

RAMESH CHAND SHARMA ETC.

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v.

UDHAM SINGH KAMAL AND ORS.

OCTOBER 12, 1999

[S.P. KURDUKAR AND R.P. SETHI, JJ.]

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Administrative Tribunals Act, 1985—S.21(1) & (3)—Limitation—Promotion—Senior employee in feeder cadre not considered—Representation for non-consideration rejected on 2.7.91—Application before Tribunal filed on 2.6.94—No application for condonation of delay filed—Tribunal admitting and disposing of the application on merits—Validity of—Held, Tribunal not justified—Application dismissed as barred by limitation—Service Law.

C

Appeal—New pleadings—No foundation laid before Tribunal—Held, cannot be entertained.

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Appellant working as Translator-cum Legal Assistant was promoted to the post of Assistant Legislative Draftsman (Hindi) Class II (Gazetted), vide Order dated 22.4.91. Respondent No. 1 who was senior to appellant was not considered for promotion. He made a representation on 1.5.91 which was rejected on 2.7.1991 on the ground that since he did not possess the requisite experience of three years in feeder cadre, he was not eligible for promotion. Thereafter, respondent no. 1 filed an application on 2.6.94 before the Administrative Tribunal. Though an objection was raised by the appellant that the said application was beyond the period of limitation, application for condonation of delay was not filed. The Tribunal admitted and disposed of the application on merits. Hence the present appeal.

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On behalf of appellant it was contended that in the absence of any application for condonation of delay under S.21(3) of the Administrative Tribunals Act, 1985 the Tribunal had no jurisdiction to admit and dispose of the application on merits.

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On behalf of respondent no. 1 it was contended that after the rejection of representation by the Government on 2.6.91, another representation pointing out the factual position was made and thus the period

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A of limitation needs to be counted not from 2.7.91 but from the date of rejection of his second representation the vacancy arose because the person working on the promotional post went on deputation by keeping a lien on the said post and he was under a *bona fide* belief that until the lien comes to an end, there may not be a clear vacancy and therefore he did not file O.A. on early date.

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Allowing the appeals and setting aside the order of Tribunal, the Court

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HELD : 1. In view of the statutory provision contained in S.21(1) of the Administrative Tribunals Act, 1985, the Tribunal was not justified in admitting and disposing of on merits the application filed beyond the period of three years. [618-B]

Secretary to Government of India and Others v. Shivram Mahadu Gaikwad, [1995] Supp. 3 SCC 231, relied on.

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2. The explanation given by respondent no. 1, for delay in filing the application cannot be entertained as no foundation thereof was laid before the Tribunal. [617-H; 618-A]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3119 of 1997 Etc.

From the Judgment and Order dated 6.8.96 of the Himachal Pradesh Administrative Tribunal, at Shimla in O.A. No. 631 of 1994.

Jitendra Sharma, Ms. Minakshi Vij and P.N. Jha for the Appellants.

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Naresh K. Sharma, Avtar Singh Rawat and K.S. Chauhan for the Respondents.

The Judgment of the Court was delivered by

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S.P. KURDUKAR, J. These two civil appeals can be conveniently disposed of by this common judgment since they are filed against the common order dated 6th August, 1996 passed by the Himachal Pradesh Administrative Tribunal (for short 'the Tribunal') in O.A. No. 631 of 1994. Civil Appeal No. 3119 of 1997 is filed by Ramesh Chand Sharma who has been promoted to the selection post as Assistant Legislative Draftsman

H (Hindi) class II (gazetted) on being recommended by the Departmental

promotion Committee. Civil Appeal No. 3120 of 1997 is filed by the State of Himachal Pradesh. A

2. Feeder cadre to the selection post is Translator-cum-Legal Assistant. Under the relevant rules called "Recruitment and Promotion Rules" framed by the Government of Himachal Pradesh prescribed the condition precedent of at least three years experience in a feeder cadre i.e. Translator-cum-Legislative Assistant or Proof Reader. The Government of Himachal Pradesh accepted the recommendation of the DPC and promoted Ramesh Chand Sharma, the appellant as Assistant Legislative Draftsman (Hindi) class-II (Gazetted). Although, he was junior to respondent No. 1- Udham Singh Kamal in service under the following circumstances : B C

It is unnecessary to set out various contentions raised in these appeals since the main question raised before us relates to limitation provided under Section 21 of the Administrative Tribunal Act, 1985. The first respondent filed O.A. in the Tribunal after expiry of three years challenging the order of promotion of Ramesh Chand Sharma issued by the Government of Himachal Pradesh on 22nd April, 1991. Suffice it to state that first respondent Udham Singh Kamal was serving in the Air Force and after his retirement from the said service, he came to be appointed as Translator-cum-Legal Assistant in October, 1989 and joined on 5th of October, 1989. It is common premise that his past service in the Air Force was reckoned and accordingly he was placed senior to appellant Ramesh Chand Sharma. A vacancy arose in the promotional post (Assistant Legislative Draftsman (Hindi) class-II (Gazetted)]. This vacancy was reserved for scheduled tribe but as a candidate from that category was not available, it was declared a general vacancy. Admittedly, Udham Singh Kamal on the date of vacancy had not put in three years experience in the feeder cadre Translator-cum-Legislative Assistant or Proof Reader. This condition was prescribed under the rules framed by Himachal Pradesh Government in exercise of powers under Article 309 of the Constitution of India. The DPC which held its meeting on 16th February, 1991 on perusal of the service record of Ramesh Chand Sharma and Udham Singh Kamal found that the later did not fulfil the condition of three years experience in the feeder cadre and, therefore, vide its letter dated 22nd April, 1991 selected and recommended Ramesh Chand Sharma for being appointed as Assistant Legislative Draftsman (Hindi) class II (Gazetted). D E F G H

A 3. The first respondent Udham Singh Kamal on 1st May, 1991 submitted his representation to the Deputy Secretary (SAD) to the Government of Himachal Pradesh which came to be rejected on 2nd July, 1991 by the government on the ground that since he did not possess three years experience, he is not eligible. In the mean time, vide notification dated April 22, 1991 issued by the Government of Himachal Pradesh (Department of Personnel), Ramesh Chand Sharma was appointed as an Assistant Legislative Draftsman (Hindi) class-II (Gazetted) in the Himachal Pradesh Secretariat.

B 4. The respondent No. 1 Udham Singh Kamal on 2nd June, 1994 filed Original Application (O.A.) before the Himachal Pradesh Administrative Tribunal. This O.A. was admittedly beyond the prescribed period of limitation of three years as provided under Section 21 of the Administrative Tribunals Act, 1985. As regards the limitation in paragraph 5, the first respondent has stated as under :

D "The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985."

E This averment clearly indicates that the first respondent was all along asserting that he had filed O.A. within limitation but it was not so. The appellants in both these appeals have raised a contention that the O.A. was beyond three years and, therefore, the same was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Despite this objection raised by the appellants, the first respondent did not file any application for condonation of delay. Section 21 (3) of the Act gives power to the F Tribunal to condone the delay if sufficient cause is shown.

5. Section 21 reads as under :

"21. Limitation - (1) A tribunal shall not admit an application, :

G (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;

H (b) in a case where an appeal or representation such as is men-

tioned 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. A

(2) xxxx xxxxxx xxxxxx B
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(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.” C

Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the O.A. filed by the first respondent Udham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-Section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of O.A. on merits. It was, therefore, contended that the Tribunal has totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, impugned order be set aside. D E

6. Learned Counsel for the first respondent urged that after his representation was rejected by the Himachal Pradesh Government on 2nd July, 1991, he had made another representation pointing out the factual position and, therefore, the period of limitation needs to be counted not from 2nd July, 1991 but from the date of rejection of his second representation (no date mentioned). He also urged that the vacancy arose because one Shri Sita Ram Dholeta who was holding the post and working as Translator-cum- Legal Assistant went on deputation in March, 1990 by keeping a lien on the said post. This respondent was under a *bonafide* belief that until the lien comes to an end, there may not be a clear vacancy and, therefore, as and when such vacancy arises, his claim would be considered. It is in these circumstances, he did not file O.A. at an early date. If there be any delay, the same may be condoned. F G

7. On perusal of the materials on record and after hearing counsel H

A for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see *Secretary to Government of India and Others v. Shivam Mahadu Gaikwad*, [1995] Supp. 3 SCC 231.

C 8. For the reasons stated above, the impugned order passed by the Administrative Tribunal on August 6, 1996 in O.A. No. 631 of 1994 is set aside and the said O.A. is dismissed on the ground of limitation. The Civil Appeal Nos. 3119 of 1997 and 3120 of 1997 are allowed. In the circumstances, parties are directed to bear their own costs.

S.V.K.

Appeals allowed.