

(3)

Central Administrative Tribunal
Principal Bench

....

O.A. No. 274/95

New Delhi, this the 29th day of Nov., 1995

Hon'ble Shri B.K.Singh, Member (A)

Kewal Krishan,
C-II/104, Sector 36,
Noida - 201 303.

..Applicant

(By Shri A.K.Behra, Advocate)

Versus

Union of India through

1. The Secretary,
Ministry of Law & Justice and Affairs,
4th Floor, Shastri Bhavan,
Dr. Rajendra Prashad Road,
New Delhi- 110 001.

2. The Secretary,
Department of Company Affairs,
5th floor, 'A' Wing,
Shastri Bhavan,
Dr. Rajendra Prashad Road,
New Delhi- 110 001.

3. The Secretary,
Department of Personnel & Training,
North Block,
New Delhi.

...Respondents

(By Shri M.K.Gupta, Advocate)

ORDER

delivered by Hon'ble Shri B.K.Singh, Member (A):

This O.A. No. 274/95 has been filed by the applicant against the action of the respondents in not removing the anomaly in his pay fixation vis.a.vis. his junior Shri D.V.Mandiratta.

When the matter came up for hearing today, the learned counsel for the respondents raised the preliminary



objection on limitation. He argued that this application is badly hit by delay and laches and as such is liable to be dismissed on that ground alone.

The learned counsel for the applicant argued that he has come within one year from the date of disposal of his representation by the respondents which is the impugned order at Annexure A.1. This order is dated 1.2.1994 issued by the Ministry of Law & Justice and Company Affairs rejecting the representation for removal of anomaly in the pay fixation stating that the same is not covered by the rules on the subject and it further states that it has been correctly fixed in the light of CCS (Revised Pay) Rules, 1986 effective from 1.1.1986.

It is admitted that the applicant is senior to Shri D.V.Mandiratta. Shri D.V.Mandiratta's pay was fixed as Rs. 3625/- w.e.f. 1.1.1987 and Rs. 3750/- w.e.f. 1.1.1988 in the pay scale of Rs. 3000-100-3500-125-4500/-. The cause of action, therefore, arose on the very first pay fixation w.e.f. 1.1.1987. It is also admitted in the D.A. itself that the applicant filed his first representation on 25.3.1987 (Annexure C-6) and the second representation on the same subject was filed on 6.3.1989 (D-2) seeking removal of anomaly in pay fixation as Under Secretary. His prayer was that he should be fixed

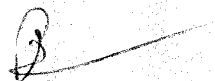
B

at Rs. 3500/- w.e.f. 13.1.1986 and Rs. 3625/- w.e.f. 1.1.1986 claiming parity with Shri D.V.Mandiratta who was working as Under Secretary in the department of Chemicals & Petrochemicals. The applicant was working in the Ministry of Law & Justice and Company Affairs. The law laid down by the Hon'ble Supreme Court in case of S.S.Nathore V/s. State of Madhya Pradesh - AIR 1990 SC P.10 is very clear. The Hon'ble Supreme Court held the view that the cause of action shall be taken to arise on the date of the order of the higher authority disposing of the appeal or representation but this is condition that subject to the/ where no such order is made within six months after making such appeal or representation, the cause of action would arise from the date of expiry of six months. The first / portion of the judgement is subject to the second portion. A person is not required to wait ad-indefinitum for the disposal of the representation. The Hon'ble Supreme Court has categorically laid down the law that if no order is made within six months after the appeal or representation is filed, the cause of action would arise from the date of expiry of six months. The applicant filed his first representation on 25.3.1987 and he was required to wait only for six months i.e. till 24.9.1987. This application has been filed in 1995/ and therefore, this is barred by limitation as specified in Section 21 of the C.A.T. Act, 1985. The same

B

....4/-

ratio has been reiterated in case of U.O.I. v/s. Ratan Chandra Samanta a JT 1993(3) SC P.418. It also refers to Section 21 of the CAT Act and says that an aggrieved party has to approach the court/Tribunal within the statutory period prescribed under Section 21 since after the expiry of that period, the court/Tribunal is not competent to grant the reliefs prayed for. Delay itself deprives the person of the remedy available to him and if the remedy is lost, the right is also lost alongwith it. In case of Ex-Captain Harish Uppal V/s UOI - JT 1994(3) P.126, the Hon'ble Supreme Court have categorically laid down the law that courts should help those who are vigilant and not those who are indolent. Delay itself defeats the equity. In one of the latest judgements, a Larger Bench of the Hon'ble Supreme Court, in case of Secretary to the Govt. of India V/s. Sivaram Mahadu Giakwad - 1995 ATC P.635, have held the view that the period of limitation prescribed under Section 21 is the statutory period of limitation and if an aggrieved party approaches the court / Tribunal after the expiry of this period, the application cannot be entertained as the same is hit by the bar of limitation. In such matters the first question that will have to be considered is the question of limitation. In the instant case, no application seems to have been filed by the applicant for condonation of delay. The



grounds for delay have to be projected in a Misc. Petition filed for condonation of delay and when such petition is filed the court is under an obligation to record reasons for granting exemption from limitation as prescribed under Section 21 and where no such petition is filed, the O.A. should be dismissed in limini, There is no valid explanation explaining away the delay involved in this application and as such this application is hit by delay and laches and moreover there is no petition for condonation of delay, therefore, the question of condoning the delay cannot be considered.

Second argument of the learned counsel for the applicant was that removal of anomaly in pay fixation is a recurring cause of action and for this he cited the various rulings of the Hon'ble Supreme Court and of the Tribunal. The Hon'ble Supreme Court have held the view in Shyam Babu Verma V/s U.O.I. - JT 1994(1) SC 574, that the claimant has to establish that he cannot be treated differently from his colleagues and that there is no reasonable basis to do so. Unless this vires is discharged, no direction can be given by Court/Tribunal. Parity in pay scales cannot be claimed as of right. If there is an anomaly, there are specific rules for its removal. There is an OM which has the statutory force and this OM No. 4792/Estt(Pay-I) has been issued by the Govt. of India, Deptt. of Personnel & Training, which is the nodal department of issuing such instructions to supplement the pay fixation Rules. This clarificatory OM points out the errors committed by the various departments in stepping

B

up of pay. Anomaly in pay fixation cannot be co-related with pension. One draws the pension on the basis of the pay drawn during the last ten months before the date of superannuation. If the pay fixation has correctly been done and the applicant has got the increments on the basis of the pay fixation in 1987, he cannot have ^{any} grievance and it cannot be treated as a recurring cause of action. If fixation of pay in the revised pay scales, as a result of the 4th Pay Commission's recommendations, has been done correctly, no grievance can arise in that matter. If the applicant had any grievance in that regard, he should have approached the Court / Tribunal as stated above latest by September, 1987. If he has already drawn the pay scale which was deemed to be correctly fixed by the respondents then estoppel also would operate against him since he did not agitate his grievance in the competent forum when the grievance arose to him. It will be deemed that he acquiesced in his pay fixation and except for filing repeated representations, he has not approached the Tribunal within the statutory time limit for redressal of his grievance. Rathore's case lays down that repeated representations do not extend the period of limitation. Therefore, this application is hit by estoppel as held by Hon'ble Supreme Court in case of Om Prakash Shukla V/s. Akhilesh Kr. Shukla - AIR 1986 P. 1043. The impugned order passed on the representation of the applicant also reveals that the applicant's case is not covered by the rules and instructions on the subject, therefore, the contention of the counsel for the applicant

B

that it is a recurring cause of action cannot be accepted.

With the above observations the C.A. is dismissed in limini on ground of limitation alone particularly when even a Misc. application for condonation of delay has not been filed by the applicant.



(B.K. SINGH)

Member (A)

/nka/