before the CAT an application seeking condonation of delay but the condonation of delay was declined and the O.A. was rejected as being time barred.

15. Being aggrieved by this judgement and order dated 12.3.2001, the present petitioners have preferred these two petitions before this Court.

16. Before us, on behalf of both the sides, detailed reference has been made to the pleadings in support of their respective claims. On the basis of pleadings on behalf of the petitioners, it has been sought to be contended that there is no question of the petitioners being precluded from filing a fresh Original Application. On their behalf in this regard, it has been argued that apart from the fact that these 4 petitioners were not the parties in the petition which was filed by Indian Revenue Service Association and therefore there is no question of the O.A. not being maintainable at their instance, it has also been submitted that the prayer made in the present O.A.No. 524 of 1998 was different then the prayer which was in the earlier O.A. It has also been submitted that the present O.A.No. 504 of 1998 has been filed on a different cause of action and merely because the earlier application filed by the Association had been dismissed by CAT in default and no steps were ever taken in getting it restored before the CAT, the original application filed by the present petitioners could not be dismissed by the CAT on the basis of the principles of estoppel. On the question of limitation also, it was submitted that in the first instance it was case of fresh cause of action also and when these facts came to their knowledge constituting a fresh cause of action they had filed the Original Application with detailed averments in this regard. It was also submitted that even if it is held that it was not a case of fresh cause of action in the facts and circumstances of the case, their prayer for condonation of delay ought to have been granted and the CAT has erred while rejecting the O.A. on the ground of limitation by treating it as time barred. It was also submitted that infact the petitioners herein have no grievance against the promotion as such given to the respondents. Their grievance is that promotees were appointed on a later date and they had been appointed in relaxation of quota rules and infact they have occupied the vacancies which were meant for direct recruits, they have been granted higher seniority over the batch of the direct recruits to which the petitioners belong and there case is that so far as the seniority is concerned, since the question had never been finalised and no seniority list as such had been issued, there is no question of rejecting the O.A. on the ground that the same is time barred. It is their specific case that the disclosure with

regard to the Office Memorandum was made for the first time on 2.3.2001 and on that basis an amendment had also been sought which too has not been considered and the petition has been rejected. So far as the petitioners are concerned, they have not ventured to say that they were not members of the Indian Revenue Service Association but it has been stated that the Association is not a registered Association and even this fact has been pleaded in this writ petition but the same was not pleaded before CAT. However, the fact remains that the petitioners sought the condonation of delay mainly on the ground that they had been waiting for the decision of CAT in the Original Application which had been earlier filed by the Association and in that process if the original O.A. was rejected in 1997 in default and not on merits and after the rejection of that O.A. within a period of 1 year, the present O.A. had also been filed and therefore it was a sufficient ground for the purpose of condonation of delay and in any case the O.A. could be considered on merits on the basis of amendment which ought to have been allowed.

17. On behalf of the respondents, it was contended that in the present case, the factual position that the respondents were being treated senior to the petitioners was known to them right from the beginning and that the basic fact which has given rise to the controversy, which has given rise to the filing of this O.A. and which had given rise to the earlier application filed by the Indian Revenue Service Association is the same. Mr. Girish Patel has also argued at length that the mere use of different phraseology in the relief cannot change the nature of the basic case. The relief sought in the present O.A. was almost the same as it was claimed in the earlier petition. Mr. Patel has submitted that it was not a case of any illiterate or poor persons or persons coming from tribal area or weaker sections of the society where they may not be knowing the actual legal position who may not be aware of their rights. He has submitted that here is a class of officers who were fully aware as to what was going on with the question of seniority. He has also submitted that though the civil list may not be authentic for seniority but the same did reflect the seniority and so far as the 'note' is concerned, it is submitted that the seniority was made only subject to result of the O.A. and otherwise it stood determined as reflected in the civil list. The note that the seniority shall be determined later on was not concerned with the case of the present parties and mere non-mentioning of such a note in the ultimate civil list of 1998 cannot save the limitation in favour of the petitioners. He has submitted that the petitioners have been through out sleeping over their rights and did not pursue the remedy of their own and if they have depended upon the earlier application filed by the Association, they should sink and sail with the fate of that O.A. which had been filed by the Association and otherwise the law of limitation should apply with the same rigour against them.

18. Mr. Mihir Thakore appearing for the petitioners has cited the following cases:-

Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others, . AIR 54 Bom 491 Baroda Oil Cakes Traders Vs. Purshottam Narayandas Bagulia & Anr.

Mukha Singh and Others Vs. Ramchariter Singh and Others, .

19. Mr. S.N.Shelat appearing for the petitioners has cited the following cases:-

AIR 1969 Cal 159 Kartik Chandra Pal & Ors. Vs. Naokhali Union Bank Ltd. JT 2000 (5) 390. Indranand Mishra & Ors. Vs. State of Bihar & Ors.

20. Mr. Patel has cited the following cases:-

J.C. Yadav and others Vs. State of Haryana and others, , Ashok Kumar Uppal and Others Vs. State of Jammu & Kashmir and Others, , Sandeep Kumar Sharma Vs. State of Punjab and others, , Mohd. Yunus Vs. Mohd. Mustaqim and Others, , Sadhu Ram Vs. Delhi Transport Corporation, , . Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, , State of Orissa and Others Vs. Shri Arun Kumar Patnaik and Others, ,. Ramesh Chand Sharma Vs. Udhham Singh Kamal and Others, . 1995 (3) SCC 231 Secretary to the Govt. of India Vs. Shriram Mehadu Gaikwad.

It was also submitted that the law of limitation has to be strictly followed , CAT is bound by Section 21 of the Central Administrative Tribunal Act and the petitioners application has been rightly rejected by CAT on both grounds with regard to the maintainability of the application as also the limitation.

21. Mr. Akil Qureshi appearing on behalf of the respondents No. 1 & 2 has cited the following cases:-

State of Karnataka and Others Vs. S.M. Kotrayya and Others, ,. Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, .

22. In rejoinder, the cases of Vajesingh Salambhai Naik and Others Vs. State of Gujarat and Another, and AIR 1996 SC 2437 were also cited and so far as the full bench decision reported in 1994(1) GLH 16, it was submitted that in this case, the decision of the Supreme Court in the case of AIR 84 SC 38 in the case of Mohd. Ynus Vs. Mohd. Mustaqim & Ors. was also considered. So far as the Full Bench decision of the Gujarat High Court which was relied upon by the respondents, Mr. Shelat submitted that against this decision, the matter was taken up to the Supreme Court and the decision was reversed by the Supreme Court on 8.1.1995.

Reliance was also placed by Mr. Shelat on an unreported decision of the Division Bench in CA No. 2143 of 2000 in LPA No. 325 of 2000 rendered on 13.9.2000 in the case of State of Gujarat Vs.Mannoharsinhji Pradhyumansinhji Jadeja.

23. We have considered the submissions as have been made before us. We find from the impugned decision that the O.A. has been rejected on two grounds. One is that the application was not maintainable at the instance of the four petitioners in view of earlier O.A. filed by the Association which was dismissed in default. Whereas, it is the order of dismissal in default which is passed in the earlier Original Application which has given rise to the whole controversy and such orders of dismissal in default create so many complications and give raise to

further litigations also, in absence of any decision on merits, we may observe that Section 22 of the Central Administrative Tribunal Act, 1985 prescribes the procedure and powers of the Tribunal. According to Section 22(2) of the Act, the Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on perusal of the documents and written representation and after hearing such oral arguments as may be advanced. The contents of Section 22(2) are reproduced as under:-

"22.(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and (after hearing such oral arguments as may be advanced)."

24. We therefore find that the legislative intent is very clear that a Tribunal constituted under an Act according to the provisions of Section 22(2) has to decide the application ordinarily on the merits of the case after perusing the representation and written submissions and after oral arguments as may be advanced. No doubt the word used in the Section is 'ordinarily' the fact remains that in case a matter is not decided on merits & departure is made from the ordinary course, proper and relevant reasons are required to be recorded. We make these observations for the simple reason that Tribunals have been created for the sole purpose to bring about an adjudication of the rights purpose by an Expert body expeditiously and whether any legal assistance is made available or not, whether the parties are present before the Tribunal or not, a duty has been cast upon such administrative tribunals to decide the matter on perusal of the documents and written submissions and after the oral argument as may be advanced. However, in a given case, the parties may not be present before the Tribunal, the documents and the written pleadings are always available and even in absence of any oral arguments, the Tribunal as an Expert body created for sole purpose for deciding the grievances can certainly decide the case of the parties on the basis of such pleadings which are available. Therefore, it is clear that in normal course, the application has to be decided by the Tribunal on merits on the basis of the material available before it and it is not supposed to pass the orders of dismissal in default merely because the parties are not available. There is no doubt that u/s 22(3), the Tribunal has been clothed with the powers of discharging its function in the Act as are vested in the Civil Court under the CPC while trying a suit in respect of the matters as enumerated in Section 22(3) and in the Central Administrative Tribunal (Procedure) Rules, 1987 - rule 16 provides for exparte hearing and dismissal of application and in these rules, it has been provided that in case when a date is fixed for hearing of an application or any other date to which such hearing is adjourned the applicant appears and the respondent does not appear when the application is called for hearing, the Tribunal in its discretion may adjourn the hearing or hear and decide the application exparte. Under Rule 16(2) if an application is heard exparte against the respondent or respondents such respondents may apply within 30 days for setting aside such an order. Rule 15 provides for the action on application for

applicant's default and says that where on the day of final hearing of the application or on any other date to which such hearing may be adjourned if the application is called for hearing, the Tribunal may in its discretion either dismiss the application for default or hear and decide it on merits. A reading of the scheme of the Act and Rules therefore make it clear that although the Tribunal has the option it is ordinarily supposed to decide the application on merits, the option is also there under the Rules either to dismiss the application for default or hear and decide it on merits. Therefore, when the Act says that ordinarily there has to be a decision on merits on the basis of the material available and the Tribunal seeks to make a departure so as to dismiss an application for default rather than deciding it on merits and this alternative is chosen with reference to Rule 15, it goes without saying that the reasons have to be recorded as to why a decision has been taken to dismiss the application in default rather than deciding it on merits as contemplated u/s 22(2). Therefore, as far as possible, the dismissal of application in default is to be avoided and if at all any application is dismissed for default, the reasons have to be recorded as to why the decision is not rendered on merits. Notwithstanding the question that the Tribunal could have dismissed the earlier application in default because nobody appeared and there was no question of restoration as no such application for restoration had been moved and whereas this question is not directly related to the controversy in the present case, we find that in the facts of the present case when the application was moved, there was no question of holding the application to be not maintainable in view of the dismissal of the earlier application filed by the Association in default. In the facts of this case, it is very clear that the petitioners have not come with the case that they were not the members of the Indian Revenue Service Association which had filed the earlier application, nevertheless, the facts remain that it is an unregistered Association which fact has not been controverted even before us, when petitioners in the present Original Application were different than the applicants in the earlier Original Application there was no question of applying principles of Order 9 Rule 9 so as to say that there was a decree against them by default and this bars a fresh case. The present petitioners even if they were members of the Indian Revenue Service Association, it can't be said that it is the same party which had filed the application earlier. We may also notice that the CPC as such has not been made applicable but through the rules, several provisions of the CPC have been incorporated and while interpreting such provisions through the scheme of the rules, no rule such as analogous with Order 9 Rule 9 has been included in this set of rules so as to bar a fresh application. In fact, there is no question of such bar when the parties are different. Such provisions which put an end to the determination of the rights of the parties and debars them from bringing fresh applications even if exist or made applicable have to be construed strictly. The provisions as are contained in the CPC even if made to apply on the basis of their principles, in other words, if the CPC as such doesn't apply and the principles are incorporated and even if there is no provision in the rules, it is very clear that under Order 9 Rule 9 who is debarred from filing fresh suit is the original plaintiff

whose suit has been dismissed in default and therefore this provision with regard to the bar against fresh suit is applicable only qua the very party whose suit is dismissed. Had the IRS Association itself come by way of a fresh application, it would have been a different matter altogether. In service matters, every person has his own rights and he can agitate such rights on the basis of his own substantive application. Merely because earlier petition is filed by an Association which cannot be said to be a real, effective and responsible representative body of all persons who may be members, the dismissal of an application of such an body is not and should not be treated enough for the purpose of debarring any members in service so as to agitate their claims and fight their own battle, if need be. Unless and until it is established that a particular body had a legal status and is a representative body on behalf of all its member, the principles of Order 9 Rule 9 cannot be invoked. It was submitted by Mr. Patel that there are large number of members of the service and in case such members which are stationed at different places start filing such applications, there will be a flood of such applications before various benches of Central Administrative Tribunal all over the country and that would be neither conducive nor expedient for the purpose of adjudication of their rights once the matter has been filed by the Association and the same has been dismissed in default. This argument could have assumed importance had there been any decision on merits in the matter which had been filed by the Association. A case where there is no decision on merits in a matter filed by the Association and subsequently the other employees who are aggrieved of any decision taken by the Government to the prejudice of their rights, we find that no principle of law can estop them from filing such applications neither the principles of Order 9 Rule 9 nor the principles of waiver nor the principles of estoppel and therefore a substantive right which is available to every member of the service cannot be made to be defeasible at the altar of negligence or inaction on the part of the Association and the resolution of dismissal in default of an application filed by such party which does not have the status of a representative body representing all its members. It is in this context that we have earlier said that in case a body like Tribunal proceeds to dismiss a case in default, it must record reasons for not deciding on merits as otherwise it is going to affect large number of persons all over the country and on the same reasoning advanced by Mr. Patel for the respondents, this argument shall recoil heavily against the very principle of rendering a decision on merits so as to do justice between the parties. In this context, the decisions which have been cited by Mr. Shelat i.e. AIR 1967 SC 416 (Supr) and (Supra) become relevant and we find that the matters where the interest of large number of persons are involved, should not be dismissed in default without assigning reasons and even if such matters are dismissed in default, they cannot create a bar under any legal principle against the persons who seek to agitate their rights and who are aggrieved by the orders. Therefore, we find that the first ground of dismissing the present Original application on the principles of Order 9 Rule 9 is not based on the correct principles of law in its proper and correct perspective. The application filed by the present 4 petitioners ought not to have been rejected on

this ground by the Central Administrative Tribunal. We find it as a serious error of law resulting in to the decision of adjudication of the case and therefore the decision on this aspect of the matter cannot be sustained.

25. So far as the question of limitation is concerned, Section 21 of the Central Administrative Tribunal Act, 1985 provides in terms that the Tribunal shall not admit an application unless the same has been made within one year from the date on which such final order has been made after the cause of action u/s 20. Therefore, the period of limitation is one year. u/s 21(1)(b) it has been provided that in a case where an appeal or representation as mentioned in clause (b) of Section 20(2) has been made and the period of six months has expired, thereafter without such final order having been made, within one year from the date of expiry of the said period of six months the appeal shall not be admitted. Section 21(3) provides that Notwithstanding anything contained in sub-section(1) or sub-section (2), an application may be admitted after a period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2) if the applicant specifies that there is sufficient cause for not making the application within such period, the application can yet be entertained.

26. In the present case, the first argument which has been raised by the petitioners is that they came on a fresh cause of action. The cause of action is essentially a bundle of facts which leads a party to approach the Court or the Tribunal. In the facts of the present case, the bundle of facts as has been disclosed even on admitted facts and even if it is taken that it had so arisen at the time when the application was filed by the Association, the fact remains that the question of seniority as such had not been finally decided at any stage and no orders in this regard had been passed. The state of uncertainty remained throughout all these years and although the application had been earlier filed by the Association, the same did not yield any purpose in as much as there was no decision on merits and it was dismissed in default. Even otherwise, we find that here is a case in which the promotion as such even if given to the respondents from an earlier date as per relaxation has not been kept under challenge by the petitioners before us and they have categorically said that even if the application was time barred for the purpose of challenging the promotion given to them from an earlier date, if the seniority is assigned to these respondents on the basis of that appointment, the same could yet be challenged because they do not enter into dispute on the question of promotion given to them and for that purpose they have a continued cause of action in the matter of seniority and the application ought not to have been rejected on the ground that they had lost their cause of action. In normal course, the basis principle is that the order of promotion is a basis order and the seniority is only the consequent of the basic appointment order and therefore seniority goes with the appointment. Here is a case, in which the appointment was given by relaxing the quota rules and such vacancies could not have been made use of and utilised unless there was relaxation under Rule 15. For any reasons which may be good reasons for

administrative exigencies or for the needs of exigency of the Department, the vacancies could certainly be utilised and to that extent, the relaxation could also be made as had been agreed by UPSC but it cannot be said that the appointment by promotion which is given for these purposes should also entail the consequence of conferring higher seniority as the seniority cannot be the requirement of the Department as discussed in the Office Memorandum. The purpose of the department could be served by giving appointment by way of relaxation in quota rules, therefore, the quota rules could be violated by way of relaxation but the question of giving seniority to those persons could not be a matter which could be said to be germane for the need of the Department. The Department can utilise the vacancies for its own purpose which had been mentioned in the Office Memorandum to which we have made reference hereinabove. As a matter of fact, the power of relaxation which has been given under rules cannot be utilised for the purpose of allowing a group of members of the service to steal a march over others when they had no vested right even for the purpose of promotion against the vacancies which were never meant for them and when in fact such promotion was given to them from a date later than the date of appointment of direct recruits. If power under rule 15 is utilised for the purpose of conferment of higher seniority and the very purpose would stand frustrated. So far as the seniority is concerned, there are specific provisions made in Rule 9 & 10 of these Rules. Under Rule 15, if the power of relaxation is used for reasons of necessity and expediency, such a reason of necessity or expediency should be recorded. Such reasons can't be utilised for the purpose of giving undue benefit to any particular class or category of persons though the relaxation can be made for any class or category of persons as provided in Rule 15 itself which is obvious from Rule 15. The paramount consideration of exercising the powers of relaxation is the necessity or expediency. That necessity and expediency is for the purpose of running the establishment and that purpose can be served by giving appointment by relaxation of quota and any other provisions but the question of giving higher seniority to the persons who are appointed in violation of the quota by way of relaxation has no relevance whatsoever with the necessity and expediency of the Department and perhaps keeping in view the spirit of the rule only itself, the UPSC remained silent on the question of seniority and did not approve of the decision with para 4(iv) of the Memorandum. We have already observed in the earlier part of this order that though the rule with regard to relaxation speaks of consultation with the UPSC but in fact, the Department itself while exercising the powers of relaxation made concurrence of UPSC as a condition and sought the concurrence of UPSC. Therefore, the relaxation itself as was proposed by the Department was coupled with the condition of concurrence instead of consultation. The Department itself thought it fit that this relaxation should be made available only if the UPSC concurs and not otherwise. If the rules provide for consultation there cannot be any exercise of powers of relaxation without consultation with UPSC but if the Department itself which is proposing the relaxation says that this relaxation may be made available only subject to the concurrence of UPSC, it cannot be said that

the concurrence of UPSC was not necessary. There cannot be anything short of consultation but if something more than consultation is resorted to by the Department itself, no exception can be taken of such a course of action and, therefore, in our opinion, the question of seniority in the facts of this case could not be made a subject matter of relaxation at all and if at all such a relaxation had been granted and even if we assume that such relaxation was within the scope of Rule 15, can it be said that in the facts of the present case when the applicants were throughout waiting for a decision, they were not waiting for a decision on merits of the case. In any case, even if earlier application filed by the association had been rejected and even if we assume that no fresh cause of action became available to the petitioners or that the applicants did not have a continuing cause of action accepting all these submissions as have been made on behalf of the respondents, in the facts of the present case when the application for condonation of delay had been moved can it be said that in absence of a decision on merits for which they were waiting all throughout, they could not approach the Central Administrative Tribunal with the prayer for condonation the delay. It is not in dispute that prior to 2.3.2001 the Memorandum infact had not become known. Even if a decision had been taken earlier at any point of time, this decision only remained in a liquid form and it acquired a shape in flesh and blood only by this Memorandum which came to the notice of the petitioners on 2.3.2001 and therefore the amendment application moved by the petitioners challenging the same ought to have been entertained and there was no basis for declining the prayer with regard to condonation of delay on the facts which had been pleaded and to which we have already made detailed reference hereinabove.

27. Besides this, we have kept in view the following principles as have been laid down by the Supreme Court in various decisions on the question of condonation of delay:-

- "a. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- b. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- c. Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
- d. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
- e. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. Infact he runs a serious risk.

f. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

Justice is one who has the strength to put an end to injustice. Such strength of justice is required to be made use of for the purpose of removing injustice, if any, and in case any matter has lost its cause without any decision on merits, it is bounden duty of the Courts to see that the parties atleast have a satisfaction of getting the cause adjudicated. We should not be understood to have laid down any law that in every case the delay has to be condoned invariably for the cause of justice. However, it will depend upon the facts and circumstances of each case. In the facts of this case, it appears that interest of large number of persons is involved and large number of persons who are direct recruits have been appointed earlier and it is their right which is alleged to have been jeopardized because of assignment of higher seniority to those who had been appointed not only at later point of time but also by making use of vacancies which were not meant for them. The appointment which was given to them on higher posts for the reasons of necessity and expediency of the Department was enough and the conferment of higher seniority on them is bound to create a heart burning amongst those who were recruited at earlier point of time and it were their vacancies which were made use of for such promotees. As a matter of fact, it has been stated very candidly before us that the petitioners are not aggrieved of the promotions accorded to the respondents. In our opinion, it is not necessary that if the department decides to violate the quota/rota rule by way of relaxation, it must also follow the higher seniority for those who are sought to be benefitted. In such cases when a grievance is raised and a time barred application is filed with an application for condonation of delay, the tribunal which does not have the trappings of a Civil Court and in normal course is supposed to decide the case of the parties on merits should not reject the application on the ground of limitation and should not refuse to condone the delay.

28. Having considered the principles laid down by the Supreme Court to which we have made reference hereinabove, we may mention the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, , the delay of 679 days was condoned for the ends of rendering substantial justice between the parties. In the case of Union of India (UOI) and Others Vs. A. Vasu, , the delay of 570 days was condoned. In the case of State of Haryana Vs. Chandra Mani and others, , delay of 109 days was found to be condonable and in this decision, in Para 11, the Supreme Court has observed that it is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. It has been further held that the expression "sufficient cause" should, therefore, be considered with pragmatism &

with justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The Court should decide the matters on merits unless the case is hopelessly without merit.

29. We find that what constitutes sufficient cause cannot be laid down by any hard and fast rules nor the limits of the discretion u/s 5 of the Limitation Act for the purpose of condonation of delay can be circumscribed by any definite or rigorous formula and may be crystallized so as to convert a discretionary matter into a rigid rule of law. We find that the principle of law is clearly discernable that unless there is want of bonafides, inaction or negligence there is no question of depriving a party from the protection which has been afforded by law through Section 5 of the Limitation Act. Where the Court condones the delay in positive exercise of discretion i.e. it condones the delay, the Superior Court may not disturb the discretion exercised by such Court but where the request for condonation of delay is refused, it is open for the Superior Court to come to its own finding on the basis of the explanation for delay given by the party. In the case of N. Balakrishnan Vs. M. Krishnamurthy, , delay of 883 days was condoned and it was found by the Superior Court that there were grounds for condoning the delay. In the instant case also, we have gone through these grounds and we find that even if it is taken that the only ground which was pleaded in the application for condonation of delay on behalf of the petitioners was that they were awaiting the decision of the earlier application filed by the Association, it cannot be said that it was not a sufficient cause, more particularly, when in that matter there had been no decision on merits, the matter had been filed by an association which was not a representative body. If a party waits for a decision in a identical case there is no reason to encourage litigious perseverance of the parties to file litigation when a cause is pending and therefore it is safe that if in such a case the aggrieved party comes up before the Court for condonation of delay, the Court should condone the delay and render decision on merits. The Supreme Court in the aforesaid decision of N Balakrishnan (Supra) has categorically held that the primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because with the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties i.e. the same principle to which we have made reference earlier. We may also add that in certain cases, the Supreme Court has also found it to be a good ground for condoning the delay where the case of any party is found to be a case based on unusual conduct. Here, if the say of the petitioners as has been stated is believed and Mr. Girish Patel himself has stated that the earlier application has been filed by the Association has been dismissed in default and no steps were taken for restoration and the present petitioners were only waiting for it, when the petitioners point out that the association which had filed the earlier application did not take any steps for restoration, it is certainly a case of unusual conduct on the part of the Association. Any party where the matter is dismissed for default would in usual

course ask for restoration of the matter and it is this unusual conduct on the part of the Association which has resulted into delay on the part of the present petitioners and therefore it should have been considered to be a good ground so as to constitute a reasonable and sufficient ground for the purpose of condonation of delay. In such matters, even the length of the period for which the delay is occasioned is not material, what is material is whether the party was prevented by any reasonable or sufficient cause or not and in the case of Nand Kishore Vs. State of Punjab, , depending upon the facts of the case, the delay of 31 years was condoned by the Supreme Court.

30. We are also of the opinion that atleast the application for amendment, which had been filed in this case which was based on the fact that the matters had come to the knowledge of the petitioners only after 2.3.2001 with the knowledge of the Memorandum and when no material had been brought on record to show that such memorandum had ever come to the knowledge of the petitioners prior to 2.3.2001 should have been allowed and the delay could be and ought to have been condoned and the matter should have been decided on merits.

31. For the reasons aforesaid, we find that the rejection of the Original Application in the present case by the Central Administrative Tribunal, Ahmedabad Bench cannot be sustained. The impugned order dated 12.3.2001 is hereby set aside. The matter is therefore remanded back to the Central Administrative Tribunal, Ahmedabad Bench for decision afresh in accordance with law on merits of the case after hearing all the parties. Both these petitions are allowed as above. Rule is made absolute accordingly. No order as to costs.

32. Whereas the matter has been remanded back to the Tribunal for decision on merits, on request of petitioners, we order that the position of the parties as was obtaining prior to the date of the impugned decision of Central Administrative Tribunal shall continue to remain operative till the decision is taken by Central Administrative Tribunal, Ahmedabad Bench in the remanded proceedings. However, we direct that since the matter relates to large number of persons and is being considered for remand, the Central Administrative Tribunal may give priority and preference in deciding these proceedings at the earliest possible opportunity preferably within a period of 3 months from the date of the receipt of certified copy of this order which may be produced by either of the parties or served through the Court.