CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.Nos.1742/95, 1744/95, 1745/95 &

1746/95

New Delhi this the 6th day of October,1999.

(9)

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI S.P.BISWAS,MEMBER(A)

O.A.1742/95

Shri Yash Pal Sharma,
Retired Junior Engineer,
Deptt. of Telecom U.P.Circle,
R/o B-2/2272, Vasant Kunj,
New Delhi-110070. ..Applicant

vs.

1. Secretary,
Ministry of Communication,
Deptt. of Telecom,
Sanchar Bhawan,
New Delhi-110001.

2. Director General(Tele),
Deptt. of Telecom,
Sanchar Bhawan,
New Delhi-110001.

3. General Manager(Telecom)
U.P. Circle Bhopal House,
Lucknow-226001. ..Respondents

O.A.1744/95

Shri Wazir Chand Tangri,
Retired Divisional Engineer/Telecom,
Residing at B-379, Nirman Vihar,
New Delhi-110092. .. Applicant

vs.

1. Secretary,
Ministry of Communications,
Deptt. of Telecommunications,
Sanchar Bhavan, New Delhi-110001.

2. The Director,
Telecom Research Centre,
Khurshid Lal Bhavan,
New Delhi-110001. ..Respondents

O.A.1745/95

Shri Wazir Chand Tangri,
Retired Divisional Engineer/Telecom,
Residing at B-379, Nirman Vihar,
New Delhi-110092. ..

vs. Applicant

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Union of India - Through

1. Secretary,
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhavan, New Delhi-110001.

2. The Director,
Telecom Research Centre,
Khurshid Lal Bhavan,
New Delhi-110001. ..Respondents

O.A.1746/95

Shri Yash Pal Sharma,
Retired Junior Engineer,
Deptt. of Telecom U.P.Circle,
R/o B-2/2272, Vasant Kunj,
New Delhi110070. .. Applicant

vs.

Union of India ,Through

1. Secretary,
Ministry of Communication,
Department of Telecom,
Sanchar Bhavan,
New Delhi-110001.

2. Director General(Tele),
Deptt. of Telecom,
Sanchar Bhavan,
New Delhi-110001.

3. General Manager(Telecom),
U.P.Circle Bhopal House,
Lucknow-226001. ..Respondents

(By Advocate Shri D.R.Roy for applicants in all the 4 O.As.)
By Advocate Shri H.K.Gangwani with Mr.S.M.Arif for Respondents)

O R D E R(ORAL)

HON'BLE SHRI S.P.BISWAS, MEMBER(A):

All these four Original Applications raise identical facts, legal issues and similar reliefs. Hence they are being disposed of by this common order.

2. The applicant went on deputation abroad as Junior Engineer from 1.7.1982, and continued in that position right upto 1985. On his return from Kuwait, he continued in the same capacity on deputation till his retirement in 1993. In all the four Original Applications, the applicants' claim

relates to issuance of directions to respondents to accept his deemed date of retirement as 1.3.88 and also to re-fix the pension as on 1.1.86.

2. The applicant seeks to assail the orders of the respondents, as at Annexure A3 dated 1.3.88, which mentions the following:

> "The General Manager, Telecom, U.P.Circle, Lucknow is pleased to accept the resignation tendered by Shri Y.P.Sharma JE. of this Circle with effect from 30.6.85(F.N.) on his permanent absorption in the TCIL in the interest of Public Service."

3. The orders above have been challenged on the ground that administrative orders cannot have retrospective effect. That apart, this order is in violation of the provisions under Rule 37 and 37A of the CCS (Pension)Rules,1972.

4. Yet another plea of the applicant is the vires of the O.M. dated 16.4.87 in that it has created unnecessarily two hostile groups between the pensioners who retired before 1.1.86 and those after 1.1.86. The applicant would contend that though this circular figured in the adjudication by the Full Bench of this Tribunal in O.A. No. 1477/89 decided on 3.8.93 and that the ratio arrived at in the Full Bench order has been also upheld subsequently at level of the Apex Court, yet the aforesaid circular suffers from infirmity in terms of the principles of natural justice.

5. We shall now examine legal validity of the applicant's claim. We find that these O.As have been filed in September 1995 when the cause of action arose way back in March 1988, if not on 30.6.85. In other words, the applicant has approached this Tribunal after a lapse of about 7 years to challenge the issue of "retrospective retirement" ordered by respondents by Annexure A3. In an attempt to overcome this

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problem of limitation, the applicant has filed four M.As in all the four applications seeking condonation of delay. The applicant sought for our indulgence in condoning the delay. The reasons offered are "that in the mean time he was deputed for duty in Kuwait and could not persue the matter during his stay abroad", while at the same he admits that

> " literally speaking the cause of action is deemed to have arisen on 30.6.1985 by virtue of retrospective operation of the orders of respondents dated 01.3.1988 going in a hotch-potch manner the respondents continued with the formalities during all this period and when applicant realised the loss to him he made personal approaches and looked forward to relief".

It is well settled law that Tribunal/Court has to record in writing that the explanation offered for the delay was reasonable and satisfactory. This is the pre-requisite for condonation of delay. Courts have no power to extend the bar of limitation on equitable grounds. If any authority is needed for this purpose, it is available in the case of P.K.Ramachandran vs. State of Kerala , JT 1998(7) SC 21. We could not be persuaded to accept the grounds adduced by applicant as satisfactory in any one of the four M.As filed for delays to be condoned.

6. We shall now examine the claims on merits of the case. The applicant admits that the fate of his case depends on exposing the vires of the O.M. dated 16.4.87. Without going into the merits of this plea, suffice it to say that the Tribunal's order in Full Bench in O.A.1477/89 has now attained finality even at the forum of the Hon'ble Supreme Court. To adjudicate the merits of the said O.M. at this stage is fraught with the danger of passing comments on the

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judicial pronouncements of the Apex Court and that is not permissible. If the applicant was aggrieved, he should have taken up this Full Bench's order for a review at the appropriate time. Having failed to do so, the applicant cannot claim at this belated stage to rake up the issues decided by the Full Bench in August,1993.

7. That apart, we sought clarification from the applicant as to when he had opted for the Liberalised Pension Scheme of which he seeks the reliefs of pensionary benefits. Right from 1963 onwards the Government of India has come out with the Liberalised Pension Schemes at several points of time, the latest one having been issued in 1993. To be eligible for any such scheme, an employee was required to express his/her willingness to opt for the scheme to which he/she is eligible. The applicant submits that he is eligible for the scheme that was introduced pursuant to the 4th Pay Commission's recommendations which took effect from 1.1.1986. To make him eligible for the said scheme, the applicant should have expressed his willingness to get covered under the appropriate scheme at the relevant time. To our specific question the applicant could not come out with any reply as to when he has expressed his option for the present Liberalised Pension Scheme. Law in this respect is again well-settled. It has been laid down that a pensioner having not exercised his option for switching over to the pension scheme by the cut off date is not entitled to be in the said pension scheme. This is particularly so for the applicant herein. He retired officially on 30.6.85 and could

not be legally considered against a scheme that came into operation afterwards w.e.f. 1.1.86(see Union of India vs. Kailash ,1998 SCC (L&S) 1531).

8. In the background of position of law as aforesaid, these four Original Applications fails on merits as well as on limitation. Accordingly, we dismiss them but without any order as to costs.

S.P.BISWAS
MEMBER(A)

A.V.HARIDASAN
VICE CHAIRMAN

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