

(2023) 05 CAT CK 0023

In the Central Administrative Tribunal

Case No : Original Application No. 205 Of 2012

Vidya Sagar Sharma & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 14

Citation : (2023) 05 CAT CK 0023

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : Bashist Tiwari, L.M. Singh

Final Decision : Dismissed

Judgement

Om Prakash VII, Member (J)

1. The present O.A has been filed by the applicants under section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:-

i) To issue an order or direction setting aside the orders dated 21.07.2011 issued by Depot Director, PC (DPC), Air Headquarters, Vayu Bhawan, New Delhi 110106 and 11.08.2011 issued by Squadron Leader, Squadron Commander, Admin Support Group, 29 Equipment Depot, Air Force, Chakeri, Kanpur 208008 (Annexure Nos. A-1 and A-2 respectively to Compilation 1).

ii) To issue an order or direction commanding the respondents to give promotional benefits to the applicant No. 1 w.e.f. 15.01.2004 and applicant No.2 w.e.f 09.07.2003 in pursuance of panel dated 03.07.2003 for the post of Store Superintendent Grade 5000-8000/- which is revised in pay band Rs. 9300-34800/- Grade Pay Rs. 4200/- per month.

iii) To issue an order or direction commanding the respondents to give seniority and other consequential benefits to the applicants in comparison with their

juniors who had been promoted in pursuance of the panel dated 03.07.2003.

iv) To grant any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.

v) To award the cost".

2. The brief facts of the case are that a panel for promotion to the post of Store Superintendent was prepared but due to low grading in the ACR, the case of the applicants was not considered, which was communicated by letter dated 19.08.2003. Shri V.K. Giri, who was also aggrieved on the aforesaid communication order, had filed original application No. 1216 of 2003. The case of Shri V.K. Giri was allowed by the Tribunal by order dated 07.09.2005. In compliance with the direction of the Tribunal dated 07.09.2005, the respondents have considered the case of Shri V.K. Giri, and the case of Shri V.K. Giri was rejected vide order dated 08.12.2005. Shri V.K. Giri had again challenged the aforesaid order before the Tribunal by filing OA No. 534 of 2006, which was decided by the Tribunal vide order dated 27.11.2009 and again directed the respondents to consider the case of Shri V.K. Giri. When respondents did not comply with the order of the Tribunal, Shri V.K. Giri filed Contempt Petition No. 47 of 2010 and thereafter respondents promoted the Shri V.K. Giri w.e.f. 15.01.2004 after reconsideration of the review DPC. The case of Shri V.K. Giri is similar to the case of present applicants, hence applicants filed an application dated 28.03.2011, which was rejected by the respondents vide order dated 21.07.2011. The aforesaid order dated 21.07.2011 is assailed by the applicants in this OA.

3. We have heard learned counsel for the parties and perused the records.

4. Submission of the learned counsel for the applicants is that applicants were denied promotion on the basis of uncommunicated entry vide orders dated 3.7.2003 and 9.7.2003. A similarly situated person namely V.K. Giri, who had also been denied the promotion, had approached before this Tribunal in the year 2004 by filing OA and his OA was allowed. When direction given by the Tribunal was not complied with, contempt petition was filed thereafter he was given a promotion. Applicants' cases are also on the same footing. Several representations were pending before the respondents but the same were not decided timely. As and when the order, in the year 2011 on the representation, was passed, the present OA was filed in the year 2012. Thus it is within the limitation period. It was further argued that if one person in a similar situation has been allowed the benefit, it is not necessary for the other similarly situated employees to approach before the Tribunal. Respondents ought to have extended the benefit to the applicants as they have allowed benefit to the similarly situated person V.K. Giri. To substantiate his argument, learned counsel for the applicants placed reliance following judgments:-

"(i) S.S. Rathore Vs. State of Madhya Pradesh reported in AIR 1990 Supreme Court 10.

(ii) Dev Dutt Vs. Union of India and others reported in (2008) 2 Supreme Court Cases (L&S) 771

(iii) Awadh Bihari Dhar Dubey Vs. Union of India and others passed in OA No. 1130 of 2001 on 10.12.2007.

(iv) Akshalbar Prasad and others Vs. Union of India passed in OA No. 1004/1997 and 1272 of 1997 on 29.08.2006”.

5. Learned counsel for the respondents argued that through relief claimed in the matter, the panel prepared in the year 2003 has been challenged for the first time in the year 2012. It is beyond the limitation period. It is next argued that representations moved by the applicants had been decided in the year 2004 thereafter they did not approach before this Tribunal. They were sleeping over their rights. They approached before this Tribunal when the original application filed by one V.K. Giri, the similarly situated employee who has also been denied the promotion was allowed, then the present original application was filed. It was next argued that person who is not conscious of his right and was sleeping for many more years, only on this ground that OA filed by the similarly situated person has been allowed cause of action will not accrue in the year 2011. Applicants if were aggrieved, they ought to have approach in the year 2003 or 2004 itself within the limitation period. It was next argued that the affected parties have not arrayed in the matter, thus OA is also barred by non-joinder of necessary parties. This plea has been taken by the respondents at the initial stage in the counter affidavit itself. It was also argued that in the year 2005 and thereafter promotions have also been made. If the plea taken by the applicants is allowed, certainly all those who have been promoted later-on will be affected. Thus he argued that relief claimed in the matter cannot be allowed and OA be dismissed.

6. We have considered the rival submissions and have gone through the entire record.

7. Before proceeding to discuss the submissions raised across the bar and analyzing the same in the light of the facts and circumstances of the case, we find it expedient to quote the relevant paras of the case laws relied upon by the learned counsel for the applicant:-

Paragraphs Nos. 21 and 22 of the S.S. Rathore (supra) are as follows:-

“21. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub- section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government serv- ants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was-filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation”.

Paragraph Nos. 41 to 44 of Dev Dutt (supra) are as follows:-

“41. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

42. In view of the above, we are of the opinion that both the learned Single Judge as well as the learned Division Bench erred in law. Hence, we set aside the judgment of the Learned Single Judge as well as the impugned judgment of the learned Division Bench.

43. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

44. We, therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment”.

Paragraph Nos. 9 and 10 of Awadh Bihari Dhar Dubey (supra) are as follows:-

“9. It is well settled principle and fundamental rules of law that no decision should be taken against a person, which will affect his right, without informing him the reasons thereof and affording him an opportunity to explain his case. An

order involving civil consequences must be made consistently with the rules of natural justice. Admittedly the adverse remarks contained in C.R of the applicant for the year 1999- 2000 were the reason for declaring him as illegible and unsuitable for the post of Motor Electrician Gr. I. Again it is admitted position by the respondents that before those adverse remarks were considered and held against the applicant, he was never informed about the adverse remarks made in the CR for the year 1999-2000. If the applicant had been informed about it, he would have got an opportunity to explain the reasons why such remarks should not have been there and if his contentions were accepted, those adverse remarks would have been expunged by the higher authority.

10. It is also seen from the impugned Annexure - 2 letter dated 30.05.2001 that. adverse remarks as communicated to the applicant are very vague. The controlling officer has not used due diligence in making these remarks. The controlling officer of the applicant have recorded adverse remarks in the CR of the applicant for the year 1999-2000 without giving him any prior opportunity for improvement. On this ground alone, adverse remarks recorded in the CR of the applicant for the year 1999-2000 is to be treated as non existent. Secondly, the respondents have clearly violated the fundamental rules of law by denying the applicant an opportunity to make representation against the adverse remarks recorded in his ACR for the aforesaid year, which was. taken in to consideration by the selection committee for determining his suitability for the post of Motor Electrician Gr. I. Such communication of adverse remarks also has to be declared as illegal and contrary to law. As held by the Apex Court, it is salutary that the controlling officer before writing adverse remarks should give prior sufficient opportunity in writing by the deficiency, he noticed, for improvement. In spite of the opportunity given to the employee, if he has not shown any improvement, then the controlling authority would be justified in recording the adverse remarks. It is not the case of the respondents that the controlling authority has taken any such action. Undisputedly, the adverse remarks were communicated to the applicant only after the suitability test was conducted and declared unsuitable for the higher post. As held by the Apex Court in the aforementioned case, the action of the respondents in not communicating the adverse remarks to the applicant in time and taking those un-communicated adverse remarks in to consideration for considering him suitability and declaring him unsuitable , are absolutely arbitrary and against the principles of natural justice. As held by the Full Bench (Supra}, "when promotion is based on seniority-cum-fitness, the incumbent is entitled to be re-considered for promotion when adverse entries in the ACRs have not been communicated to him for the relevant period ignoring the findings of the DPC that incumbent is "Not yet fit" on the basis of ACRs. In normal circumstances, we also would have directed the respondents to hold a suitability test again for consideration of the applicant for promotion to the post of Motor Electrician Gr. I ignoring the adverse entries in the CRs for the year 1999-2000 and if found suitable, to promote him to the said post. In our considered opinion such a course of action would be a futile exercise because the

only reason, even according to the respondents to declare him as unsuitable for the aforesaid post is the un-communicated adverse remarks in his ACRs for "year 1999-2000~", which are unjustifiable in the eyes of law. Once these un-communicated adverse remarks are ignored, there are no other reasons for the respondents to deny promotion to the applicant, as it is an admitted fact that the entrance of the adverse remarks :in the ACR for the year 1999- 2000 was the only reason for declaring him as unsuitable for promotion".

Paragraph No. 11 of Akshalbar Prasad (supra)

"11. It is felt expedient that keeping in view the recommendations of the 5th CPC and various judgments of the Apex Court, as referred to therein, the benefit accrued to the applicants. In these OAs are made available to all the similarly placed employees without driving them to move the Tribunal for the benefits. Relevant para of the Pay Commission is as under:-

"We have observed that frequently, in cases of service litigants involving many similarly placed employees, the benefit of judgments is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of the Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others Vs. UOI and others (OA 451 of 1991), wherein it was held that the entire class of employees who are similarly situated as required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C Ghosh Vs. UOI (1992) 19 ATC 94 (SC) dated 20.07.1998; K.I Shepherd Vs. UOI (JT 1987 (3) 600); Abid Hussain Vs. UOI (JT 1987 (1) SC 147) etc. Accordingly, we recommend the decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of government employees is concerned and not in matters relating to a specific grievance or anomaly of an individual employee".

8. As is clear for aforesaid analysis, limitation for filing the present OA in case of representation or appeal if not decided within the period of six months then after the expiry of six months cause will accrue to file the OA and in the present matter as is evident from the record representation of the applicant has been decided in the year 2004 itself. Panel has been prepared in the year 2003 itself. Applicants approached before this Tribunal in the year 2012. They have approached before the Tribunal after passing the order in the petition filed by the other employees. Hon'ble Supreme Court in the case of the State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and others passed in Civil Appeal No. 9849 of 2014 on 17.10.2014 by the Hon'ble Supreme Court discussing the law laid down in S.S. Rathore case in paras 23 and 24 have held as under:-

"23 The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

24. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the

parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.

9. Since the applicants' were sleeping, they did not approach before the Tribunal within the limitation period, mere pendency of representation filed after deciding the first representation will not extend the period of limitation.

10. As far as the submissions raised on behalf of the applicants, that if the judgment has been passed in regard to similarly situated employees, applicants cannot be compelled to come to the Tribunal for redressal of their grievance and respondents ought to have extended the benefit without waiting for the Tribunal order is concerned, it is a case of promotion, the person who was not included in the panel of 2003 namely V.K. Giri approached before this Tribunal on the basis of facts and circumstances of his own case. If the ratio laid down in the Arvind Kumar Srivastava (supra) case is taken into consideration, it can safely be held that the action of the respondents by not extending the benefit as provided to the other employee namely V.K. Giri who had approached before this Tribunal cannot be said to be arbitrary. It would also not be discriminatory; therefore, prayer made by the applicants is not liable to be allowed. Applicants were sleeping over their rights meaning thereby they acquiesced the situation arose in the year 2003. Applicants were sleeping over his right and did not approach before this Tribunal in time. Hon'ble Supreme Court in the case of Capt. Harish Uppal v. Union of India & Ors. (JT 1994(3) S.C. 126). has held that if the parties "..... choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere.....".

The Hon'ble Supreme Court in the case of Bhop Singh Vs. Union of India and others reported in (1992) 3 SCC 136, also held that:-

"Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner irrespective of the merit of his claim."

. Further, Hon'ble Apex Court in the case of Union of India Vs. Harnam Singh reported in AIR (1993) SCC page 1367, has been pleased to observe that "The law of limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire."

11. It is pertinent to mention here that promotions in the year 2005 and thereafter on several occasions have been made. If the prayer made in the original application is allowed, it would be tantamount to disturbing the settled seniority of the employees, who are not before this Tribunal. Thus on this count

also prayers made in the OA are not liable to be allowed.

12. In view of the aforesaid deliberation mentioned hereinabove and in the light of observations mentioned in the aforesaid judgments of the Hon'ble Supreme Court, we are of the opinion that the OA is liable to be dismissed. Accordingly, OA is dismissed. All associated MAs stand disposed of. No order as to costs.