

K. Ajit Babu

Vs

Union of India

(Sujata V.Manohar, V.N.Khare JJ)

25.07.1997

JUDGMENT

1. The short question that arises for consideration in this appeal is whether the application filed by the appellants under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act) could be rejected by the Central Administrative Tribunal as not maintainable.

2. The facts giving rise to the question referred to above are these:-

The establishment of the Chief Controller of Imports and Exports is divided into four separate zones, viz., eastern, western, southern and northern and the employees of each of the said zones have combined seniority list. The present appeal concerns the appellants working in the western zone which comprises the establishments at Bombay, Ahmedabad, Gandhidham, Rajkot, Bhopal and Goa. Each of the zone comprises of posts of Lower Division Clerks, Upper Division Clerks, Section Heads, Controllers, etc. (for short LDCs, UDCs, etc.). The LDCs are the lowest category from which the promotions are available to the post of UDCs, from which promotion is made as Licensing Assistants and thereafter as Section Heads. From the post of Section Heads, the employees are eligible to be promoted to the post of Controllers. The seniority lists are maintained cadrewise. The promotion to the post of UDC is made on the basis of seniority roll, whereas promotion to Licensing Assistants, Section Head and Controllers are made on the basis of selection i.e., seniority-cum-merit. The appellant before us were appointed as LDCs. In due course they were promoted as UDCs, Licensing Assistants, Section Heads and Controllers. As Controllers they were promoted on ad-hoc basis. They were working in the western zone which is headed by the Joint Chief Controller of Imports and Exports. Subsequently, it was found that some of the officers who were promoted and were transferred in new offices were reluctant to join in the new place of posting and as such, since the year 1978 a policy was adopted for seeking options as to whether they are ready to go on transfer in case they are promoted or they would like to stay at the place of present posting foregoing their promotions. The officers who have given their options to go out to new place of posting in case of promotion, they were given promotions in preference to the claims of their seniors. In the year 1983, one PS Jhon and others who were affected by the seniority list published on 13.10.81 and were working at Ahmedabad filed a Civil Application No. 1533/83 before the Gujarat High Court making grievance that the respondents never asked for their options for going to the new place of posting in case of their promotions. The said application was transferred to the Ahmedabad Bench of the Central Administrative Tribunal

where it was numbered as Transfer Application No. 263/86. The Tribunal by its judgment dated August 14, 1987 held that the promotion made on the basis of options without resorting to the recruitment rules in terms of quota laid down and the procedure for filling it up is valid as long as it is ad-hoc and such ad-hoc promotions do not deprive seniority of those who have not given their options for going out to the new place of posting. The tribunal was further of the view that the employers are free to allow the juniors who have given their options to continue to enjoy promotion on ad-hoc basis, but the orders conferring regular promotions to such promotee cannot be upheld in so far as it affects the seniority of those who have not given their options. The officers who have not given their options have the right to promotion in their own turn of seniority. In view of the decision rendered by the Central Administrative Tribunal referred to above, the respondents prepared and circulated four draft seniority lists inviting objections, if any. Subsequently, a number of review petitions were filed for reviewing the judgment given by the Tribunal in T.A. No. 263/86, but the said applications were rejected. After the review petitions were rejected, the present appellants filed an application under Section 19 of the Act before the Central Administrative Tribunal, Gujarat, at Ahmedabad. Relying upon a Full Bench decision of the Tribunal, in Jhon Lucas and others Vs. Additional Chief Mechanical Engineer decided on 2.11.87, the Tribunal held that the persons who were not a party to a decision but are affected by the decision of the tribunal are not entitled to file an application under Section 19 of the Act, but can only file a review petition seeking review of the decision adversely affecting them. Consequently the appellants' application was rejected summarily. The appellants have now come up to this Court.

3. As stated earlier, the appellant has challenged the impugned seniority list prepared on the basis of the decision rendered by the Central Administrative Tribunal, Ahmedabad in Transfer Application No.263 of 1986 dated 14.8.1987, by means of an application under Section 19 of the Act wherein there was no prayer for setting aside the judgment dated 14.8.1987 of the Administrative Tribunal. It is true that the judgment given by the Central Administrative Tribunal, Ahmedabad in T.A. No.263/86 would have come in the way of the appellant. Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employees and at the same time adversely affect another class of employees. In such circumstances the judgments of the courts or the tribunals may not be strictly judgments in personam affecting only to the parties to the cases, they would be judgments in rem. In such a situation, the question arises; what remedy is available to such affected persons who are not parties to a case, yet the decision in such a case adversely affect to their rights in the matter of their seniority. In the present case, the view taken by the Tribunal that the only remedy available to the affected persons is to file a Review of the judgment which affects them and not to file a fresh application under Section 19 of the Act. Section 22(3)(f) of the Act empowers the Tribunal to review its decisions. Rule 17 of the Central Administrative Tribunal (Procedure and Rules) (hereinafter referred to as "the Rules") provides that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of the copy of the order sought to be reviewed. Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression "a person feeling aggrieved" occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the

Code of Civil Procedure. Although Strictly Speaking the Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said decision. A party in whose favour a decision has been given can not monitor the case for all times to come. Public policy demands that there should be end to law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation.

4. The Tribunal rejected the application of the appellant merely on the ground that the appellant was seeking setting aside of the judgment rendered by the Central Administrative Tribunal, Ahmedabad in the case of P.S. John (supra) in T.A. No.263/86. It is here that the Tribunal apparently fell in error. No doubt the decision of the tribunal in the case P.S. Jhon was against the appellant but the application filed by the appellant under Section 19 of the Act has to be dealt with in accordance with law.

5. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger bench/full bench and place the matter before the Chairman for constituting a larger bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of earlier decision in disposing of the later application. The larger Bench can over-rule the view take in the earlier judgment and declare the law, which would be binding on all the Benches (See Jhon Lucas (supra)). In the present case, what we find is that the tribunal rejected the application of the appellants thinking that appellants are seeking seting aside of the decision of the tribunal in Transfer Application No. 263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law.

6. For the aforesaid reasons, the order of the Administrative Tribunal dated 14.8.1987 passed in O.A. No. 47 of 1990 is set aside and the case is sent back to the Tribunal for decision on merits preferably within three months from the date of receipt of the copy of the Judgment. The appeal is allowed. There shall be no order as to costs.