
(2010) 11 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36059 of 2002

Uma Kant Srivastava

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20(2), 21(1), 21(3)
Constitution of India, 1950 — Article 226

Citation : (2011) 7 ADJ 601 : (2011) 130 FLR 649 : (2011) 3 UPLBEC 2363

Hon'ble Judges : S.P. Mehrotra, J; Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 6.6.2002 (Annexure-1 to the writ petition) passed by Central Administrative Tribunal (in short "the Tribunal"), and the order dated 20.12.1996 (Annexure-14 to the writ petition) passed by the Respondent No. 2. Further relief has been sought for directing the Respondents to give seniority to the Petitioner since 1979 treating him to be promoted to the post of Office Superintendent Grade-II, and thereafter to the post of Office Superintendent Grade-I, and for re-fixing the pay-scale and other service benefits admissible to the Petitioner according to law. Further relief has been sought by the Petitioner for fixation of pension/retiral benefits etc. according to the re-fixed pay-scale, and disburse the entire dues including Dearness Allowance, arrears of salary etc. with interest in favour of the Petitioner.

2. From a perusal of the record, it appears that the Petitioner was appointed in the Railways as a Junior Clerk with effect from 20.4.1948. The Petitioner was promoted to the rank of Senior Clerk with effect from 9.7.1958 and later as Head Clerk with effect from 10.11.1981. The Petitioner raised claim that he was promoted as Head Clerk in the vacancy created by promotion of one Jawahar Lal as Office Superintendent Grade-II with effect from 17.10.1981. The said Jawahar

Lai, though promoted as Office Superintendent Grade-II with effect from 17.10.1981, was granted seniority in that Grade with effect from 1.1.1979, and in the circumstances, the Petitioner should be considered to have been promoted as Head Clerk with effect from 1.1.1979. The Respondents did not accept the claim of the Petitioner for grant of seniority with effect from 1.1.1979 as Head Clerk. He further raised grievance that in the years 1981 and 1982, there were examinations for selection as Office Superintendent Grade-II. In the year 1981, despite representations, the Petitioner was not allowed to appear in the Written Examination. As regards the 1982 Examination, in which the Petitioner appeared, no results were declared, nor was he appointed to the higher post. The Petitioner made representations dated 14.12.1981 and 9.6.1982, but the Respondents did not give any reply to the said representations. The Petitioner was given ad-hoc promotion to the grade of Office Superintendent-II with effect from 31.12.1985. The Petitioner retired in July, 1987, as per his Date of Birth, namely, 12.7.1929.

3. After more than seven years of his retirement, the Petitioner made yet another representation before the General Manager, Gorakhpur (Respondent No. 2). The said representation was rejected by the General Manager, Gorakhpur (Respondent No. 2) by the order dated 20.12.1996 (Annexure-14 to the writ petition).

4. The Petitioner, thereafter, filed an Original Application being Original Application No. 657 of 1997 before the Tribunal. The Tribunal by its order dated 6.6.2002 rejected the said Original Application filed by the Petitioner as barred by time.

5. The Petitioner has, thereafter, filed the present writ petition seeking the reliefs as mentioned above.

6. We have heard Shri P.K. Sinha, Learned Counsel for the Petitioner and Shri P.C. Srivastava holding brief for Shri Tarun Verma, Learned Counsel for the Respondents, and perused the record.

7. Shri P.K. Sinha, Learned Counsel for the Petitioner submits that time for the purposes of filing the Original Application before the Tribunal ought to have been counted from the date of rejection of the representation of the Petitioner by the order dated 20.12.1996.

8. In reply, Shri P.C. Srivastava holding brief for Shri Tarun Verma, Learned Counsel for the Respondents submits that the Tribunal was right in dismissing the Original Application as barred by limitation. He has relied upon the reasoning given by the Tribunal in the impugned order.

9. We have considered the submissions made by the Learned Counsel for the parties.

10. During the course of arguments, the Learned Counsel for the Petitioner produced a copy of the Original Application filed before the Tribunal. Relief clause of the said Original Application is reproduced below:

VIII. Relief sought:

In view of the facts stated in paragraph IV above, the applicant prays for the following reliefs:

- (1) The Hon''ble Tribunal may be pleased to direct the Respondents to give the seniority since 1979 for the post of Office Superintendent II (Rs. 550-750) and treat him promoted since 1981 and/or further be pleased to refix the pay scale and all other benefits for which applicant is entitled.
- (2) The Hon''ble Tribunal may be pleased to direct the Respondents to fix the pension/retiral benefits etc. to the applicant in accordance with the refixed pay scale (Rs. 550-750) since 1981 and disburse the entire due with 18% interest.
- (3) The Hon''ble Tribunal may be pleased to direct the Respondents to pay the Dearness Allowance which is due with interest of 18% to the applicant forthwith.
- (4) The Hon''ble Tribunal may be pleased to direct the Respondents to pay arrears of salary to the applicant with interest forthwith.
- (5) The Hon''ble Tribunal may be pleased to pass such and other further orders as it may deem fit and proper in the circumstances of the case; and
- (6) The Hon''ble Tribunal may award costs of this application to the applicant against the Respondents.

It will, thus, be noticed that no relief regarding the order dated 20.12.1996 was sought by the Petitioner in his Original Application before the Tribunal.

In order to decide the controversy involved in the present writ petition, it is necessary to refer to the provisions contained in Sections 20 and 21 of the Administrative Tribunals Act, 1985 (in short "the Act"), which are reproduced below:

20. Application not to be admitted unless other remedies exhausted.-- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of Sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from

the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of Sub-section (1) and (2) any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation.--(1) A Tribunal shall not admit an application,--

(a) in a case where a final order such as is mentioned in Clause (a) of Sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of Sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in Sub-section (1), where--

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of Sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of Sub-section (1), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

11. Clause (a) of Sub-section (1) of Section 21 of the Act provides that an application before the Tribunal must be filed within one year from the date on which final order, as mentioned in Clause (a) of Sub-section (2) of Section 20 of the Act, is made in connection with the grievance of the applicant.

12. Clause (b) of Sub-section (1) of Section 21 of the Act lays down that in case final order is not made for a period of six months after the filing of Appeal or representation, as mentioned in Clause (b) of Sub-section (2) of Section 20 of the Act, the application before the Tribunal must be filed within one year from the date of expiry of the said period of six months.

13. Sub-section (2) of Section 21 of the Act deals with the case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under the Act in respect of the matter to which such order relates. In such a situation, in case no proceedings for the redressal of such grievance had been commenced before the said date before the High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b) of Sub-section (1) of Section 21 of the Act or, as the case may be, within the period of six months from the said date, whichever period expires later.

14. Sub-section (1) of Section 21 of the Act provides that the Tribunal may entertain the application after the expiry of the period mentioned in Clause (a) or Clause (b) of Sub-section (1) of Section 21 of the Act or, as the case may be, the period of six months specified in Sub-section (2) of Section 21, provided the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

15. In the present case, as noted above, the Petitioner made representations regarding his grievances on 14.12.1981 and 9.6.1982. As the representations were not decided by the concerned authorities, the Petitioner ought to have approached the Tribunal within the period mentioned in Sub-section (2) of Section 21 of the Act. The Petitioner evidently failed to approach the Tribunal within the said period. The Petitioner further did not show any sufficient cause for his failure to approach the Tribunal within the period mentioned in Sub-section (2) of Section 21 of the Act.

16. In regard to the submission made by Shri P.K. Sinha, Learned Counsel for the Petitioner that the period for filing the Original Application ought to have been counted from the date of rejection of the representation of the Petitioner by the order dated 20.12.1996, we may refer to the observations made by the Tribunal in paragraph 4 of its order rejecting the said submission made on behalf of the Petitioner before the Tribunal. The said paragraph 4 is reproduced below:

4. Without going into the merits of the case of the applicant, the first issue to be considered, as raised by the Learned Counsel for the Respondents, is whether the O.A. is time-barred or not. The cause of action to the applicant arose in 1981 when his name was not sent for examination for selection to the post of Office Supdt.II A further cause of action arose, according to the applicant, in 1982 when despite his appearing in the examination and viva voce test, the results were neither declared, nor was he promoted. Apparently, he also took recourse to filing representations before the authorities at that time, vide Annexures 4 and 5 dated 14.12.1981 and 9.6.1982 respectively. In the normal course, he should have approached a Court of Law (as the Tribunal did not exist at that time) within one year of filing of the said representations which remained unheeded. The present O.A. is, therefore, highly time-barred. The applicant claims limitation

to have begun from the date of passing of the impugned order dated 20.12.1996. We are afraid that after remaining silent for nearly 14 years between 1982 and 1996, a fresh representation after nearly 7 years of retirement, for a cause of action that arose in 1981 and 1982 cannot grant him a fresh lease of life. In fact the Respondents would have been well within their rights to have rejected the applicant's representation dated 9.8.96 simply as time-barred. Merely because the General Manager (Personnel), Gorakhpur, entertained his highly time-barred application, it gives no right to the applicant to treat his belated representation as being within time. The Learned Counsel for the Respondents has relied on a judgment of the Supreme Court in the case of Administrator of Union Territory of Daman and Diu and Ors. v. R.D. Valand 1996 SCC (LandS) 205 in which the Supreme Court held that a time-barred application does not become within time by successive representations being made without any result. In that case the Apex Court held "the Tribunal fell into patent error in brushing aside the question of limitation by observing that the Respondent has been make representations from time to time and as such the limitation would not come in his way". Therefore, in accordance with the principles laid down in the said judgment, we conclude that in view of the applicant's representation dated 14.12.81 and 9.6.82 having gone unanswered, fresh limitation could not begin on his filing yet another representation 14 years thereafter. We are, therefore, clear in our minds that this O.A. is not worth consideration, being highly time-barred. Therefore, the benefits of seniority as Head Clerk, consequent promotion as Office Supdt.II and consequential retiral benefits cannot be granted to the applicant.

17. We do not find any illegality or infirmity in the reasoning of the Tribunal, as mentioned above. The submission made by Shri P.K. Sinha, Learned Counsel for the Petitioner regarding counting of the period of limitation from 20.12.1996 cannot, therefore, be accepted.

18. Shri P.K. Sinha, Learned Counsel for the Petitioner, however, submits that once the Original Application was admitted by the Tribunal, it was not open to it to reject the Original Application on the ground of limitation. He has referred to subparagraph XX of paragraph 4 of the writ petition in this regard.

19. We have considered the submission made by Shri Sinha, and we find ourselves unable to accept the same.

20. In case the Original Application was not filed within the period mentioned in Section 21 of the Act, the Tribunal could not have entertained the application unless sufficient cause was shown by the Petitioner, as mentioned in Sub-section (3) of Section 21 of the Act. Merely because the Original Application of the Petitioner was admitted by the Tribunal and the affidavits were exchanged in regard to the same, it does not mean that it is not open to the Tribunal to reject the Original Application as barred by limitation. Such a course will be contrary to the legislative intention, as mentioned in Section 21 of the Act.

21. Before parting with the case, we may refer to certain decisions of the Supreme Court which deal with the scope of Section 21 of the Act.

22. In *Secretary to Government of India and Ors. v. Shivram Mahadu Gaikwad*, 1995 Supp. (3) SCC 231 their Lordships of the Supreme Court opined as under (paragraph 2 of the said SCC):

2. ...When we turn to the judgment of the Tribunal we find that there is no mention about the question of limitation even though it stared in the face. It would immediately occur to anyone that since the order of discharge was of 7.10.1986 and the application was filed in 1990, it was clearly barred by limitation unless an application for condoning the delay was made u/s 21(3) of the Administrative Tribunals Act. No such application was in fact made. Even if it was the contention of the employee that he was suffering from schizophrenia, that could have been projected as a ground for condonation of delay under Sub-section (3) of Section 21 of the said statute. Even otherwise without insisting on the formality of an application u/s 21(3) if the Tribunal had dealt with the question of limitation in the context of Section 21 we may have refrained from interfering with the order of the Tribunal under Article 2136, but it seems that the Tribunal totally overlooked this question which clearly stared in the face. Even the employee made no effort to explain the delay and seek condonation. We find no valid explanation on record for coming to the conclusion that the case for condonation of delay is made out. In the circumstances, there is no doubt that the application was clearly barred by limitation. It is also difficult to understand how the Tribunal could have awarded full back wages even for the period of delay for which the employee was solely responsible. However, since application itself is barred by limitation u/s 21 of the Administrative Tribunals Act, it deserves to be dismissed."

23. This decision, thus, lays down that where the Tribunal totally overlooked the question of limitation which stared in the face, and no application for condoning the delay was made u/s 21(3) of the Act giving valid explanation for the delay, the order of the Tribunal was liable to be set-aside, as the application before the Tribunal was barred by limitation u/s 21 of the Act.

24. In *Administrator of Union Territory of Deman and Diu and Ors. v. R.D. Valand* their Lordships of the Supreme Court held as under (paragraph 4 of the said SCC):

4. We are of the view that the Tribunal was not justified in interfering with the stale claim of the Respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.9.1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8.10.1986. Thereafter for four years the Respondent did not approach any Court and finally he filed the present application before the Tribunal in March 1990. In the facts and circumstances of this case, the Tribunal was not justified in putting the clock

back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the Respondent has been making representations from time to time and as such the limitation would not come in his way.

25. This decision, thus, lays down that once the claim became time-barred, making successive representations was inconsequential, and the same would not give any benefit so far as the question of limitation was concerned.

26. In *Ramesh Chand Sharma Vs. Udham Singh Kamal and Others*, their Lordships of the Supreme Court opined as under (paragraph 7 of the said AIR):

7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first Respondent to make proper application u/s 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see *Secretary to Government of India and Ors. v. Shivram Mahadu Gaikwad*, 1995 Supp. (3) SCC 231

27. This decision, thus, lays down that where no valid explanation for the delay in filing the Original Application before the Tribunal was given, the Original Application filed before the Tribunal after the expiry of the limitation period could not have been admitted and disposed of on merits in view of the statutory provisions contained in Section 21(1) of the Act.

28. The above decisions, thus, support the conclusions mentioned above in regard to the question of limitation in the present case.

29. In view of the above discussion, we are of the opinion that the writ petition filed by the Petitioner lacks merits, and the same is liable to be dismissed.

30. The writ petition is accordingly dismissed.