

Central Administrative Tribunal
Principal Bench

O.A.No.423/96
M.A.No.453/96

Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri S.L.Jain, Member(J)

New Delhi, this the 8th day of March, 1999

R.K.Bhatnagar
P-1, N.D.S.E. Part-II
New Delhi.

... Applicant

(By Shri S.Madhusudan Babu, Advocate)

Vs.

1. The Ministry of Science & Technology
Govt. of India
(Department of Biotechnology)
through Secretary)
Block No.2, C.G.O.Complex,
New Delhi - 3.

2. The Ministry of Personnel Public
Grievances & Pension
Govt. of India
(through Secretary)
New Delhi.

... Respondents

(By Shri N.S.Mahta, Advocate)

O R D E R (Oral)

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant had joined service in the Directorate of Audit in 1958. In 1980, he initially went on deputation to Mineral Development Board, New Delhi but was permanently absorbed there and served in that office till 15.9.1987. In 1987, in response to an advertisement, inviting applications for the posts under the Department of Biotechnology, the applicant submitted his application through proper channel and by order dated 28.8.1987, Annexure-A2 he was selected for appointment on transfer basis in the Department of Biotechnology. The offer inter alia provided the following conditions:

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"(3) This will be a fresh appointment and his pay will be fixed at the minimum of the scale. He will not be entitled to any benefit like counting of previous service for seniority, fixation of pay, pension etc."

4 2. The applicant submits that he had an uninterrupted service with Government from 8.10.1958 till the date of his retirement on 30.6.1991 though he had served in three different Departments, namely, Directorate of Audit, Mineral Development Board and the Department of Biotechnology. He further submits that since his appointment under the Department of Biotechnology was on transfer basis, he was entitled to all the benefits of past Government service including the protection of pay in the previous Department, i.e., Mineral Development Board, New Delhi. It is his case that in the latter Department he was already serving in the pay scale of Rs.2000-3500 and at the time of his transfer to the Department of Biotechnology his pay was Rs.2,450/-. His grievance is that the respondents wrongly fixed his pay at the minimum of the pay scale, i.e., Rs.2000/-. This wrong fixation of pay resulted in wrong fixation of his pension inasmuch as he did not get the benefit of his Last Pay Drawn on the basis that he had come on transfer from the Mineral Development Board.

3. The respondents in their reply have raised a preliminary objection in regard to limitation. They have also submitted that the applicant had been selected in the Department of Biotechnology on special request from his previous Department since the Mineral Development Board was about to be wound up. Accordingly, the respondents had treated the applicants induction into Department of Biotechnology as a fresh appointment. They also pointed out that the terms and conditions of

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appointment had been clearly stated in the offer of appointment; as already mentioned, it was indicated that his pay would be fixed at the minimum of the scale.

4. We have heard the counsel on both sides. The learned counsel for the applicant drew our attention to the orders of this Tribunal in OA No.126/92, Purushotham Lal Vs. Union of India & Others. In that case also the applicant therein had been appointed under the Department of Biotechnology on transfer from Mineral Development Board in similar facts and circumstances to that of the applicant herein. He also came to the Tribunal for similar reliefs and the Tribunal had allowed the same on the basis of the orders of the Department of Personnel and Public Grievance and Pension in their OM dated 7.8.1989 which laid down that in respect of candidates working in Public Sector Undertakings, etc. who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their initial pay may be fixed at a stage in the scale of pay attached to the post so that that pay and DA as admissible in the Government, will protect the pay plus DA already being drawn by them in their parent Organisation.

5. The learned counsel for the applicant submits that as applicant's case is identical, he is entitled to the same relief. He further submits that though he had given earlier representations on learning of the decision of this Tribunal, he had filed a fresh representation on 18.3.1994 but the respondents had taken no action thereon. As regards the delay in approaching the Tribunal, the learned counsel submits that since the loss

in his pension constitutes a reccurring loss as per Supreme Court's Judgment in M.R.Gupta case there would be no question of limitation. He however further submits that he has filed a Miscellaneous Application for condonation of delay and points out that the applicant's wife was seriously ill during this period and ultimately she succumbed to her illness. Burdened by this domestic problem, the applicant could not approach the Tribunal in proper time. The learned counsel also points out that the question of limitation had been taken by the respondents before the Tribunal even in OA No.126/92 but the Tribunal rejected the same and Tribunal had concluded that in monetary claims against Govt. a more liberal attitude has to be adopted. As the matter was not of a challenge to seniority or promotion or appointment where delay cannot be lightly excused as that would disturb settled conditions and create confusion, the delay was overlooked.

6. Having considered the matter carefully, we are not persuaded that the plea of the applicant is not barred by limitation or that the explanation given for delay is satisfactory. The orders of this Tribunal in OA No.126/92 were made as far back as on 23.9.1992. The applicant submits that he filed a representation on 18.3.1994. It is also stated on behalf of the applicant that prior to that the applicant had given a copy of the Judgment in OA No.126/92 (Supra) to the respondents but that they had not taken any action. The applicant however has filed the present OA on 27.2.1996, i.e., after waiting for two years even after filing his representation. It is contented on behalf of the applicant that he had a period of one and half years

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under Section 21 of the Administrative Tribunals Act to approach the Tribunal. This in our view is not correct. He had to approach the Tribunal within one year of the cause of action which arose as far back as in 1987 when he came over to the Department of Biotechnology and his pay was fixed without protecting his pay in the previous Department. If he had filed a representation, he should have waited for another six months. Even if his representation is taken into account, which was filed on 18.3.1994, he had to come within six months if no reply was received by him from the respondents. However, he has come before the Tribunal in 1996. Therefore his application clearly suffers from laches and is time barred.

7. The learned counsel for the applicant has urged that the loss of pension gives a recurring cause of action. In M.R.Gupta Vs. Union of India, 1995(5) SCC 628 it was considered that the loss in the amount of pension constitutes a fresh cause of action every month. In such a situation the delay in approaching the Court can be reflected in the relief which is provided. We however find in the present case that there is no allegation that pension had been wrongly calculated in terms of the Last Pay Drawn by the applicant. What he has urged is that the pay itself is wrongly fixed and had it been correctly fixed then the pension would have been correspondingly also correctly fixed. We do not consider that this gives him a recurring cause of action since the main grievance is in respect of the fixation of pay which took place as far back in 1987. If the argument of the applicant's counsel were to be accepted then there would be no limitation in matters of fixation of pay and it

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would be open to the parties to urge their grievance much after retirement even in cases of supersession and denial of promotion. 20

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8. The applicant has also submitted that in case there is a delay, that may be excused because of the domestic circumstances of the applicant. We find that the applicant had taken up the case with the respondents from 1992 onwards when he says that a copy of the Judgment of the Tribunal was forwarded to the respondents. He also filed a representation in 1994. Yet he waited for another two years before he came to this Tribunal. In these circumstances, we do not consider that the explanation given for delay is satisfactory.

9. Lastly, the learned counsel also pointed out that in OA No.126/92 the Tribunal had rejected the contention of the respondents regarding limitation. We find that the applicant in that case had filed the OA after much less delay and in the facts and circumstances of the case the Tribunal thought it proper to condone the delay.

10. In the light of the above discussion, we dismiss the case on the ground of laches and limitation.

S.L.Jain
(S.L.Jain)
Member(J)

/rao/

R.K.Ahodja
(R.K.Ahodja)
Member(A)