CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(16)

HON. SHRI R.K. AHOOJA, MEMBER (A)

NEW DELHI, THIS 29th DAY OF MAY, 1997.

R.A. NO.65/97
OA NO.739/96

SHRI R.S. KUNDU
S/o Sh. Shiv Dhan Kundu
30-N Central Govt. Housing Complex
Vasant Vihar
NEW DELHI

working as Sr. Tech. Asstt.
Dte. of Quality Assurance
Warship Project
H Block, N. Delhi-11 ...APPLICANT

(By Advocate - Shri K.B.S. Rajan)

VERSUS

1. Union of India, through
The Secretary
D/o Defence Production
Ministry of Defence
South Block, N. Delhi

2. Dte. Gen. of Quality Assurance
D/o Defence Production
M/o Defence, DHQ PO,
New Delhi

3. Director of Quality Assurance
West Block No.V
R.K. Puram
NEW DELHI-66 ..RESPONDENTS

(By Advocate - Shri P.H. Ramchandani)

ORDER

The petitioner seeks a review of the order dated 1.1.1997 in OA No.739/96. In that O.A. the grievance of the applicant was that though he had become due for crossing of the Efficiency Bar (EB for short) on 1.12.1988, even though there were neither any adverse remarks in his ACRs nor any chargesheet was issued to him at the relevant time, no orders were passed regarding his crossing the EB. After various representations, he was informed in 1992 that his case for crossing the EB will be considered only after vigilance clearance [illegible]

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accorded. He was issued two chargesheets, one in June 1991 and the other in 1992. The second chargesheet, disposed of in September 1992, resulted in a minor penalty, ~~and~~ the appeal against that being rejected in October 1993. The case of the applicant was that the disciplinary proceedings initiated in June 1991 could not be made the ground for stopping his increment at EB which fell due as early as in 1988. He therefore sought a direction to respondents to allow him to cross the EB with all consequential benefits, including payment of arrears with 18% interest. The respondents in reply, amongst other things, raised the preliminary objection of limitation. During the arguments, Shri Rajan, ld. counsel for the applicant, urged that there was no question of limitation since this was a case of recurring loss to the applicant, and with the loss of every annual increment, the applicant acquires a fresh cause of action. After hearing the counsel on both sides, the O.A. was disposed of with the conclusion that the impugned decision of the respondents conveyed in 1991 could not be agitated by the applicant at this late stage; but the other part of the relief sought for by the applicant regarding delay in taking a final decision was deserving of consideration. Accordingly, the respondent were directed to conclude and decide the pending disciplinary proceedings and inform the applicant of the same within a period of four months. The review petitioner/applicant submits that there is an error apparent on the face of record in as much as the rejoinder filed by the applicant was obviously not taken into account while passing the final order. In the rejoinder, the applicant had cited the Supreme Court judgement in the case of M.R. GUPTA VS. UOI 1995(5) SCALE which supported his contention that limitation did not apply because there was a recurring cause of action. The petitioner submits that while the Tribunal took note of certain case law, e.g., S.S. RATHORE VS. STATE OF M.P. 1982(2) SCALE 510, the following observation ~~of the~~

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of the Tribunal gives the impression that the Tribunal does not appreciate the judgement in the case of M.R. Gupta (Supra) and may be deleted:-

> "Shri Rajan argues that since this is a matter of earning annual increments once he crosses efficiency bar, then with the loss of every annual increment the applicant acquired a fresh cause of action. If this reasoning were to be accepted, then there could virtually be no limitation in service matters and laches may be overlooked in case of refusal of promotion if the applicant were to come today before the Tribunal and agitate the matter once again ~~this~~ seeking relief on the ground that but for his supersession he would be entitled to a much higher pay on the date he filed the application."

For these reasons, the petitioner submits that the order dated 1.1.1997 may be reviewed.

2. I have heard the counsel on both sides. It is true as the ld. counsel for the petitioner points out that a reference has not been specifically made in the impugned judgement of the M.R. Gupta (Supra) case. However, in the facts and circumstances of this case, the ratio of M.R. Gupta does not apply to the present case. Because of the view expressed by the petitioner and the ld. counsel in the concluding part of the R.A., it might need further elucidation. In M.R. Gupta, the appellant's grievance was that his pay fixation was not in accordance with the rules and there was a fresh cause of action every month when he got his salary on the basis of a wrong computation made contrary to rules. The appellant had joined as temporary in Punjab Government and after some years he joined the Railways. His grievance was that the fixation of his pay on his joining in the Railways was incorrect and that on coming over to Railways he was entitled to fixation of his pay after adding one increment to the pay under FR 22(c). The Tribunal had upheld the respondent's objection of limitation. The Supreme Court however in its order concluded that the appellant's grievance that his pay fixation was not in accordance with the rules was the assertion of a continuing wrong against him, and so long as the appellant is in service, a fresh cause of action arises every month when he is paid his salary. The Supreme Court also

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concluded that the "Tribunal misdirected itself when it treated the appellant's claim as 'one-time action' meaning thereby that it was not a continuing wrong and did not give rise to a recurring cause of action." S.S. Rathore's case was also distinguished as a case of termination of service and therefore a one-time action.

3. It is clear that the decision of the respondents not to allow the applicant to cross the EB, when otherwise due, on whether good or bad grounds, is a one-time action. The so called loss of increment is not the result of a wrong computation of pay based on a mis-interpretation of rules but a conscious decision taken not to allow the crossing of the EB. This would fall in the same category as not allowing promotion or reducing the pay of an employee after disciplinary proceedings. In the end, all service grievances would result in adverse effect on the pay and allowances of an employee whether it be a matter of being overlooked for promotion, not being allowed to cross the EB, punishment, loss in seniority, and so on. A loss in pay due to wrong interpretation of rules relating to pay fixation would be a continuing cause of action, as held in M.R. Gupta (Supra). Supercession etc. would be a 'one-time action' and would be covered by S.S. Rathore, as has been clarified by the Supreme Court in M.R. Gupta itself. The observations in the impugned order, to which the petitioner has drawn my attention, dealt with the argument of the ld. counsel that not being allowed to cross EB in 1988 constituted a recurring cause of action and could be agitated at any time. For the reasons stated this argument was not accepted. The conclusion of this Tribunal could well be wrong but this is a matter to be determined by an appellate forum and cannot be gone over in a review petition.

4. As regards the other points raised by the petitioner, I am in agreement with the ld. counsel for the respondents that the issues raised by the petitioner largely are a matter of

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interpretation of facts and law, for which the proper remed for the applicant is before an appellate forum and not through a review.

6. For the aforesaid reasons, I find no merit in the R.A. and the same is accordingly dismissed. While doing so, I take note of the submission of the ld. counsel that as per the directions given in the impugned order, they have finalise the disciplinary proceedings against the applicant which have resulted in imposition of a penalty.

(R.K. AHOOJA)
MEMBER (A)

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