

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1935/95

New Delhi this the 6th day of February, 1996.

Hon'ble Shri N.V. Krishnan, Acting Chairman.

Hon'ble Dr. A. Vedavalli, Member(J).

1. E. Paramasivan, SAO (Retd.),
Flat No. A/9, 23, Sarojini Street,
T Nagar,
Madras.
 2. Hardial Singh, PBSO (Retd.),
GH-13/304, SFS, Paschim Vihar,
New Delhi.
 3. S.K. Guha, SAO (Retd.),
61/11, Narayan Roy Rao,
P.O. Barisha,
Calcutta.
 4. B.N. Barat, SAO (Retd.),
Flat No. M/103,
108/7, Manicktala Main Road,
Calcutta.
 5. A.K. Sinha, SBSO (Retd.),
Luxmi Niwas,
1-PC Bose Road,
Dinapore Cantt,
Patna.
 6. M.R. Subramanian, SBSO (Retd.),
Chandra Vihar,
YMCA Lane, Chittoor Road,
Cochin-682 035.
 7. Joginder Singh, SAO (Retd.),
(since dead), through his wife,
Smt. Baldev Kaur,
112, Green Park,
Jalandhar.
 8. Vas Dev, SBSO (Retd.),
102, Manas Vihar,
Opp. J.K. Colony,
Tiwari Pur-2,
Kanpur.
 9. N.N. Viswanathan, SAO (Retd.),
"Parvati Niwas",
3/499, Vivek Khand,
Gomti Nagar,
Lucknow.
- u

10. S.N. Rajan, SAO (Retd.),
(since dead) by his wife,
Smt. Radha Rajan,
A-16, Neeta Apartments
Mithagar Road,
Mulland (East),
Bombay.
11. K. Sreekumaran, SAO (Retd.),
72-Chandra Nagar,
Palakkad (Palghat),
Kerala-678 007.
12. Krishan Lal, SBSO (Retd.),
16-Gulmarg Avenue,
P.O. Pipelines,
Jalandhar Cantt-144 006.
13. K.L. Chopra, SAO (Retd.),
23/2, Udham Singh Nagar,
Jalandhar City-144 001.
14. M.V. Adhyapak, SBSO (Retd.),
Flat No. 1,
"Abhinandan",
88-Mayur Colony,
Koth Rud,
Pune-411 029.
15. M.S. Saraph, SBSO (Retd.),
Survey No. 23(B),
Plot No. 2,
Patwardhan Baug,
Pune-411 004.
16. K.R. Chhabra, SAO (Retd.),
BB/33D, Janakpuri,
New Delhi-110 058.

...Applicants.

By Advocate Shri C.P. Saxena.

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
South Block,
New Delhi-110 011.
 2. Engineer-in-Chief,
Military Engineering Services,
Kashmir House, Rajaji Marg,
New Delhi-110 011.
- k

3. The Controller General of
Defence Accounts,
West Block-V, R.K. Puram,
New Delhi-110 022.

...Respondents.

ORDER

Hon'ble Shri N.V. Krishnan.

The 16 applicants in this O.A. were employed in the Military Engineering Services under the Ministry of Defence from where they have retired either as Senior Administrative Officers or Senior Barrack Stores Officers during the period from 31.1.1980 to 31.1.1985 as mentioned in Annexure-I of the O.A. The applicants have stated that in regard to pay fixation on promotion in terms of concordance table notified in the Ministry of Defence O.M. dated 12.1.1976, O.As 211/86 and 498/86 were disposed of by the judgement dated 13.11.1992 of the Principal Bench at Annexure-III. The respondents were directed to treat the applicants therein as entitled to pay fixation in terms of the aforesaid O.M. Though the respondents have filed appeal against this judgement in the Supreme Court, orders were issued on 14.12.1993 (Annexure-IV) implementing the judgement in respect of those applicants, after obtaining an undertaking that the applicants therein would refund the amount paid to them if the Supreme Court reverses the decision of the Tribunal. It is further stated that in O.A. 430/94 filed before the Bombay Bench of the Tribunal, a similar judgement has been delivered on 29.6.1985 (Annexure-IX) following the decision of the Tribunal in Annexure-III judgement, referred to above. The applicants had made representations ^{in 1994 (An.I)} to the respondents

7

to give them also the benefit of Annexure-IV judgement. These representations had been rejected by the respondents by the letters sent to the applicants (Annexure VI collectively) on 23.3.1994 and other dates. They were informed that the orders of the Govt. of India dated 14.12.1993 (Annexure IV) applied only to the applicants in O.As 211/86 and 498/86. Further, they are subject matters of appeal before the Supreme Court and the order has been made subject to the outcome of the SLP.

2. Aggrieved by these orders, this O.A. has been filed for a direction to the respondents in the same terms as in O.As 211/86 and 498/86 decided on 13.11.1992 (Annexure-III).

3. When the matter came up for admission, we wanted to know whether this O.A. is not barred by limitation because the grievance of the applicants had arisen when there was a wrong fixation of their pay and that the judgement of the Tribunal rendered on 13.11.1992 (Annexure-III) would not give them fresh cause of action.

4. The learned counsel for the applicant submitted that the matter was not barred by limitation. We have heard him. He relies upon the judgement of the Supreme Court in M.R. Gupta Vs. Union of India (1995(5) SCC 628) to contend that as the issue involved relates to proper fixation of pay, it is a continuing cause of action and there can be no limitation.

ll

8

5. We have carefully considered this submission. We have seen the judgement of the Supreme Court. The appellant therein was aggrieved by the pay fixed in 1978 when he joined service in the Railways after serving for about 11 years in the State of Punjab as an Administrator in Government Polytechnic. His representations were rejected by the Railways. He then filed O.A. before the Tribunal which was dismissed on the ground of limitation. The Tribunal noted that the appellant was informed on 12.8.1985 and 7.3.1987 that his pay has been correctly fixed. Hence, if he had any grievance, he should have assailed that order at that time, as that order was a one time action. The Court held that so long as the pay was being drawn on the basis of an alleged incorrect fixation of pay in 1978, the appellant continues to have a grievance. The Court held that rejecting the appellant's claim on the ground of one time action meaning thereby that ~~thereby that~~ it was not a continuing ground based on a recurring cause of action was incorrect. It was held as follows:

"...So long as the appellant is in service, a fresh cause of action arises every month when ^{he} ~~is~~ paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs.....

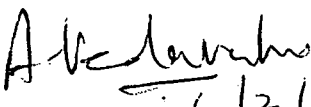
6.....The claim to be paid the correct salary computed on the basis of proper pay fixation,


u

is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules..."

6. The ratio of that decision will not apply to the present case as the applicants have long ceased to be in service from somewhere in the 1980. Therefore, the continuing wrong complained of by the appellant before the Supreme Court does not obtain in the present O.A.

7. It is a settled law that the judgement of the Tribunal cannot give rise to a cause of action. In the circumstance, we find no merit in the contention of the learned counsel that the application is within limitation. We find it is barred by limitation and accordingly it is dismissed.


6/2/96
(Dr. A. Vedavalli)
Member(J)


6/2/96
(N.V. Krishnan)
Acting Chairman

'SRD'