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Court : Central Administrative Tribunal CAT Patna

Decided On : Jul-02-1998

Judge : V A S.C., J S Dhaliwal

Appellant : Avinash Sood and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. Through this Review Application the applicants seek review of judgment dated 23.8.94, copy of which is Annexure P-1, in OA 180/CH/88, passed by this Tribunal. The applicants were appointed as Inspectors, Central Excise and Customs in 1972 and 1973 against direct quota. They plead that the appointment to the posts of Inspectors was, under the rules, 50% by promotion of Sub Inspectors, 25% by promotion from UDCs and other ministerial cadre and 25% by direct recruitment in the ratio of 2:1:1. In the year 1966, the Govt. appointed a Committee to consider the question of upgradation of the posts of Sub Inspectors as representations to that effect had been received, when a decision was taken to abolish the post of Sub Inspector and gave them options to join the post of LDCs etc. On the basis of the report of a Committee appointed to consider this, upgradation of all the posts of Sub Inspectors to the posts of Inspectors was decided throughout the country in different Collectorates under letter dated 28.10.66, (P-5).

This was carried out in a phased manner and a per the applicants, 578 posts of Sub Inspectors were upgraded in the first chance. Their grievance is that all the Sub Inspectors were appointed as Inspectors by upgradation, while the applicants

had joined directly as Inspectors against the direct quota in the years 1972 and 1973. The upgraded Sub Inspectors, made Inspectors, were initially assigned the seniority by rota-quota rule with other 2 categories from a common seniority list maintained at Delhi, but on the basis of judgment dated 23.8.94 (P-1), the respondents have circulated a seniority list placing those upgraded Sub Inspectors enbloc above the applicants. Annexure P-2 is the revised seniority list in pursuance of the Tribunal's order at Annexure P-1 and similarly, vide Annexure P-3 also, in compliance with the same judgment, the persons so placed in the revised seniority list have been further promoted as Supdt. Grade 'B' on the basis of DPC held. The applicants claim that they were not a party in the OA decided vide P-1 and thus are aggrieved by the same. But since Review Applications have been filed beyond the period of 30 days, they have also filed an MA No.745 of 1997, seeking condonation of delay, pleading that when they came to know about the judgment and order passed by this Tribunal and the revised seniority list, they challenged the same in a Civil Writ Petition No. 547 of 1995 under Article 32 of the Constitution of India in the Supreme Court. However, it was dismissed with the observation that the Court would not like to entertain the petition under Article 32 and it will be open to the petitioners to seek remedy in an appropriate forum. Thereafter, they filed OA No. 936/CH/95, challenging Annexure P-1, which was dismissed vide orders dated 28.9.95, holding that a fresh OA was not maintainable. It was observed that such dismissal of the OA will not take away the rights of the applicants, if any, under the law for seeking a review of the said judgment.

Thereafter, they have filed the present RA on 2.11.95. Condonation of delay is sought on the grounds that on legal advice, they had gone to the Hon'ble Supreme Court and their right to come to the Tribunal stands protected by the orders of the Hon'ble Supreme Court. The delay was not intentional and having gone to the Hon'ble Supreme and having filed the OA, these are sufficient grounds for condonation of delay. 10 applicants have, therefore, prayed for reviewing the order placed at P-1 by recalling the same and for ordering the OA to be heard again on merits with a consequential relief that the orders passed on the basis of said judgment are also to be reviewed and the earlier seniority list placed at Annexure P-10 be ordered to be restored.

2. After considering the nature of the controversy raised, a notice was issued vide orders dated 7.8.97 in the MA for condonation of delay to the parties in that OA. The said parties have filed reply to the MA for condonation of delay in which the applicants have filed a rejoinder.

They have also filed a reply to the RA.3. We have heard the learned counsel Shri M.K. Tiwari for the review applicants Shri Gopal Mahajan for the applicants in the OA and Shri Deepak Thapar, counsel for the official respondents in the OA.4. The respondents have taken objection to the maintainability of the RA, firstly, on the ground that it is barred by limitation and secondly, that a civil writ petition of the present review applicants and an SLP filed by the parties to the OA, having been filed and dismissed by the Hon'ble Supreme Court, vide orders dated 4.9.95 (P-5/A) and R-1, the present RA is not maintainable at all.

5. We find considerable force in the contentions raised by the respondents in the R.A. Judgment of this Bench is dated 23.8.94, whereas the RA has been filed on 2.11.95 i.e. more than one year and 2 1/2 months. As per plea taken by the applicants in their MA 745/97, they mention that they saw the order vide which a change was effected in the seniority list on the basis of judgment passed by this Bench P-1. The date of their knowledge would thus be very important in this case. P-2 is the seniority list from which the applicants claim to have acquired knowledge of the orders P-1, which mentions that in compliance to the orders of this Bench dated 23.8.94 and letter received from the Principal Collector dated 16.2.95, the seniority list as on 1.1.87 is revised subject to decision of the SLP. This order is dated 10.3.95.

Similarly, the promotion of the Inspectors as Supdts. Group 'B' on the basis of P-1 and P- 2 was circulated on the basis of judgment of this Bench vide orders dated 3.4.95 (P-3). Counted from any of these dates, the Review Application is much beyond the period of limitation. We are coming to this conclusion, taking the claimed date of knowledge of the applicants. Right to seek review, if any, starts from these dates. That they chose to file a Civil Writ Petition, which was dismissed on 4.9.95 (P-5/A) cannot be of much help to them. Even after dismissal of the CWP by the Hon'ble Supreme Court, they filed an OA in 1995, which was

dismissed on 28.9.95. Apparently, as has become clear from the oral submissions made by the learned counsel for the Review applicants, the Bench had taken the view that fresh OA is not maintainable, when there is a judgment on the points being raised by similar persons who are not a party to the OA and feel aggrieved. This view is taken by the Tribunal in many cases on the basis of a Full Bench judgment in the case of John Lucas v. GM, South Central Railway and Ors., Full Bench Judgments of the C.A.T. (1986-89), Vol. 1 Page 135, and Ram Janam Singh v. State of UP and Anr., JT 1994(1) SC 187. Today, the learned counsel for the applicants has argued that he has become aware of a judgment of the Hon' ble Supreme Court wherein a view has been taken that in such a situation a person can file a separate OA and there is no bar to it.

That will not be relevant for the purpose of considering the condonation of delay and maintainability of the RA. An order which has become final and has been accepted by the applicants and is not itself under review vide which the OA stands dismissed, cannot be made subject matter of the present MA and the RA, assuming that the applicants may deserve some sympathetic consideration, Even though the OA was dismissed on 28.9.95 and the present RA has still been filed beyond 30 days even from the said dismissal of the OA. Thus seen from any point of view, the RA is beyond the period of 30 days. Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 prescribes, inter alia, that no application for review shall be entertained unless it is filed within 30 days from the receipt of a copy of the order sought to be reviewed. We thus find the RA barred by limitation and also come to the conclusion that in this case the delay should not be condoned as no good grounds are made out.

6. The respondents have also argued that the judgment of this Bench is based on an earlier judgment of Calcutta Bench of C.A.T. and without seeking a review of the said judgment, the applicants' RA is not maintainable. After going through Annexure P-1, we find that the question of placement of the said Inspectors upgraded to the post of Inspectors vis-a-vis the direct recruits and the promotees in the ministerial staff was considered and adjudicated upon by the Calcutta Bench of C.A.T. vide orders dated 24.7.90 in the case of "Moitosh Goswami and Ors. v. Union of India and Ors.", which was itself based on a judgment of Kerala High

Court in a Writ Petition No. 4489/1977-A dated 20.3.79. This Bench of the Tribunal in P-1 mentioned: "5. In view of the fact that this subject has already been a matter of decision by the Kerala High Court which was followed by the Central Administrative Tribunal, Calcutta Bench, we are of the opinion that the application can be disposed of with suitable directions to the respondents in the matter. Accordingly, we allow the original application and direct the respondents to rectify the combined gradation list dated 13.2.87 as on 1.1.1987 in terms of the judgment of the Central Administrative Tribunal Calcutta Bench in OA 8 of 1988. "Moitosh Goswami and Ors.", the case of the applicants to the posts of Supdt., Central Excise as per rules after such rectification." We, thus find substance in the submission of the respondents that this Review Application is not maintainable.

7. There are added reasons for coming to the same conclusion. It would be quite natural that when a particular point is being considered for adjudication, all persons similarly placed may not be party to a litigation at the level of the C.A.T., High Court or Supreme Court. If some judgments are rendered, and a few persons who are not a party, keep on challenging one judgment or the other on these grounds, by filing fresh OA or for that matter, Review Applications, what would be the state of affairs? In matters of service disputes, Hon'ble Supreme Court has taken a definite view that subsequent petitions would be barred by the principles of res judicata, even if the persons now coming before the Court were not a party to the earlier service dispute. It was so held in the case of Makhan Lal Waza v. State of Jammu and Kashmir, AIR Junior Telecom Officers Forum and Ors. v. Union of India and Ors., AIR 1993 SC 787, Hon'ble Supreme Court held that a judgment would be barred by the principles of res judicata a subsequent case even if the members of a forum or a majority of the Engineers were not individually party in that particular case. In the case of Federation of Directly Appointed Officers of Indian Railways and Ors. v. Union of India and Ors., AIR 1993 SC 2422, the Hon'ble Supreme Court held that in service matters, decisions regarding the points adjudicated upon cannot be unsettled (as res judicata would apply), in subsequent proceedings, notwithstanding subsequent exponents broadening and expanding dimensions of Article 14.

The decision which has become final and is regarding categories of employees, in the present case the direct recruits to the posts of Inspectors, Customs and Excise and Sub Inspectors upgraded to the post of Inspectors on the basis of decision taken in 1966, would be binding on the persons who may not have been individually party to that case and subsequent proceedings in any forum would not be maintainable in an RA or some other proceedings. Exception would, however, be if while applying the decisions of Court/Tribunal, some violation is made affecting the rights of terms or directions in that order.

8. Learned counsel for the applicant, now placing reliance on the judgment of K. Ajit Babu and Ors. v. Union of India and Ors., 1998(1) SLJ 85 (SC), has argued that if a person is not a party in an earlier judgment in the dispute about seniority, but was aggrieved by the decision of the Tribunal, he could maintain an OA. Through this contention the applicants seek to revive his OA dismissed by this Tribunal on 28.9.95 without seeking review of that order and without having challenged that order before a superior Court. It is a recent judgment which has been rendered by the Hon'ble Supreme Court in July, 1997, where exponents of a point of law has been made almost 2 years of the order having become final. Allowing the applicants undoing something which has become final would be against the policy under the law which attaches importance in giving finality of judicial decisions.

In any case, such request cannot be considered in the present RA. There are, however, judgments in support of a view that RA filed by the applicants is not maintainable if an SLP against the judgment of the Tribunal which is sought to be reviewed in the RA had already been dismissed. Considering the principle of attaching finality, the Hon'ble Supreme Court after considering the scope of Section 22 of the Administrative Tribunals Act read with Order 47, Rule 1, CPC, a number of cases under the said Act and under the CWP jurisdiction of the Hon'ble High Courts, have held that judgments which have become final by dismissal of an SLP cannot be reopened by the Tribunals or High Courts by way of review. In the case of State of Maharashtra and Anr.

v. V. Prabhakar Bhikaji Ingle, JT 1996(3) SC 567, it was held that a rejection for leave to appeal under Article 136 of the Constitution, in effect, amounts to declining to entertain an appeal, thus making the judgment and order appealed against final and binding. Once such leave petition is filed and rejected, the party cannot go back to the Tribunal to apply for review. The Court observed that exercise of power of review by the Tribunal in such circumstances would be "deleterious to judicial discipline". The above judgment was affirmed in the case of Narayana Dharmasanghom Trust v. Swami Parkasananda and Ors., JT 1997(5) SC 100, while considering the dismissal of an SLP in limine from the judgment of the High Court in the case of "Ajit Babu and Ors. v. Union of India and Ors.", was also considered which also holds, the review that once an SLP is preferred and dismissed, review is not permissible.

The same view has been taken in the case of Raj Kumar Sharma v. Union of India and Ors., 9. A question was, however, raised by the learned counsel for the applicant Shri M.K. Tiwari that this law would be applicable where a person is already party to an OA or a CWP and will not be applicable to persons who were not a party to those cases and yet are aggrieved persons. He maintains that atleast they have a right for sucking review. This point has been considered by the Hon'ble Supreme Court in the case of "Sri Gopabandhu Biswal etc. v. Krishna Chandra Mohanty and Ors. etc., JT 1998(3) S.C. 279. In para 10 of the judgment, the Hon'ble Supreme Court took note of the contentions raised on behalf of 4 applicants who had filed review applications before the Tribunal and were not parties to the main petition and were not even parties to the SLP filed before the Supreme Court. The Hon'ble Apex Court, assuming that the said persons are aggrieved persons by the judgment of the Tribunal, posed a question as to whether they can have a judgment which has attained finality by virtue of an order of the Supreme Court, set aside in review and as to whether a third party by filing a review petition can get the same judgment reviewed, which would amount to holding that the rights determined in favour of a particular parties in the earlier decisions were not entitled to the benefits of the directions contained in the main judgment. The Court held : "In our view, this is wholly impermissible. It will lead to re-opening a matter which has attained finality by virtue of an order of this Court." The Hon'ble Court considered the scope of Order 47, Rule 1, CPC to come to this

conclusion. Even on the grounds that certain documents produced before the Tribunal had not been noticed by the Tribunal, the Supreme Court held that the judgment of the Tribunal has attained finality and it cannot be reopened after the SLP against the same has been dismissed. The question discussed above regarding a petition being filed beyond the period of 30 days was also considered by the Hon'ble Supreme Court to come to the conclusion that such application would be not maintainable.

10. The discussion above leads us to the conclusion that the Review Application is not maintainable and is also barred under the law of limitation. The same is accordingly dismissed. No costs.

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