

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

C.A. No. 10 of 1997 decided on 17.02.1998.

Name of Applicant - A. S. Yadav & 12 ors.

By Advocate : Sh. B. S. Mainee

Versus

Name of respondent/s Union of India - Secy. H/o Food

By Advocate : Shri R. L. Aggarwal

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

N. Sahu
(N. Sahu)
Member (Admnv)

17.2.98

CENTRAL ADMINISTRATIVE TRIBUNA
PRINCIPAL BENCH

OA No.10 of 1997

New Delhi, this the 17th day of February, 1998.

Hon'ble Mr. N. Sahu, Member(A)

1. A.S.Yadav
S/o Late Sh.C.S.Yadav
Asstt.Dir.S&R
Ministry of Food
(Department of Food Procurement
& Distribution)
Government of India
Krishi Bhawan
New Delhi - 110 001
2. Rama Kant Kariv
S/o Late Sh.D.D.Kriv
Ministry of Food
(Department of Food Procurement
& Distribution)
Government of India
Krishi Bhawan
New Delhi - 110-001
3. Raswant Singh
S/o Bishan Singh
Save Grain Campaign
Ghaziabad
4. Vinod Kumar
S/o Sh.Sheoram Singh
Tech.Officer
Save Grain Campaign
Ghaziabad
5. Khajan Singh
S/o Yadu Singh
Tech.Operator
Save Grain Campaign
Ghaziabad
6. Radhey Shyam Pandey
S/o Ram Bahl Pandey
Tech.Operator
Save Grain Campaign
Ghaziabad
7. Virendra Kumar
S/o Sh.Hoshiyar Singh
Tech. Operator
Save Grain Campaign
Ghaziabad
8. Akhtar Ali
S/o Abdul Majid
Tech.Operator
Ministry of Food,
New Delhi

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9. R.B.Yadav
S/o Sh.C.L.Yadav
T.A.,
Save Grain Campaign
Ghaziabad
10. Dinkar Jha
S/o Sh.Bhola Jha
Peon,
Save Grain Campaign
Ghaziabad
11. H.O. Garg
S/o Sh.Uttam Chand Garg.
Retired
Office of Dy.Director
Ministry of Food
New Delhi
12. Dr.Mahendra Singh
S/o Sh.Bhagwan Singh
Tech.Officer,
Save Grain Campaign Office
Ghaziabad
13. Ravati Singh
S/o Sh.Karan Singh
Retired, P.O.C. Driver,
Save Grain Campaign
Ghaziabad

(By Advocate : Sh.B.S. Mainee)

Versus

Union of India: through

1. The Secretary to the
Govt. of India
Ministry of Food,
(Deptt. of Food Procurement
& Distribution)
Krishi Bhawan
New Delhi - 110 001
2. The Regional Director
Save Grain Campaign
C.G.O. Complex
Ghaziabad

(By Advocate : Sh.R.P. Aggarwal)

ORDER

By Sh. N. Sahu, Member (A) -

The most important point in this OA relates to limitation. The applicants are aggrieved by the impugned order No.B-2(1)/87-SGC/124/193 dated



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21.02.1989 passed by the Dy. Director (S & R), Govt. of India, Ministry of Food and Civil Supplies, Department of Food, Save Grain Campaign, CGO Complex, Hapur Chungi, Post Box No.66, Ghaziabad (U.P) and an order dated 17.01.1995 by the Under Secretary, Ministry of Food rejecting their representations for refund of the amounts recovered from them as HRA and CCA paid to them for the period between 1981 to 1988. The applicant claims refund on the basis of the judgment of this Tribunal in other cases on 08.09.1993. According to this Tribunal's order it has been held that the staff working at Ghaziabad were entitled to HRA and CCA as admissible to Central Govt. servants in Delhi. This judgment is in OA No.1285/92 which was subsequently followed in OA No.487/93 - CPWD Mazdoor Union, Ghaziabad Vs. Union of India.

2. I shall deal with the question of limitation. The facts are that the office of Respondent No.2 was at Navrang Theatre, Cantt.Road, Ghaziabad from 1973. The employees were entitled to HRA and CCA according to the classification of Ghaziabad city. By OM dated 26.05.1979 the Central Govt. employees were allowed to draw Delhi rates of HRA and CCA although they were working within the limits of Ghaziabad Municipality. The applicants drew at Delhi rate w.e.f. from that date. This office was shifted to CGO Complex, Ghaziabad which was outside its municipal limits. However, upto 1988, the applicants were paid Delhi rates. This was stopped on 18.03.1988. On 21.02.1989 respondent No.2, issued a memo directing recovery of HRA and CCA wrongly paid

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upto 1988. These recoveries were made from August, 1989 upto July, 1992. The applicants state that they made a representation on 19.03.1989. The applicant No.1 made a representation on 08.03.1994 for refund of the amount recovered from him drawing the attention of the respondents to the judgment of the CAT dated 10.09.1993. This was rejected on 17.01.1995.

3. According to the learned counsel for respondents, the cause of action arose on 21.02.1989 when the OM was issued directing recovery. Learned counsel has cited Bhoop Singh Vs. Union of India & Ors. - 1992(2) SLJ 103 to press home the point that the judgment did not give a fresh cause of action. He cited a very important decision of the Supreme Court in the case of State of Karnataka & Ors. Vs. S.M. Kotrayya & Ors. - 1996 SCC (L & S) 1488. I will refer to this case a little later.

4. Learned counsel for the applicants however, cited the case of Girdhar Lal Vs. Union of India arising out of SLP(C) No.24005 of 1992. In that case, the appellant was entitled to the benefits of the judgment of the Tribunal in TA-319/85. The Union of India challenged the appellant's claim that he did not join as a party. The Supreme Court held that the Tribunal is required to grant relief to the appellant in accordance with its decision in TA-319/85. It must not be forgotten that the decision in TA-319/85 related to the computation of retiral benefits. I am not convinced that the applicant's case is advanced by this reference to the above decision of the Hon'ble

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Supreme Court because for claiming retirement benefits limitation does not apply [S.R. Bhanrala Vs. Union of India - (1996) 10 SCC 172]. The learned counsel next cited the decision of the Supreme Court in K.C. Sharma & Ors. Vs. Union of India & Ors.- 1998(1) AISLJ 54. That was a case where the appellants were aggrieved by the notification dated 05.12.1988 whereby Rule 2544 of IREM was amended. Under the amendment for the purpose of calculation of average emoluments the maximum limit in respect of running allowance was reduced from 75% to 45% in respect of period from 01.01.1973 to 31.03.1979 and to 55% from April, 1979 onwards. Here again the matter related to average emoluments for the purpose of retirement benefits and, therefore, this decision is not appropriate in deciding a case of limitation. He next cited the decision of Amrit Lal Beri's case - SLR 1975(1) 153 for his preposition that the decision of a court in a Tribunal is applicable to similarly situated persons.

He cited the following decisions of of CAT Benches :-

- (i) SLJ 1996(3) 223,
- (ii) SLJ 1996(3) 164
- (iii) SLJ 1996(2) 142
- (iv) SLJ 1992(1) CAT 315

All the above CAT decisions referred to relate to recovery of over-payments which continued for a long period of years and such recoveries was held to be impermissible.

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5. In my view the first hurdle to be crossed is in respect of limitation. In fact, the applicant's grievance arose on 18.03.1988 when the Delhi HRA and CCA rates were stopped. The next grievance arose when by OM dated 21.02.1989 the amount wrongly paid was directed to be recovered and recovery was made within a period of three years. The applicants did not question the claim either in 1988 or in 1989 at any period from 1989 to 1992. Let us assume that the representation was filed on 19.03.1989. Applicants should have approached this Court within one year thereafter if he had not received any reply. It will be a clear violation of the law if an OA is entertained in 1997 on the basis of a Tribunal's order pronounced on 04.09.1993. In my view, the decision of the Apex Court cited by the learned counsel for respondents (supra.) wholly covers the question. The respondents in that case availed all LTC claims during the year 1981-82. They were Teachers under the Govt. of Karnataka in the Department of Education. It was later found that they did not utilise the LTC benefit but they have drawn the amount and used it. The recovery of the said amount was made during 1984 to 1986. Similarly placed persons challenged the recovery before the Administrative Tribunal which allowed their applications in August, 1989. The respondents filed their applications for similar reliefs and the Tribunal condoned the delay. The State of Karnataka was in an appeal before the Supreme Court. Para 9 of the order of the Supreme Court is extracted as under:

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"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

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6. The explanation given before the Supreme Court that they filed this Application after they came to know of the decision of the Tribunal in 1993 was rejected. The situation in this case is also a similar one. The applicants could have approached this Court at any time between 1989 to 1996. But they did not. I agree with the learned counsel for respondents that the representation made by the applicant on 08.03.1994 did not give a fresh cause of action. The second case cited by learned counsel for respondent is equally relevant. That was the case of administrator of Union of India Territory Daman and Deav & Ors Vs. R.K. Valand - 1996(1) SCC (L & S) 205, para 4 of the report is extracted hereunder:

"The Tribunal was not justified in entertaining the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.09.1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 08.10.1986. Thereafter for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March 1990. In the facts and circumstances of the present case, the Tribunal was not justified in putting the clock back by

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more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way."

7. In view of the above two decisions of the Supreme Court I hold that this OA is barred by limitation and, therefore, deserves to be dismissed in limine on that account.

Narasimhaswami
(N. Sahu) 17.2.98
Member (A)

/Kant/