
Before G.S. Singhvi & S.S. Grewal, JJ

UNION OF INDIA & ANOTHER—*Petitioners*

versus

CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
BENCH, CHANDIGARH AND ANOTHER—*Respondents*

C.W.P. No. 9691 of 2002

9th December, 2002

Administrative Tribunals Act, 1985—S. 21(2)—Constitution of India, 1950—Art. 226—Reversion of an employee in 1980—Employee failing to challenge the order before the competent Court or even to make a representation about 13 years—Rejection of representations between the years 1994 to 1997—Challenge before the Tribunal after 17 years of the passing of order of reversion—Whether the Tribunal has jurisdiction to entertain such an application where cause of action accrued 6 years prior to its establishment—Held, no—Application filed after the expiry of period of limitation prescribed u/s 21(2) liable to be rejected as barred by time—Rejection of repeated representations cannot justify entertaining of an application filed after expiry of the period of limitation.

Held, that :—

- (i) The Tribunal established under the Act cannot entertain an application filed after expiry of the period of limitation prescribed under Section 21(1) unless the applicant satisfies it that he had sufficient cause for not filing the application within the prescribed period of limitation.
- (ii) In respect of the causes which had accrued to the aggrieved person before establishment of the Tribunal, an application could be filed within the period prescribed under clause (a) or (b) of sub-section (1) of Section 21 or within a period of 6 months from the expiry of that period. The benefit of non-obstante clause contained in sub-section (3) of Section 21 could also be availed by the persons in whose favour the cause had accrued before the establishment of the Tribunal.

- (iii) The rejection of successive representations cannot justify entertaining of an application filed after expiry of the period of limitation unless the relevant service rules as to the redressal of the grievances provide for such representations.
- (iv) Delay in filing the application cannot be condoned unless a written request to that effect is made under Section 21(3) and the Tribunal is satisfied that the applicant had sufficient cause for not making the application within the period of limitation.

(Para 24)

Namit Kumar, Advocate, *for the Petitioners*

R.K. Sharma, Advocate *for respondent No. 2.*

JUDGMENT

G.S. SINGHVI, J.

(1) Whether the Central Administrative Tribunal (for short, the Tribunal) established under the Administrative Tribunals Act, 1985 (for short, 'the Act') has the jurisdiction to entertain an application filed by an employee in relation to a cause which had accrued prior to its establishment is the question which arises for determination in this petition filed by Union of India through Secretary to Government of India, Ministry of Labour and Employment and Director General, Labour Bureau for quashing order dated 17th January, 2002 (Annexure P. 34) passed by Chandigarh Bench of the Tribunal in O.A. No. 1066/CH of 1997-G.S. Cheema v. Union of India and another.

(2) For deciding the afore-mentioned question, it will be useful to notice the background facts. Respondent No. 2- Shri G.S. Cheema joined service as Computer in the Labour Bureau on 30th May, 1962. By an order dated 7th December, 1977, the Director, Labour Bureau promoted him as Investigator Grade-II on *ad hoc* basis. He was regularly appointed on that post w.e.f. 13th October, 1978. His case was considered in the meeting of the Departmental Promotion Committee (for short, DPC) held on 28th June, 1979 for confirmation as Investigator Grade-II but he was not found fit for that purpose.

After about one year, he was reverted to the post of Computer,—*vide* order dated 4th September, 1980 due to reduction in the sanctioned strength of the cadre of Investigators Grade-II. His case was again considered for promotion as Investigator Grade-II in the meetings of the DPC held on 4th September, 1980, 24th April, 1981 and 18th July, 1981 but he was not found suitable. A number of persons junior to him in the cadre of Computers were promoted on the recommendation of the DPC. He did not challenge the order of reversion and/or promotion of juniors by filing a civil suit or a writ petition under Article 226 of the Constitution of India. He did not even represent against the reversion till 18th November, 1993 when he made first representation to the Director, Labour Bureau for restoration of his status as Investigator Grade-II with retrospective effect and fixation of pay in the pay scale of that post. He reiterated this demand,—*vide* representation dated 19th November, 1993 (Annexure P. 15) sent to the Secretary, Government of India, Ministry of Labour and representations/reminders Annexures P. 18 dated 28th February, 1994, P. 20 dated 25th January, 1995, P. 22 dated 28th March, 1995 and P. 24 dated 6th October, 1995, all of which were addressed to the Director, Labour Bureau. Two of his representations, which were forwarded to the Government of India were rejected,—*vide* office memorandum dated 25th February, 1994 and 12th May, 1994 (not placed on record). With reference to representation Annexure P. 20 dated 25th January, 1995, Government of India, Ministry of Labour (Labour Bureau) informed respondent No. 2,—*vide* memo Annexure P. 21 dated 13th March, 1995 that he had been reverted due to reduction of the sanctioned strength of the cadre of Investigator Grade-II. This was reiterated in memo Annexure P. 23 dated 5th May, 1995. However, three successive negative replies did not deter respondent No. 2 who submitted representations Annexure P. 24 dated 6th October, 1995, P. 27 dated 9th October, 1996 and P. 28 dated 21st April, 1997 for retrospective restoration of his position as Investigator Grade-II and grant of consequential benefits. The same were also rejected by the Government of India and its decisions were conveyed to respondent No. 2,—*vide* office memorandum Annexures P. 25 dated 22nd August, 1996/3rd September, 1996, P. 26 dated 13th August, 1996/3rd September, 1996 and P. 29 dated 10th September, 1997. Thereafter, he filed an application under Section 19 of the Act

which was registered as OA No. 1066/CH of 1997 for grant of the following reliefs :

- “(i) Order No. 26/6/78-Admn. I dated 30th May, 1980 passed by the then Director, Labour Bureau, Chandigarh, which was never communicated to the applicant (Annexure A. 1).
- (ii) Office memo No. 73/18/93-Admn. I, dated 22nd August, 1996/3rd September, 1996 passed by the office of respondent No. 2 to the extent the claim of the applicant for his retrospective promotion from 13th October, 1978 has been declined (Annexure A. 2).
- (iii) Office memo No. 73/8/96-Admn. I, dated 13th August, 1996/3rd September, 1996 passed by the office of respondent No. 2 to the extent the respondents have declined the notification of seniority list of Investigators Gr. II issued as on 30th April, 1996, on 6th May, 1996, whereby he had claimed his placement in the cadre of Investigators Gr. II w.e.f. the date earlier to the date of promotion of persons junior to him (Annexure A. 3).
- (iv) Office Order No. 73/18/94-Admn. I dated 10th September, 1997 whereby the representations of the applicant against his reversion from the post of Investigator Gr. II to Computer have been rejected (Annexure A. 4).
- (v) For issuance of directions to the respondents to treat the applicant as Investigator Gr. II as if he was never reverted as has been done in respect of the persons similarly situated including his seniors and juniors, with all consequential benefits ;

OR

In the alternative to treat him as Investigator Gr. II either from the date earlier to the date of such promotion/regularisation of his juniors as Investigator Gr. II or at least from the said date with all the consequential benefits.”

(3) He challenged the order of reversion on the ground of discrimination and violation of his fundamental right to equality in the matter of employment and also on the ground of violation of the rules of natural justice.

(4) On being noticed by the Tribunal, the non-applicants (petitioners herein) filed reply to contest the application. They raised an objection to the maintainability of the application by asserting that the Tribunal does not have the jurisdiction to entertain the applicant's prayer for quashing the reversion brought about in the year 1980. On merits, they pleaded that reversion of the applicant was necessitated due to reduction in the cadre strength of Investigator Gr. II. They also justified the promotion of persons junior to him by asserting that his case was duly considered by the DPC but he was not found suitable.

(5) After considering the rival pleadings and hearing the Advocates for the parties, the Tribunal allowed the application of respondent No. 2, quashed the orders impugned before it and directed the petitioners to treat him as Investigator Grade-II from the date his juniors were promoted/regularised on that post and also give him all consequential benefits. The objection raised on behalf of the petitioners to the maintainability of the application on the ground that it was barred by limitation was over-ruled by the Tribunal by assigning the following reasons :

“On the point of limitation, the learned counsel for the applicant placed reliance on *Sua Lal Yadav v. The State of Rajasthan and others*, (1976) 4 SCC 853. In that case, the applicant a Sub-Inspector of Police was dismissed from service in 1964 after holding a departmental enquiry. His appeal was dismissed on 25th June, 1966. The appellant made a review application on June 1, 1968 which was entertained by the Governor who held on merits that the matter was not fit for review. The High Court dismissed the writ petition against dismissal of review application on the ground of unreasonable delay. The Supreme Court held that as the Governor dismissed the review application on merit and not on delay, the ground of

delay cannot be resurrected in the review application at a remote stage and made a ground for dismissing the writ application. High Court's order was set aside and the matter was remanded to the High Court for disposal in accordance with law.

We find that the impugned orders were passed by the respondents rejecting applicant's representations. However, on merits and not on grounds of delay in making representations. The ratios in the cases of Gurdev Singh (supra) and Nandial Raigar (Supra) are not applicable to the facts of the present case as the facts in those cases vis-a-vis the present case are distinguishable. The present case does not relate to a civil suit and the provisions of the Limitation Act. Further in comparison with the decision of the Punjab and Haryana High Court in the case of Balbir Singh, the ratio in the matter of Sua Lal Yadav (supra) will certainly hold the field as the respondents had entertained applicants delayed representations and rejected them on merits and not on the ground of delay. In this view of the matter the objection of the respondents relating to limitation is rejected.

From the facts of the case, we find that whereas applicants punishment of compulsory retirement was quashed and set aside by the Court's order dated 6th November, 1992 in OA No. 506/PB/90 and the respondents were directed to reinstate the applicant forthwith. Instead of reinstating him in the grade of Investigator Grade-II, he was posted as Computer. The orders of the Court had become final and the respondents could not have posted the applicant in any other post except Investigator Grade-II."

(6) The narration of facts would remain incomplete without a reference to the disciplinary enquiries initiated against respondent No. 2 and orders passed by the competent authorities. The first enquiry was initiated against him;—*vide* memo dated 12th January, 1982 issued under Rule 14 of the Central Civil Services (Classification,

Control and Appeal) Rules, 1965 on the charges of over-staying the sanctioned leave, not responding to the official communications, not informing the office about his whereabouts during the period of absence from duty and unauthorisedly retaining LTC advance. At the conclusion of the enquiry, the Director, Labour Bureau passed order Annexure P. 8 dated 11th January, 1983 removing respondent No. 2 from service. The departmental appeal filed by him was rejected by the appellate authority,—vide order dated 23rd May, 1984. He challenged the order of removal by filing a suit for declaration in the Court of Senior Sub Judge, Chandigarh. On the establishment of Chandigarh Bench of the Tribunal in 1986, the suit was transferred to it under Section 29(2) of the Act and was registered as OA/T.A. No. T-118, dated 1986. The same was allowed by the Tribunal,—vide order dated 4th September, 1986 and the order of removal was quashed with a direction to the non-applicants to reconsider the matter on the question of quantum of punishment. Thereafter, the Director, Labour Bureau passed order dated 31st May, 1989,—vide which he compulsorily retired respondent No. 2 w.e.f. 11th January, 1983 by way of punishment. The appeal filed by respondent No. 2 against that order was dismissed by the appellate authority. He then challenged the order of punishment as well as the appellate order in OA No. 506-PB of 1990 which was allowed by the Tribunal,—vide order Annexure P. 10 dated 6th November, 1992 on the ground that the disciplinary authority had not supplied copy of the enquiry report to the applicant (respondent No. 2 herein) before imposing penalty. Thereafter, respondent No. 2 was reinstated in service w.e.f. 24th November, 1992. This was followed by an order dated 20th/23rd April, 1993,—vide which Director, Labour Bureau, Chandigarh imposed penalty of stoppage of three grade increment with cumulative effect. He also ordered that period of absence from duty from 24th July, 1980 to 10th January, 1983 be treated as *dies-non*. After 9 years, the authority concerned reviewed the earlier order and regularised the period during which respondent No. 2 had remained away from duty.

(7) In April, 1994, respondent No. 2 was placed under suspension on the allegation of having physically assaulted Shri Harwant Singh, the then Assistant Director and hurling filthy abuses on him. He was reinstated in November, 1994 and the second departmental enquiry was initiated against him,—vide memo dated 24th November, 1994. That enquiry culminated in the imposition of penalty of censure on respondent No. 2,—vide order dated 6th April, 1998.

(8) During the pendency of OA No. 1066/CH of 1997, the case of respondent No. 2 was again considered by the DPC for promotion as Investigator, Grade-II, but due to pendency of disciplinary proceedings, his name was kept in sealed cover. Later on, he was promoted as Investigator, Grade-II,— vide order Annexure P. 32 dated 24th September, 1999.

(9) Shri Namit Kumar, learned counsel for the petitioner assailed the impugned order by arguing that Chandigarh Bench of the Tribunal did not have the jurisdiction to entertain the prayer made by respondent No. 2 for quashing the order of reversion passed by the competent authority 6 years prior to its establishment. He submitted that the only remedy available to respondent No. 2 against order dated 4th September, 1980 was to file a civil suit or a petition under Article 226 of the Constitution of India and the Tribunal could not have entertained the application simply because the representations made by him in 1993 and thereafter were considered and rejected by the competent authority in the years, 1994, 1995, 1996 and 1997. He relied on to the provisions of Section 20 and 21 of the Act and argued that the Tribunal could not have entertained the application filed after 17 years of the accrual of cause of action simply because the representation made by respondent No. 2 after almost 13 years of his reversion was considered and rejected by the Government of India.

(10) Shri R.K. Sharma, learned counsel for respondent No. 2 supported the impugned order by arguing that rejection of the representations made by respondent No. 2 in 1993 and onwards gave rise to fresh cause of action entitling him to seek relief from the Tribunal. He pointed out that the last rejection of the representation made by respondent No. 2 was conveyed to him,—vide letter dated 10th September, 1997 and, therefore the Tribunal did not commit any jurisdictional error by entertaining the application. He further argued that after having rejected the representation on merits, the petitioners did not have the locus to seek dismissal of the application as barred by time. In support of this argument, Shri Sharma relied on the judgment of the Supreme Court in *Sualal v. State of Rajasthan (1)*.

(1) AIR 1977 SC 2050

(11) We have given serious thought to the respective arguments. For deciding the question relating to jurisdiction of the Tribunal to entertain the application filed by respondent No. 2 after 17 years of his reversion and 6 years prior to its establishment, we may refer to the Preamble and Section 3(b), (q), (r), 14(1), 19(1), 20 and 21 of the Act. The same read as under :

"Preamble

An Act to provide for the adjudication or trial by the Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323 A of the Constitution and for matters connected therewith or incidental thereto.

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3. (b) "Application" means an application made under section 19 :

(q) "Service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, as the case may be, of any corporation (or society) owned or controlled by the Government, as respects—

(i) remuneration (including allowances), pension and other retirement benefits :

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation :

(iii) leave of any kind;

- (iv) disciplinary matters; or
- (v) any other matters whatsoever,
- (r) "Service rules as to redressal of grievances", in relation to any matter, means the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act, or any grievances in relation to such matters.

14. Jurisdiction, powers and authority of the Central Administrative Tribunal—

- (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—
 - (a) recruitment and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian :
 - (b) all service matters concerning—
 - (i) a member of any All-India Service ; or
 - (ii) a person (not being a member or an All India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union ; or
 - (iii) a civilian (not being a member of an All India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence.

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or any State or of any local or other authority within the territory of India or under the control of the Government

of India or of any corporation (or society) owned or controlled by the Government.

- (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such.

*(Explanation.—*For the removal of doubts, it is hereby declared that reference to “Union” in this sub-section shall be construed as including references also to a Union Territory).

19. Applications to Tribunals.—(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

*Explanation.—*For the purpose of this sub-section, “order” means an order made—

- (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government ; or
- (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation referred to in clause (a).

20. Applications 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 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-sections (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 material.
- 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 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), or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfied the Tribunal that he had sufficient cause for not making the application within such period.”

(12) A reading of the Preamble and the provisions quoted above shows that the main object behind the creation of special adjudicatory forum for resolution of disputes and complaints with respects to recruitment and conditions or service of persons appointed to public services and posts in connection with the affairs of the Union etc. is to reduce the burden of regular Courts and thereby give them more time to deal with other cases expeditiously, and also to provide speedy remedy to the persons having complaints in respect of recruitment, matters relating to recruitment and conditions of service. For achieving this object, the Tribunals Act have been bestowed with the jurisdiction, powers and authority exercisable by all Courts [except the Supreme Court] immediately before the date of enforcement of the

Act in relation to all service matters including recruitment, promotion, pay, remuneration, pension etc. By virtue of the judgment of 7-Judges Bench of the Supreme Court in *L. Chandra Kumar* versus *Union of India and others*, (2) the High Court can now entertain petitions under Article 226 of the Constitution of India against the orders of the Tribunal. However, this does not, in any manner, detract from the fact that the Tribunals established under the Act have the exclusive jurisdiction to entertain and decide all disputes and complaints pertaining to service matters. The factors, like prescription of shorter period of limitation, conferment of power upon the Tribunals to devise their own procedure, express exclusion of the jurisdiction of all other Courts except the Supreme Court (and now of the High Courts) and transfer of the pending suits and other proceedings to the Tribunals are clearly indicative of the Parliament's intention to create specialised forums having exclusive jurisdiction to deal with the disputes and complaints with respect to recruitment, matters relating to recruitment as well as service conditions of the employees.

(13) Section 20(1) lays down that 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. Sub-section (2) of Section 20 declares that 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 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 and where no final order has been made by the government etc., if a period of six months has elapsed from the date of filing of appeal or making of representation. Section 21(1) declares that the Tribunal shall not admit an application against a final order as is mentioned in clause (a) of sub-section (2) of Section 20 unless the same is made within one year from the date of such final order and in the case covered by clause (b) of sub-section (2) of Section 20 within a period of one year and six months from the date of filing of appeal or making of representation. Sub-section (2) of Section 21 contains a non-obstante clause which was incorporated to obviate

unnecessary objection of limitation in respect of order made immediately preceding the date on which power, jurisdiction and authority of the Tribunal became exercisable. It lays down that notwithstanding anything contained in sub-section (1) 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 and 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 filed within the period specified in clause (a) of Section 21(1) or clause (b) thereof or within a period of six months from the said date. Sub-section (3) of Section 21 also contains a non-obstante clause. It empowers the Tribunal to admit an application after expiry of the period specified in clauses (a) or (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2) if the applicant satisfied that he had sufficient cause for not making the application within such period.

(14) The reason for prescription of a shorter period of limitation for filing an application under the Act as compared to the limitation prescribed for filing civil suits is not difficult to fathom. This must have been done by the Parliament keeping in view the object sought to be achieved by enacting special legislation under Article 323-A of the Constitution of India to deal with service disputes and complaints of the employees and other aggrieved persons. The main object behind the creation of special adjudicatory forum for resolution of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of union etc. was to provide speedy remedy to the aggrieved persons and also to reduce the burden of regular courts. While doing so, the Legislature was alive to the fact that one of the major causes for declining the efficiency of services was the long pendency of litigation in the courts relating to service disputes. Therefore, with a view to ensure that such complaints and disputes are adjudicated/ resolved expeditiously, limitation of one year only came to be prescribed with a provision for extended period of limitation of one year and six months for those cases in which the aggrieved employee may have made appeal/ representation and the same may not have been decided

by the concerned authority. If the Legislature had retained the period of limitation prescribed for filing civil suits. The Tribunals constituted under the Act would have been reduced to the level of an ordinary forum for adjudication of service disputes and the purpose sought to be achieved by enacting the special legislation would have been frustrated.

(15) The ambit and scope of Section 21 of the Act was first considered by a 7-Judges Bench of the Supreme Court in *S.S. Rathore* versus *State of Madhya Pradesh*, (3) in the backdrop of the dismissal of the appellant's suit as barred by time. Their Lordships of the Supreme Court referred to the provisions of the Limitation Act, 1963 and Section 20 and 21 of the Act and held as under :

“We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. **We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.**”

It is appropriate to notice the provision regarding limitation under Section 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 servants 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.

It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation 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. **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.**

(Underlining is ours).

(16) In **Secretary to Government of India and others** versus **Shivram Mahadu Gaikwad**, (4) the Supreme Court held that an application filed in the year 1990 questioning the order of discharge from service passed on 7th October, 1986 was liable to be dismissed as barred by limitation. Their Lordships further held that in the absence of an application for condonation of delay, the Tribunal cannot entertain the application filed after the expiry of the period of limitation prescribed under Section 21(1) of the Act.

(17) In **Central Hospital** versus **Savita S. Bodke and others**, (5) the Supreme Court, while reversing the order of Bombay Bench of the Tribunal which had allowed an application filed by respondent No. 1 in the year 1982 for quashing the termination of his service brought about on 8th March, 1982 observed as under :

“We fail to understand how the Tribunal could have exercised jurisdiction in regard to an event which accrued long before it came into existence and how could it direct the payment of salary of Staff Nurse when she was not qualified to be appointed to the post.

(4) (1995) Supp. (3) S.C.C. 231

(5) (1995) Supp. (3) S.C.C. 439

(18) In **Administrator of Union Territory of Daman and Diu and others** versus **R.D. Valand**, (6) their Lordships of the Supreme Court quashed the order passed by Bombay Bench of the Tribunal which had entertained the claim of the respondent for retrospective promotion and held as under :

“The Tribunal was not justified in entertaining the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28th September, 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 9th October, 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 the present 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.”

(19) In **Dhala Ram** versus **Union of India**, (7) the Supreme Court held that an application filed in 1993 questioning 1988 rejection of the claim for compassionate appointment was liable to be dismissed as barred by limitation.

(20) In **Ramesh Chand Sharma** versus **Udham Singh Kamal**, (8) the Supreme Court held that the Tribunal did not have the jurisdiction to admit an application filed after 3 years of the rejection of representation in the matter of promotion.

(21) In **Government of Andhra Pradesh** versus **Mohd. Ghosh Mohinudin**, (9) the Supreme Court allowed the appeal filed by the Government of Andhra Pradesh against the order passed by Andhra

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- (6) 1995 Supp. (4) SCC 593
(7) (1997) 11 SCC 201
(8) 1999 (4) RSJ 689
(9) 2001(4) RSJ 477

Pradesh Administrative Tribunal and held that an application filed after more than 15 years of the notification issued by the government for re-organisation of the cadre was liable to be dismissed as barred by limitation.

(22) In *Y. Ramamohan and others* versus *Government of India and others*, (10) the Supreme Court held that disposal of repeated representations made by the employee would not justify condonation of delay in filing the application. In that particular case, the appellant had approached the Tribunal in 1990 for quashing Common Gradation List which communicated to him on 3rd May, 1983. The Tribunal rejected the application as barred by time. Their Lordships of the Supreme Court upheld the order of the Tribunal and observed as under :-

“In the case in hand, when the Tribunal has recorded a finding in the year earlier case that the gradation list had been duly communicated in the year 1983, we must assume that the applicants knew of the gradation list assigning them the year of allotment as 1976, in 1983, and therefore the so-called representation filed by the appellants to the Central Government after disposal of the earlier application filed by the direct recruits is nothing but a subterfuge to get a period of fresh limitation. This method adopted by the appellants disentitles them to any relief. That apart, the gradation list of the year 1983 allotting 1976 as the year of allotment to the appellants has almost settled the seniority list, which need not be disturbed after this length of time.”

(23) In *Director of Settlement and others* versus *D. Ram Prakash*, (11) the Supreme Court reversed the order of Andhra Pradesh Administrative Tribunal and held that the Tribunal should not have entertained the application ignoring the period of limitation. The facts of that case were that seniority of the respondent in the cadre of Surveyor was determined taking his entry into service with effect from 1st February, 1978. In the year 1985, he filed representation

(10) (2001) 10 SCC 537

(11) 2002(2) RSJ 582

claiming that the period of training from 1st October, 1971 to 1st February, 1972 shall be counted for the purpose of fixation of seniority. The same was rejected. In 1996, he made fresh representation which was rejected on 17th October, 1998. Thereafter, he filed an application before the Tribunal. The Tribunal accepted the application and directed the non-applicants to count the period of training for the purpose of fixation of seniority of the respondent. Their Lordships of the Supreme Court reversed the order of the Tribunal and held that it should have rejected the claim on the ground of limitation as provided under Section 21 of the Act.

(24) The above analysis of the provisions of the Act and survey of judicial precedents leads to the following conclusions :

- (i) The Tribunal established under the Act cannot entertain an application filed after expiry of the period of limitation prescribed under Section 21(1) unless the applicant satisfies it that he had sufficient cause for not filing the application within the prescribed period of limitation.
- (ii) In respect of the causes which had accrued to the aggrieved person before establishment of the Tribunal, an application could be filed within the period prescribed under clause (a) or (b) of sub-section (1) of Section 21 or within a period of 6 months from the expiry of that period. The benefit of non-obstante clause contained in sub-section (3) of Section 21 could also be availed by the persons in whose favour the cause had accrued before the establishment of the Tribunal.
- (iii) The rejection of successive representations cannot justify entertaining of an application filed after expiry of the period of limitation unless the relevant service rules as to the redressal of the grievances provide for such representations.
- (iv) Delay in filing the application cannot be condoned unless a written request to that effect is made under Section 21(3) and the Tribunal is satisfied that the applicant had sufficient cause for not making the application within the period of limitation.

(25) We may now revert to the case in hand. A brief recapitulation of the facts shows that the petitioner was reverted from the post of Investigator Grate-II,— *vide* order dated 4th September, 1980. He did not challenge that order before the competent court. He did not even make a representation to the higher departmental authorities till 1993. First representation made by him was rejected in February, 1994. This was conveyed to him,—*vide* office memorandum dated 25th February, 1994. His repeated representations were rejected,—*vide* memos dated 12th May, 1994, 5th May, 1995, 28th February, 1996/ 3rd September, 1996, 13th August, 1996/3rd September, 1996 and 10th September, 1997. After 17 years of the passing of order of reversion, he filed application for quashing of order dated 4th September, 1980 and office memorandums,—*vide* which his repeated representations were rejected. Unfortunately, the Tribunal over-looked the provisions of Section 21(2) and entertained the application ignoring the fact that the cause of action had accrued to respondent No. 2 about 6 years prior to its establishment.

(26) In our considered opinion, the Tribunal did not have the jurisdiction to entertain muchless except the application filed by respondent No. 2 in 1997 for quashing order dated 4th September, 1980 and the fact that the representations made by him in 1993 and thereafter were rejected between 1994 and 1997 was not sufficient to cloth it with the jurisdiction to adjudicate upon the legality of that order.

(27) We are further of the view that even by giving benefit of the special period of limitation prescribed under Section 21(2), the application of respondent No. 2 could not have been entertained and the Tribunal was bound to reject the same as barred by time because it had been filed after more than 10 years of the expiry of period specified in that section.

(28) The reason assigned by the Tribunal for rejecting the objection of limitation is too flimsy to be accepted. The repeated representations made by respondent No. 2 and rejection thereof did not revive the cause which had accrued to him in 1980 and had become time-barred in the year 1983 even for the purpose of filing a civil suit. It is not the case of respondent No. 2 that the rules/regulations/executive instructions regulating his service conditions

provide for making of repeated representations. Therefore, we have no hesitation to hold that the Tribunal committed a grave illegality by entertaining and accepting the application filed by respondent No. 2.

(29) The judgment of the Supreme Court in **Sua Lal Yadav versus State of Rajasthan** (*supra*), has absolutely no bearing on the case of respondent No. 2. In that case, the review filed by the appellant under Rule 34 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules after the expiry of limitation was entertained by the Government and decided on merits. In the backdrop of that fact, their Lordships of the Supreme Court held that the High Court was not right in dismissing the writ petition on the ground that the review was belated. The ratio of that decision cannot be applied to the cases which are governed by the provisions of Sections 20 and 21 of the Act.

(30) In the result, the writ petition is allowed. Order Annexure P-34 is quashed and OA No. 1066/CH of 1997 filed by respondent No. 2 is dismissed.

R.N.R.

Before Swatanter Kumar & S.S. Saron, JJ.

HARVINDER SINGH—*Petitioner*

versus

FOOD CORPORATION OF INDIA & OTHERS—*Respondents*

C.W.P. No. 6386 of 2002

6th February, 2003

Constitution of India, 1950—Art. 226—Territorial jurisdiction—Discharge from service—Petitioner remained posted at places falling in the State of Sikkim—Order of discharge issued from New Delhi and addressed to the petitioner through the Zonal Manager, Guwahati—Order communicated/served to the petitioner at his native place in the State of Punjab—Whether receipt of communication of the order confers upon the petitioner a part of cause of action within the territorial jurisdiction of this High Court—Held, no—Service of the