

on *ad hoc* basis. After his appointment, he became a member of the Service and was governed by the Rules.

(13) The last question that arises is whether the petitioner is entitled to his seniority from the date of appointment or from that of regularisation. It is true that in the letter, dated January 29, 1973, the Chief Secretary has said that the Government servants who would be regularised under the aforesaid letter would be entitled to the seniority from January 1, 1973. It is well settled that the Government cannot issue any instruction against statutory rules. The rule in the present case clearly provides that the *inter-se* seniority of the members shall be determined from the date of their continuous appointment in the Service. The Chief Secretary could not lay down another principle for determination of the seniority of the petitioner. In case the government wanted to do so it should have amended the rules. Consequently, the petitioner is not bound by the said letter. He is, therefore, entitled to his seniority from the date of appointment, i.e., June 12, 1971.

(14) The facts of the other writ petitions are similar and no additional argument was raised in them.

(15) For the aforesaid reasons, I accept the writ petitions and direct the respondents to determine the seniority of the petitioners from the dates of their appointment to the Service.

(16) No order as to costs.

H. S. B.

Before G. C. Mital, J.

POKHAR SINGH,—Appellant

versus

STATE OF HARYANA,—Respondent.

Regular First Appeal No. 1707 of 1978.

May 21, 1980.

Land Acquisition Act (1 of 1894)—Sections 3-D, 18, 26 and 54—Limitation Act (XXXVI of 1963)—Section 5—Reference under

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section 18 dismissed as time barred—Such order—Whether appealable—The Court of District Judge under the provisions of the Act—Whether a 'court' within the meaning of section 3-D so as to attract the provisions of section 5 of the Limitation Act.

Held, that a reading of the amended section 26 (2) of the Land Acquisition Act, 1894 shows that every award under the Act is deemed to be a decree and the statement of the grounds of the award is a judgment within the meaning of section 2, clause (2) and section 2, clause (9) respectively of the Code of Civil Procedure, 1908. Therefore, every final decision of reference made under section 18 of the Act whether rejecting the reference or enhancing the compensation would be a judgment within the meaning of the Code and as such would be an award and shall be executable as a decree. An appeal lies to the High Court under section 54 of the Act from every award or part of the award. Therefore, any decision on a reference made under section 18 of the Act would be a decision and award and will be considered as a judgment and decree within the meaning of the Act and would be appealable as such. (Paras 6 and 7)

Held, that the Land Acquisition Act itself defines 'Court' in section 3-D to mean a principal Civil Court of original jurisdiction unless the appropriate Government has appointed a special judicial officer within any specified local limits to perform the functions of the Court under this Act. The District Court and all Additional District Judges have been empowered to function as 'courts' within the meaning of section 3-D of the Act and, therefore, they are courts and not special Tribunals. (Para 15)

Regular First Appeal from the order of the Court of Shri J. C. Nagpal, Additional District Judge, Rohtak, dated 31st August, 1978, concluding that the market value of the acquired land was Rs. 100 per marla, but since the reference application was held to be time barred, the same was declined by him. In the appeal, filed in the month of September, 1973, allowed compensation at the rate of Rs. 6,000 per acre.

C. M. Chopra, Advocate, for the appellant.

Bhup Singh, Additional A. G., Haryana & S. S. Ahlawat, Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

(1) By notification published on 31st January, 1973, the State of Haryana acquired 132 acres of land in village Bohar, district

Rohtak, for setting up Tourist Complex and a lake in that area. The Land Acquisition Collector by his award, dated 26th November, 1973, allowed compensation at the rate of Rs. 6,000 per acre. The claimant felt dissatisfied and sought reference under section 18 of the Land Acquisition Act (hereinafter called the Act), which came up for consideration before the Additional District Judge, Rohtak, who on the contest of the parties framed five issues out of which the following two issues are relevant, for the decision of this case:—

1. Whether the petition or reference made by the claimant is barred by time as the award was announced on 28th November, 1973, while the application for making reference was made on 14th January, 1974 ?
2. What was the market value of the land in question on the date of notification under section 4 of the Land Acquisition Act?

(2) After evidence was led, the Additional District Judge, by his order, dated 31st August, 1978, decided the first issue against the claimant and held that the reference application was time barred inasmuch as the award was given on 28th November, 1973, when the claimant was present in pursuance of notice issued under section 9 of the Act and the reference application was filed on 14th January, 1974, beyond forty-two days, as required by section 18 of the Act.

(3) On the other issue it came to the conclusion that the market value of the acquired land was Rs. 100 per *marla*, but since the reference application was held to be time barred, the same was declined. Feeling dissatisfied, the claimant has come up in appeal to this Court.

(4) As regard the issue on merits, counsel for the parties are agreed that market value at the rate of Rs. 140 per *marla* deserves to be fixed in this case, in view of the Division Bench decision of this Court in *Sheo Ram vs. Chandgi Ram and others* (1), wherein for acquisition in the same village by notification, dated 11th November, 1969, compensation was awarded at the rate of Rs. 140 per *marla*. Accordingly, the market value of the acquired land is fixed at the rate of Rs. 140 per *marla*.

(5) Coming to the point of limitation, the learned Additional Advocate-General, Haryana, has raised a preliminary objection that no appeal is competent in this Court against the judgment of the

(1) 1979 P.L.J. 416.

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Court below, rejecting the reference as time barred. According to him, such a decision does not fall within the ambit of section 54 of the Act. In this regard, reliance is placed on a Division Bench decision of the Lahore High Court in *Nafis-ud-Din and others vs. Secy. of State of another* (2).

(6) I have gone through the decision in *Nafis-ud-Din's case* (supra) and find that there is no discussion on the point except that reliance is placed on *Ghulam Mohy-ud-Din and another vs. Secretary of State of India* (3), which in return had placed reliance on *Hasum Molla vs. Tasiruddin* (4). *Ghulam Mohy-ud-Din and another's case* (supra) and *Hasum Molla's case* (supra) were decided long before the amendments made in sections 26 and 54 of the Act, which were made by Act 19 of 1921. A reading of the amended section 26(2) shows that every award under the Act is deemed to be a decree and the statement of the grounds of the award is a judgment within the meaning of section 2, clause (2), and section 2, clause (9) respectively, of the Code of Civil Procedure, 1908. Therefore, every final decision of reference made under section 18 of the Act, whether rejecting the reference or enhancing the compensation, would be a judgment within the meaning of the Code of Civil Procedure and as such would be an award and would be executable as a decree.

(7) An appeal lies to the High Court under section 54 of the Act from every award or part of the award. Therefore, any decision on a reference made under section 18 of the Act, would be a decision and award and will be considered as a judgment and decree within the meaning of the Act and would be appealable as such. The decision in *Hasun Molla's case* (supra) and *Ghulam Mohy-ud-Din case* (supra) proceeded on the unamended provisions and, therefore, cannot hold the field any longer. Since the afore-said two decisions were merely followed in *Nafis-ud-Din's case* (supra) without much of discussion, the same will not stand in the way of the claimant, as I am of the opinion that even if a reference application is dismissed on the point of limitation, it would be considered as a decision on merits and an appeal would certainly lie

(2) A.I.R. 1927 Lahore 858.

(3) 48 Punjab Record 1914.

(4) (1912) I.L.R. 39 Calcutta 393.

against the decision rejecting a reference as time barred, as it would amount to a judgment and decree within the meaning of section 26 and appealable under section 54 of the Act.

(8) The aforesaid view of mine finds support from the judgment of Kailasam, J. in *G. Gopalaswami vs. G. Navalgaria and others* (5), where it was held that under the Motor Vehicles Act, 1939, if the claim application is dismissed as time barred, an appeal lies therefrom; as such an order is an award within the meaning of sections 110-A(3), 110-B and 110-D of the Motor Vehicles Act, 1939. In a Division Bench judgment of this Court in *Bachan Singh and others vs. Mohinder Kaur and others* (6), decided by the Chief Justice and myself the following observations were made :—

“Without launching a dissertation on the meaning of the word ‘award’ as such, it appears to me that in any case its use in Section 110-B makes it plain that the ‘Award’ which the legislature had in mind was the final determination of the amount of compensation or otherwise which the Tribunal may arrive at. In essence, it is only when the claim, for compensation is either allowed or refused that it can be termed as an “Award” determining the amount of compensation which appears to the Tribunal to be just and further specifying the person or persons to whom compensation shall be paid”.

A reading of the aforesaid passage clearly shows that under the Motor Vehicles Act, 1939, whether the claim application is allowed or refused, it is still termed as an award and the same is appealable.

(9) To take any other view would clearly be in the negation of the interpretation of section 54 of the Act and instead of promoting the underlying object of the Parliament would defeat the same.

(10) The additional reasoning given in *Nafis-ud-Din's case* (supra) was that a Division Bench of the Chief Court had held in *Bhagwan Das vs. The Collector of Lahore* (7), that section 12, Limitation Act, 1877, does not apply in computing the period of

(5) A.I.R. 1967 Madras 403.

(6) L.P.A. 378 of 1977 decided on 21st March, 1979.

(7) 79 Punjab Record 1904.

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limitation prescribed for an application under section 18(1) of the Act and, therefore, the time requisite in obtaining a copy of the award cannot be deducted in computing the periods laid down by sub-section (2) of section 18 of that Act. The aforesaid reason does not, in any way, advance the argument to a reasonable conclusion that the appeal will not lie to the High Court from the decision of the District Court rejecting the reference on the ground that the reference made under section 18 was time barred.

(11) For the reasons recorded above, I am of the view, on reading sections 26 and 54 of the Act, after the amendments made in the year 1921, that an appeal would lie to the High Court against the decision of the District Court rejecting the reference made under section 18 of the Act, on the ground of limitation. Consequently, I overrule the preliminary objection.

(12) Coming to the point whether reference application made under section 18 of the Act was barred by time, it will be important to notice some facts brought out on the record. The claimant received a notice under section 9 of the Act to appear before the Land Acquisition Collector to file his claim. The claimant appeared and objected to the acquisition and claimed the market value. The claimant sought opportunity to lead evidence to produce documentary evidence to prove the market value. Thereafter, document Exhibit R. 2 shows that as many as 37 claimants appeared before the Land Acquisition Collector and made statements, objecting to the acquisition and asked for opportunity to lead documentary evidence. Even Hazari Singh Reader to Land Acquisition Collector, appeared as R.W. 2 and in cross-examination admitted that the right-holders had stated in the joint statement before the Land Acquisition Collector that they should be given time to produce evidence. Thereafter, award was delivered on the same day and in para 5 of the award, the Land Acquisition Collector has noticed that the claimants sought compensation varying from Rs. 50,000 to Rs. 60,000 per acre. It was also stated in the award that no documentary evidence was produced by any claimant. At the end of the award, there is a mention that the same was announced to all the persons who were present before him in pursuance of notices under section 9 of the Act for filing the claim.

(13) The Court below has merely noticed two dates in holding the reference to be time barred without much of discussion and

those are that the award was announced on 28th November, 1973, when the claimant was present to submit his claim and the reference application was filed on 14th January, 1974, and therefore, it was barred by time. Some more facts have come on the record which have not been noticed by the Court below. The first is, according to Hazari Singh. R.W. 2, Reader to the Land Acquisition Collector, only 14 claimants were present in whose presence the award was announced, whereas according to Exhibit R. 2, 37 persons were present who made statements in regard to filing of claim. However, the award says that it was announced to all the persons who were present in pursuance of notices under section 9 of the Act. Therefore, there is obvious inconsistency between the statement of the Reader and the statement contained in the award. What appears is that the statements of 37 persons were recorded and when they claimed an opportunity to lead documentary evidence, the matter was kept over and after they went away, the award was announced in their absence. If the award was announced in their presence, then the Land Acquisition Collector had to decide the grant or refusal of opportunity which is not contained anywhere on the proceedings of the Land Acquisition Collector or in the award made by him, although there is a mention that the claimants have not produced any documentary evidence in support of their case. A reading of the entire record does not show a happy state of affairs in which the proceedings were conducted by the Land Acquisition Collector and in the matters of land acquisition where the land owners are deprived of their property and there are technical provisions, like filing of reference application within certain period, utmost care has to be taken by the concerned officer in strictly following the procedure and in recording the evidence of the persons present before him at the time of announcement of the award and taking on it their signatures in token of having heard the award. There are as many as seven cases before me in all in which it was held that the award was announced in their presence and the reference applications were filed beyond limitation. This further arouses doubt about the following of a correct procedure by the Land Acquisition Collector. Accordingly, I am of the opinion that none of the claimants was present when the award was announced and that is why their signatures were not obtained of having heard the award and the general statement made at the bottom is contradicted by the statement of Hazari Singh, Reader of the Land Acquisition Collector, as is apparent from a reading of his statement as R.W. 2.

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(14) The question of limitation does not rest here. Along with the application for reference filed under section 18 of the Act, an application under section 5 of the Limitation Act was also filed for condonation of delay on the ground that the claimant was ill from 7th January, 1974, to 13th January, 1974, and the claim application was filed on 14th January, 1974, although there is no specific order on the application under section 5 of the Limitation Act, but the Land Acquisition Collector referred the reference application by endorsing that it was within limitation. It clearly shows that the delay, if any, was condoned by the Land Acquisition Collector and the exercise of discretion by him cannot be lightly interfered with. It will be useful to notice that the Court below has not adverted to this aspect of the matter.

(15) The learned Additional Advocate-General, Haryana, has urged that there would have been merit in the contention of the learned counsel for the claimant provided section 5 of the Limitation Act was applicable. According to him, section 5 of the Limitation Act is applicable only to the proceedings before a Court. The Court of District Judge and the Additional District Judge is not a Court within the meaning of the Land Acquisition Act and is a special Tribunal and, therefore, the Limitation Act would not apply to it. I am not impressed with this argument. The Land Acquisition Act itself has defined 'Court' in section 3-D to mean as principal Civil Court of original jurisdiction unless the appropriate Government has appointed a special judicial officer within any specified local limits to perform the functions of the Court under this Act. In the present case, the District Court and all Additional District Judges have been empowered to function as Courts within the meaning of the Act and, therefore, they are Courts and not Special Tribunals, as urged by the learned Additional Advocate-General. Therefore, on this reasoning alone, section 5 of the Limitation Act would be applicable.

(16) Even if it is assumed for the sake of argument that the District Judges and the Additional District Judges deciding reference applications under section 18 of the Act are special judicial officers or special Tribunals, then section 5 of the Limitation Act would be applicable by virtue of section 29(2) thereof. The stand of the learned Additional Advocate-General is that by virtue of section 29(2) of the Limitation Act, the provisions of sections 4 to 24 can be extended only to Courts created under special law and not to

Judicial Tribunals created under special law. I do not find any merit in this argument either. The Supreme Court in *Commissioner of Sales Tax, U.P. vs. Madan Lal* (8), has held that the U.P. Sales Tax Act is a special law within the meaning of section 29(2) of the Limitation Act and sections 4 to 24 of the Limitation Act would apply to the various proceedings before the appellate and revisional authorities created under the U.P. Sales Tax Act. A Full Bench of this Court has also taken the same view in *M/s. Bharat Rubber and Allied Industries v. The State of Punjab* (9). Accordingly, I hold that even if the judicial officers appointed to decide reference applications under section 18 of the Act were special Courts or Tribunals, still sections 4 to 24 of the Limitation Act would apply to the proceedings before them and, therefore, section 5 did apply to the present case.

(17) A reading of section 5 of the Limitation Act shows that any application may be admitted after the prescribed period if the application satisfies the concerned authority that he had sufficient cause for not making the application within such period. Therefore, once the Land Acquisition Collector has referred the matter to the District Court after stating therein that the application was within limitation, it must be assumed that he condoned the delay. This part of the matter was not challenged by the State before the Additional District Judge and I do not permit the State counsel to raise this matter for the first time before this Court. However, if in a given case, the condonation of delay is objected to by the State on the ground that it was on irrelevant or extraneous considerations and is able to bring material on record, it will be open to the District Court to go into the same and find out whether the exercise of discretion by the Land Acquisition Collector in condoning the delay was reasonable or not.

(18) For the reasons recorded above, I hold that the reference application filed by the claimant was not barred by time on both the grounds, that he was not present at the time of announcement of the award and, therefore, limitation would be six months whereas the application has been filed within two months, and that the Land Acquisition Collector will be deemed to have condoned the delay, if any, under section 5 of the Limitation Act which was not objected to before the Court below.

(8) (1976) 38 S.T.C. 543.

(9) C.W. No. 3692 of 1977 decided on 29th February, 1980.

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(19) Since the reference application is held to be within limitation, I fix the market value of the acquired land at the rate of Rs. 140 per *marla* instead of Rs. 6,000 per acre awarded by the Land Acquisition Collector and the claimant would be entitled to the difference of compensation subject to the court fee paid in this Court.

(20) For the reasons recorded above, this appeal is allowed with proportionate costs and since the claimant has paid a court fee of Rs. 2,998 on appeal in this Court, but the maximum enhancement over the amount awarded by the Land Acquisition Collector would not exceed Rs. 65,000. Besides the above, the claimant would be entitled to 15 per cent solatium and 6 per cent per annum interest from the date of taking of possession till payment on the enhanced amount, counsel's fee being Rs. 200.

H. S. B.

Before J. M. Tandon, J.

RATTAN CHAND,—Petitioner.

versus

DIRECTOR, FOOD AND SUPPLIES, PUNJAB, CHANDIGARH,—
Respondent.

Civil Writ Petition No. 1027 of 1980.

May 22, 1980.

Punjab Food and Supplies Department State Service Class III Rules 1969—Rules 9(P), (Q) & (Y)—Rules providing for different and wider channels of promotion—Junior Analyst eligible for promotion both as Inspector as well as Head Analyst—Promotion made to the post of Inspector—Promotee—Whether can decline the promotion by way of right.

Held, that the scheme of the Punjab Food and Supplies Department State Service Class III Rules 1969 is to provide wider channel of promotion. The various categories of posts from which the channel of promotion is Head Analyst or Assistant Food and Supplies Officer are integrated with each other. The duties of one category of personnel cannot be the same as that of another. The object, however, is to give the employees varied experience of all