

ITEM NO.38

COURT NO.10

SECTION XIA

S U P R E M E

C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).16575-16576/2011

(From the judgement and order dated 30/03/2011 in WP No. 17779/2008 and final order dated 16.05.2011 in RP No. 93/2011 of The HIGH COURT OF ORISSA AT CUTTACK)

SATISH KUMAR GAJBHIYE,IPS

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date: 25/07/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s) Mr.T.V.George,Adv.
Mr.Dushyant Kumar, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

These petitions are directed against orders dated 30.3.2011 and 16.5.2011 passed by the Division Bench of Orissa High Court whereby the writ petition filed by respondent Nos.1 and 2 was allowed, the order passed by Cuttack Bench of the Central Administrative Tribunal (for short, "the Tribunal") in O.A. No.201 of 2006 was set aside and the review petition filed by the petitioner was dismissed.

The petitioner and respondent No.3 were selected in 2001 for appointment to the Indian Police Service. The petitioner was allotted to Orissa Cadre and was appointed vide order dated 9.12.2002. Respondent No.3 was allotted to Maharashtra Cadre as an insider candidate and was appointed as such.

After almost two years of his appointment, the petitioner made representation dated 12.11.2004 questioning the appointment of

respondent No.3 as an insider candidate in the Maharashtra Cadre

and claimed that he should be appointed in place of respondent

No.3. He made another representation for the same purpose on

27.1.2005. The Central Government rejected his representations and

this was conveyed to him vide letter dated 24.3.2005.

The petitioner challenged the rejection of his claim for

allotment to Maharashtra Cadre in O.A. No.201 of 2006, which was

allowed by the Tribunal vide order dated 24.7.2008. The operative

portion of that order reads as under:

"In the light of the discussions made above, this Original Application is disposed of with direction to the respondent Nos.1 and 2 to re-examine the case of the Applicant for his allotment to Maharashtra cadre in place of respondent No.3 within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs."

The Division Bench of the High Court entertained and allowed the writ petition filed by respondent Nos.1 and 2 and held that

allotment of respondent No.3 to the Maharashtra Cadre did not

suffer from any illegality. The relevant portion of the order

passed by the High Court is extracted below:-

"We are unable to accept such a finding considering the specific stand taken by the petitioners in their counter affidavit that from the Civil Services Examination, 2001 only one vacancy was available to be filled up in the I.P.S. Cadre of

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Maharashtra which was meant for insider general category. This fact is neither disputed by the petitioners nor has been found to be illegal by the Tribunal. If only one post was available to be filled up in I.P.S. Cadre of Maharashtra meant for the insider general category candidate, the scope of appointment of opposite party no.1 against the said post was not available at all. Therefore, on this ground alone the Tribunal should have dismissed the Original Application. Opposite party no.1 also did not come up before the Tribunal with any material to show that only vacancy available to be filled up in the I.P.S. Cadre of Maharashtra from the Civil Services Examination, 2001 was meant for O.B.C. category. In absence of any such material the Tribunal should have also refrained from rendering a finding in favour of opposite party no.1."

On 11.7.2011, the case was adjourned at the request of Dr.

Rajeev Dhawan, learned senior counsel appearing for the petitioner

because he wanted to study the issue relating to limitation.

Today, learned counsel argued that this Court should not non-suit the petitioner on the ground that the application filed by him before the Tribunal was barred by limitation because no such point was raised before the High Court. He then submitted that the

application filed by the petitioner was within limitation counted from the date of his acquiring knowledge about the appointment of respondent No.3 in the Maharashtra Cadre as an insider candidate.

He emphasized that the petitioner learnt about appointment of respondent No.3 in the Maharashtra Cadre for the first time in 2003 and immediately thereafter he represented against the same and upon rejection of the representation by the Central Government, he filed application before the Tribunal without any delay.

We have considered the argument/submission of the learned counsel, but have not felt impressed. Although, the Tribunal had

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negatived the plea of bar of limitation raised by respondent No.3 and the High Court did not even consider the issue of limitation, but after having carefully scrutinized the record, we are convinced that the original application filed by the petitioner was barred by limitation and the Tribunal committed serious jurisdictional error by entertaining the same. Sections 20 and 21 of the Administrative Tribunals Act, 1985 (for short, "the Act"), which have bearing on the issue of limitation read as under:

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

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

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

(b) where no final order has been made by the Government or other authority or officer

or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-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 memorial.

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

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

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

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

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

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

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

Section 20(1) of the Act which is couched in negative form

lays down that the 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 provides for extension of time by six months where the appeal preferred or representation made by the aggrieved employee has not been decided by the Government or other competent authority.

Section 21 is also couched in a negative language. It impose s

an embargo against admission of an application if the same is not filed within the time prescribed under clauses (a) and (b).

Of course under sub-section (3) of Section 21, the Tribunal can admit an application after expiry of the period specified in sub-section (2), if it is satisfied that the applicant had sufficient cause for not filing the application within the prescribed period.

In the present case, the petitioner has neither pleaded nor any material has been placed before the Court to show that

representations dated 12.11.2004 and 27.1.2005 had been made by him under the relevant service rules or any other procedure prescribed by the Government for redressal of grievances.

Therefore, he could have filed application within one year from the date of appointment

of respondent No.3 in the Maharashtra Cadre as an insider

candidate. The argument of the learned counsel that the petitioner should not be non-suited on the ground of limitation because till 2003 he did not know about the allotment of respondent No.3 to the

Maharashtra Cadre sounds attractive but it is not possible to

accept the same because the petitioner has not produced any

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evidence to show that he had come to know about the appointment of respondent No.3 only in 2003. The representations made by him are absolutely silent on the issue of his having come to know about allocation of respondent No.3 to the Maharashtra Cadre in 2003.

The record of the case shows that the application was filed by

the petitioner after more than two years of the appointment of respondent No.3 and no application was filed under sub-section (3) of Section 21 for condonation of delay. Therefore, the Tribunal was not entitled to entertain the application filed by the petitioner under Section 19 of the Act.

The petitioner's prayer for setting aside order dated 16.5.2011 was misconceived because order dated 30.3.2011 did not suffer from any error apparent on the face of the record and the High Court rightly declined to review the same.

With the above observations, the special leave petitions are dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master