

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 728/1995

New Delhi, this 2nd day of May 1995

Hon'ble Shri P.T.Thiruvengadam, Member(A)

Shri P.S. Sethi
s/o Shri Jiwan Das
758, Sector III, R.K.Puram, N.Delhi -22 .. Applicant

(By Shri S.K. Sawhney, Advocate)

versus

Union of India, through

1. General Manager,
Northern Railway, Baroda House, New Delhi
2. Divisional Rly. Manager
Northern Railway,
Chelmsford Road, New Delhi .. Respondents

ORDER

This OA has come up for admission. The grievance of the applicant is that he was promoted in the year 1976 but was not relieved to give effect to that promotion and ultimately he retired from service on 28.2.1982. This OA has been filed to allow pension from 1.3.82 based on the pension drawn by persons junior to the applicant who have been given the benefit of promotion.

2. The learned counsel for the applicant argued that the OA is maintainable since pension is a continuing cause of action and limitation can not be invoked. However, I note that the actual cause of action arose in 1976 when the promotion was made. The applicant had continued in service till February, 1982 and received his settlement of pension etc. based on the actual pay drawn by him prior to his retirement. This settlement of pension etc. was effected after his retirement

in February, 1982, i.e. 3 years prior to the setting up of the Tribunal. In the circumstances, I am not convinced that limitation will not act as a bar in this case.

3. The learned counsel then drew my attention to Annexure A-1 which is a copy of the letter by the Divisional Railway Manager dated December, 1994. This letter reads as under:

"....It is seen from your letter that the issue raised by you relate to legal sub judice case pending on your account. These are not within the purview of this pension adalat. Your case will therefore not to be discussed in the pension adalat. The necessary action in your case will be taken on decision of court case." (sic)

4. Reliance was placed on the order passed by this Tribunal in B.Kumar Vs. UOI & Ors.(ATR(Vol.I)1988-CAT-1), wherein it has been observed that:

"..Where there is no such statutory rule, as for example, in case of grievances against transfers/posting, fixation of seniority etc. the administrative instruction in regard to making of representation referred to above must apply...Accordingly we have no hesitation in holding that in the absence of a specific rule, a representation by a Government servant made to the competent authority for redressal of his grievance is to be treated as covered within the ambit of section 20 of the Act.

While it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is in any case open to the department concerned to consider a matter at any stage and redress the grievance or grant the relief, even through the earlier representations have been rejected, it would be inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it. This is what exactly has happened in the present case."

4

5. The above citation does not help in this case since the alleged disposal of the representation by letter of December, 94 merely states that the issue raised is not within the purview of Pension Adalat. There is no disposal on merits.

6. In another case settled by this Tribunal (Sangeetha Rao Vs. UOI reported in 1989-11-ATC-516) it was held that there is no continuing cause of action, the cause of action not being in the select list in 1975, arose in 1987. There is no question of cause of action having survived.

7. In yet another case reported in II(1992)CSJ CAT-4(M.Muniramaiah Vs. UOI) it has been held "delay not to be condoned except in very rare cases having extraordinary features and circumstances and where pay fixation is itself the direct cause and not a consequential benefit of some other cause".

8. In the circumstances, the OA is dismissed in limine, as being barred by limitation.

P. T. Thiruvengadam
21/5/95

(P.T.Thiruvengadam)
Member(A)

/tvgr/