

(2017) 05 DEL CK 0129

In the Delhi High Court

Case No : 4337 of 2017

RAJESH SUBRAHMANYA KALLAGE

APPELLANT

Vs

UNION OF INDIA

RESPONDENT

Date of Decision : 19-05-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Limitation Act, 1963, Section 29, Section 17(1)(c) - Savings - Effec

Citation : (2017) 05 DEL CK 0129

Hon'ble Judges : Vipin Sanghi, Deepa Sharma

Bench : DIVISION BENCH

Advocate : V.K. Garg, Sagar Saxena, Himanshi Saini, Noopur Dubey

Judgement

1. The petitioner has preferred the present writ petition to assail the order dated 21.02.2017 passed by the Central Administrative Tribunal in O.A. No. 643/2017. By the impugned order, the Tribunal has dismissed the original application of the petitioner as being barred by limitation. Consequently, the Tribunal has not examined the merits of the petitioner's claim.

2. The petitioner appeared in the Indian Forest Service Examination, 2000 (IFSE). He was selected by the UPSC and allocated Nagaland cadre. The cadre allocation of IFS probationers of 2001 batch was notified contemporaneously. Consequent upon petitioner's marriage with another 2001 batch IFS officer, the petitioner's cadre was changed from Nagaland to Chhattisgarh in the year 2004. After serving in the State of Chhattisgarh for seven years, the petitioner was sent on deputation to Karnataka State on 29.08.2011, which stands extended upto 18.09.2018. The petitioner has been working as Deputy Director, Forest Survey of India, Southern Zone, Bengaluru, since September, 2011.

3. The petitioner, for the first time, started raising the issue of his being unjustifiably denied the Karnataka cadre at the time of allocation of cadres in

2001, by making representations beginning 06.06.2016. The petitioner claimed that he belonged to the State of Karnataka and he was entitled to be considered as a general category candidate in respect of an insider seat/vacancy meant for general category candidates in the State of Karnataka. The petitioner claimed that the respondent did not consider the petitioner in respect of the said insider seat/vacancy, despite the fact that in his application form, he had indicated his willingness to work in his home State, i.e., the State of Karnataka. He also claimed that as per the cadre allocation policy dated 31.05.1985, by virtue of Rule 3, allocation of insiders had to be made strictly according to the rank and subject to willingness of the candidate to be allocated to his/her home State. Rule 4 of the said policy further states that allocation of outsiders - whether they are general category candidates, or reserved category candidates, would be made according to the roster system after placing the "insider" at the proper slot. The petitioner claimed that the respondent, instead of granting him his home State, i.e. Karnataka, allocated Nagaland cadre to him . The petitioner claimed that the insider seat/vacancy which should have come to the petitioner was converted to an outsider vacancy and allotted to an outsider OBC candidate, which was contrary to the cadre allocation policy and also caused injustice to him. Since his representations did not bear fruit, he preferred the Original Application.

4. The Tribunal took note of the fact that the petitioner made his representations on 06.06.2016, 08.08.2016 and 28.06.2016 for re-allocation of his cadre in accordance with the cadre allocation policy. The same were rejected on 29.09.2016. Thereafter, the aforesaid original application was preferred. The petitioner moved M.A. 663/2017 to seek condonation of 16 years" delay. The Tribunal rejected the application by observing that even though the cadre allocation of the petitioner was made in the year 2001, he made his first representation only on 06.06.2016 i.e. after a lapse of more than 15 years. The Tribunal did not entertain the applicant's plea that he became aware about the error in the cadre allocation later. The Tribunal observed that in the period of 16 years, various officers (in the Karnataka cadre) must have earned promotions, and it was not appropriate to interfere with the settled seniority positions after the lapse of 16 years. The Tribunal observed that the petitioner should have been vigilant when the cadre allocation was made, and he slept over the matter for over 15 years before making his representations. Consequently, the original application was dismissed as barred by limitation.

5. The submission of learned senior counsel for the petitioner Mr. V.K.Garg is that the period of limitation would run against a person only from the time he actually derived the information with regard to the commission of illegality by the respondent in the matter of allocation of cadre to him or her. He submits that when the cadre allocation was made in respect of the petitioner in the year 2001, in good faith, he believed that there was no insider vacancy available in the State of Karnataka for the general category candidates, and he had no reason to believe that the petitioner had been denied an existing insider vacancy on

account of its illegal conversion to an OBC category/reserved vacancy for an outsider. Mr. Garg submits that the petitioner derived information about the said illegality for the first time, only in the year 2016. Mr. Garg submits that the respondent has admitted, in response to a query under the Right to Information Act, in its reply dated 03.02.2009 to another IFS Officer, namely, Mr. Sidrmappa that there was one insider vacancy in the State of Karnataka for the year 2001(examination year 2000), and that it was not meant for the reserved candidates.

6. In support of his aforesaid submission, Mr. Garg has, firstly, placed reliance on the decision of the Supreme Court in *K.B.Ramachandra Raje Urs (Dead) by LRs Vs. State of Karanataka and others* (2016) 3 SCC 422. In this decision the Supreme Court observed that while exercising the jurisdiction under Article 226 of the Constitution of India, the High Court is not bound by any strict rule of limitation, and if substantial issues of public importance touching upon the fairness of governmental action arise, the delayed approach to the Court will not stand in the way of exercise of jurisdiction by the High Court.

7. The aforesaid decision, in our view, is not apposite in the facts of the present case. Firstly, the said decision was rendered in the context of acquisition of land, which was acquired in the year 1985, and the land owner approached the High Court in the year 1994 by preferring a writ petition under Article 226 of the Constitution of India. The present case does not concern a challenge to acquisition of land under the Land Acquisition Act. The dispute raised by the petitioner before the Tribunal after a delay of 15 years related to allocation of his cadre, which was made as early as in 2001. Moreover, the observations made by the Supreme Court in *K.B.Ramachandra Raje* (supra) were in relation to the exercise of writ jurisdiction under Article 226 of the Constitution of India by the High Court. In the present case, the right of the petitioner to prefer an original application before the Central Administrative Tribunal is prescribed under Section 19 of the Administrative Tribunals Act, 1985, and under Section 21 of the said Act, period of limitation is prescribed. Therefore, unlike for preferring a writ petition-where no statutory period of limitation is prescribed, for filing an original application under Section 19 of the Administrative Tribunals Act, 1985, the statutory period of limitation is prescribed under Section 21 of the aforesaid Act. Moreover, even in respect of exercise of writ jurisdiction by the High Court under Article 226 of the Constitution of India, the High Court may exercise such jurisdiction - despite delay and laches, if substantial issues of public importance arise which touch upon the fairness of governmental action. In the present case, there is no substantial issue of public importance raised by the petitioner. As opposed to delay of about 9 years in preferring the writ petition, in *K.B.Ramachandra Raje* (supra), in the present case, the cadre allocation made in 2001 was sought to be assailed by the petitioner in the year 2016 i.e. with delay of about 15 years. It is well-settled by a catena of decisions of the Supreme Court, and of this Court, that delayed challenge to wrong fixation of seniority would not be entertained by the Court. The same logic would apply to a belated

challenge to the cadre allocation in respect of an all-India service, since the ramifications of grant of relief to the applicant/ petitioner in such a case would necessarily effect the seniority positions of the incumbents in the cadre to which the applicant/ petitioner seeks entry.

8. In this respect, we may refer to the decisions of the Supreme Court in *P.S Sadasivaswamy Vs. State of Tamil Nadu*, (1975) 1 SCC 152, *B.S. Bajwa & Another Vs. State of Punjab & Others*, (1998) 2 SCC 523, and *State of Karnataka & Others Vs. S.M. Kotrayya & Others*, (1996) 6 SCC 267, which have been followed by a Division Bench of this Court in *Prakash Singh Vs. Union of India & Another*, W.P.(C.) No. 9580/2015 decided on 03.06.2016.

9. In fact, in *Prakash Singh* (supra), the petitioner had sought to raise a similar argument - that limitation would begin to run only upon the petitioner/ applicant discovering the fraud or mistake by referring to Section 17(1)(c) of the Limitation Act, 1963. The Division Bench rejected the said argument of the petitioner on interpretation of Section 21(1) and 21(2) of the Administrative Tribunals Act, 1985 in the light of Section 29(2) of the Limitation Act. The Division Bench observed: "7. ... Section 29 (2) of the Limitation Act states that provisions of Section 4 to 24 of the Limitation Act do not apply where a special or local law provides for a mode of computation of the period of limitation. Read in this light, Section 17(1) (c) of the Limitation Act would not be applicable to the extent expressly excluded by Section 21 of the Act, i.e. Administrative Tribunals Act, 1985. Sub-sections (1) and (2) of Section 21 specifically stipulate and provide when the limitation period would begin. Once the said starting point is so fixed, it will be wrong to apply provisions of Section 17(1) (c) of the Limitation Act and extend the beginning or starting point on the precept that the beginning or starting point in case of mistake whether of fact or in law, would be the date of knowledge of the applicant as to the said mistake. If we accept the plea, this would be contrary to and override the provisions of sub-sections (1) and (2) of Section 21 of the Act. However, this would not affect the petitioner or an applicant who seeks condonation of delay and in that context, refers and relies upon a decision of the Court or Tribunal. Whether or not in the given facts the said explanation should be accepted or not, is a different matter. There is a difference between offering an explanation by relying upon a pronouncement for condonation of delay under sub-section 3 to Section 21 of the Act; and Section 17(1) (c) of the Limitation Act that has the effect of postponing the limitation period till the plaintiff or applicant has discovered the mistake of fact or law. Section 17(1)(c) of the Limitation Act has an independent application and in view of the fact that sub-sections (1) and (2) of Section 21 stipulate and specify the beginning or starting point of limitation, Section 17(1)(c) would not be applicable.

8. Indeed, this view has been followed and accepted by different Courts and the Tribunal for long. The reason for indicating and specifying the period of limitation under sub-sections (1) and (2) of Section 21 is the larger public interest as administrative decisions pertaining to service matters should be made the

subject matter of challenge and adjudication with promptitude and parties should not sleep over their rights and claims. The government servants are literate and aware of their rights. They cannot be equated with the marginalized and poor, who because of social and economic reasons, may not be aware of their right or hesitate in approaching the Court or Tribunal. We would refer to some case law which is relevant. Way back in 1975, in *Malcom Lawrence Cecil D'souza Vs. Union of India and Ors.* (1976) 1 SCC 599, it was held that if anyone feels aggrieved by an administrative decision affecting one's seniority, the said government employee should act with due diligence and promptitude and not sleep over the matter.

Raking up old settled claims after a long time in questioning seniority etc. is likely to cause administrative complications and difficulties. This would be contrary to the the interest of smoothness and efficiency of service. The quietus should not be disturbed and shattered after a lapse of time.

9. Similarly, in *K.R. Mudgal and Others Vs. R.P. Singh and Others*, (1986) 4SCC 531, the Supreme Court highlighted that promotions should not be disturbed after an inordinate delay. Merits need not be examined when a belated challenge is made to promotions and seniority, as that would create a sense of uncertainty and insecurity amongst government servants. A person feeling aggrieved must approach the Court at the earliest. Reference was made to another decision of the Supreme Court in *Union of India Vs. M. Ravi Varma*, (1972) 1 SCC 379. These were decisions where writ petitions were filed challenging the seniority lists and promotions made. These observations were made with reference to the principle of delay and laches.

10. In the case of *B.S. Bajwa (supra)*, the Supreme Court upheld rejection of the prayer for ignoring and overlooking the delay of nearly a decade in filing the writ petition. There was a seniority dispute and the applicant had been treated junior all along. The inordinate delay itself was sufficient to decline interference. These observations were again made when the government servant had invoked writ jurisdiction under Article 226 of the Constitution, where no specific period of limitation is prescribed, but general principles of delay and laches apply. The government servant relying upon a favourable court decision in another case, had claimed seniority. Plea of parity was raised but was rejected. Similarly, in *P.S Sadasivaswamy (supra)*, a matter relating to a writ petition under Article 226 of the Constitution, the claim of the writ petitioner was rejected on the ground that it had the effect of unscrambling the scrambled egg, for he had approached the Court after nearly 14 years. At the relevant time, he had failed to question the promotion of his "juniors". A person aggrieved by an order promoting his juniors should approach the Court within six months or a year of such promotion. The Supreme Court observed that though the Limitation Act was not applicable when Courts exercise their powers under Article 226, albeit the writ courts do not interfere in a matter after a passage of time. It would be sound and wise not to exercise discretion when the aggrieved person does not approach the Court

expeditiously. When the petitioner/ applicant allow things to happen and approach the Court by way of a stale claim, he seeks to unsettle the settled matters, and this should not be permitted."(emphasis supplied)

10. Mr. Garg has also placed reliance on the decision of a Division Bench of this Court in *Seema Chaudhary Vs. Union of India* 2002 VI AD (Delhi) 982. The Division Bench by this decision decided a batch of writ petitions. For the purpose of its discussion, the facts in the case of *Ashok Kumar Pandey Vs. Union of India*, CWP 5450/2001 were narrated. In this case, the petitioner had appeared in the Civil Services Examination, 1991. The result of the said examination was declared on 13.09.1992. His rank in the overall merit list was 538. The petitioner, on the basis of his ranking in over-all merit list was recruited to the Central Civil Services Group "B". The petitioner joined the foundation course at the S.V.P. National Police Academy, Hyderabad. The petitioner was allocated to the Customs Appraisers Service Group "B", and appointed in February, 1993 with retrospective effect from October, 1992. The petitioner claimed that he learnt - from an affidavit filed by the Central Board of Excise and Customs before the Supreme Court, that 801 posts of Assistant Commissioners of promotee quota had been diverted from 1980 to 1996. It was also learnt that 92 officers were promoted to the post of Assistant Commissioners from various feeder cadres just 10 days prior to declaration of the final result by the UPSC, and even 185 ad hoc promotions had been made. The petitioner claimed that, whereas the number of direct recruits as per 1991 examination were only 60, as per allocation list maintained on the basis of CSE 1991, candidates only up to the rank 534 were absorbed in Group "A" service. Had the correct number of vacancies been intimated as per rules, having regard to the fact that services had not been allocated at the time of joining the foundation course, there was a fair chance of the petitioner being allocated the Central Civil Services Group "A" service. He was not aware about the split of the vacancies in existence in the particular year, with the result that successful candidates accepted the allocation made to them in Group "B", believing that the same was done fairly. He also stated that there was lack of transparency. It was also claimed that though the appointment letter had been issued on 08.02.1993, the petitioner learnt of the diversion of posts in June, 1998. After making representation on 22.06.1998, the petitioners preferred the original application in February, 1999.

11. Mr. Garg submits that the Division Bench accepted the said explanation of the petitioner and rejected the objection of the respondents premised upon delay and laches in approaching the Tribunal.

12. The Division Bench in paragraph 23 of this decision, inter alia, observed: "23. ... The contention of the petitioner to the effect that they were not aware of the factual position so as to enable them to lay their claim has not been disbelieved. Question of delay and laches may arise only when a set of facts were known to the petitioner but he did not take any action for a long time although he is aware thereof. Question of slipping over the right for a long time will arise

only when one knows about his right. A cause of action relating to enforcement of right would arise only when factual background is known."

13. The Division Bench further observed in paragraph 37 as follows: "37. The position, however, is well settled with regard to the proposition that when in the acts and circumstances of the case the Court of the Tribunal would entertain an application despite delay and laches on the part of the applicant would essentially depend upon the fact situation obtaining in each case. In a given case even a few months delay may be held to be fatal, while in another number of years" delay may not be. While considering the question of delay illegality committed by the respondent, nature and extent of rights of the third parties which may be affected thereby may be relevant."

14. Having considered the decision in Seema Chaudhary (supra) in the light of the facts of the present case, we are of the view that the petitioner cannot take advantage of this decision. In the present case, Mr. Garg has submitted that the petitioner secured the 10th rank amongst the General category candidates on all-India basis. The petitioner claims to have given his option for his home State, i.e. Karnataka State while filling up the form. The petitioner, admittedly, was not allocated his home State in the year 2001. Despite having secured a high rank of All-India 10, the petitioner did not seek to raise any issue upon allocation to him of Nagaland cadre. Pertinently, the petitioner - to claim that the respondent had illegally converted the general category insider vacancy in the State of Karnataka to an outsider vacancy reserved for OBC candidates, places reliance on information gathered by another person, namely. Sh. Sidramappa M.C. under the Right to Information Act on 03.02.2009. It is not that the petitioner made enquiries on his own - even in the year 2009, to gather information with regard to the insider/ outsider, unreserved/ reserved vacancies in the State of Karnataka for the year 2001. There are no specific and particularized averments made by the petitioner, as to how the petitioner claims to have derived information only in 2016 with regard to the status of the insider/ outsider vacancies in the year 2001. The averments of the petitioner are sketchy and devoid of particulars. They do not inspire confidence.

15. The fact situation considered by the Division Bench in Seema Chaudhary (supra) was entirely different. The facts themselves show that it was an extraordinary situation inasmuch, as, a very large number of posts, i.e. 801 posts of Assistant Commissioner of promotee quota had been diverted between 1980 to 1996 (the Civil Services Examination in question was of the year 1991; the results were declared on 13.09.1992 and the appointment of Ashok Kumar Pandey was made on 08.02.1993 to the Customs Appraiser Service Group-B). Moreover, 92 officers were promoted to the post of Assistant Commissioner just 10 days prior to declaration of final result by the UPSC, and 182 ad-hoc promotions had also been made. Ashok Kumar Pandey had himself not secured a high rank. He had secured the rank of 538. Therefore, there were no eye-brows to be raised when he was allocated to the Customs Appraiser Service Group-B. In

contrast, the petitioner had secured the high rank of All-India 10, and yet had not been allocated his home State. Yet he did not bother to make any enquiry as to why, despite his very high rank, he had not been able to secure the insider vacancy in the State of Karnataka. In *Seema Chaudhary (supra)*, the Division Bench did not consider the interplay between Section 17(1)(c) & 29 of the Limitation Act, with Section 21 of the Administrative Tribunals Act, which has subsequently been elaborately discussed in *Prakash Singh (supra)*. Thus, the reliance placed by the petitioner on *Seema Chaudhary (supra)*, in our view, is of no avail, particularly in the facts of the present case.

16. For all the aforesaid reasons, we do not find any reason to interfere with the impugned order passed by the Tribunal. The writ petition is, accordingly, dismissed.