

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision : 10.04.92

OA 1625/89

L.P. CHANDOLA

... APPLICANT.

Versus

UNION OF INDIA & ANR. ... RESPONDENTS.

CORAM:

THE HON'BLE MR. J.P. SHARMA... MEMBER (J).

For the Applicant ... Shri M.L. Chawla

For the Respondents ... Shri M.L. Verma

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?

JUDGEMENT

(DELIVERED BY HON'BLE MR.J.P. SHARMA, MEMBER (J).)

The applicant, since retired as Research Officer, Forest Research Institute, Dehra Dun, filed this application on 16.8.89, assailing the order dated 22.11.88 by which the representation of the applicant dated 3.8.88 requesting fixation of his pay on return, from deputation on 1.8.72, from the post of Statistical

Officer in the Preinvestment Survey of Forest Resources, where he joined in June, 1966.

2. The applicant has claimed the relief for issue of appropriate directions/orders to the respondents to refixing the pay of the applicant since 1.8.72 when he returned from deputation as per Government of India's decision No.22 below Article 29 of CSR Volume-I 13th Ed. in Choudhary's Compilation, after quashing the impugned order dated 22.11.88 and also all consequential benefits and re-calculation of pay with effect from 1.8.72 and the pension of the refixed pay be ordered to be awarded to the applicant along with arrears of pay and pension with interest.

3. The facts of the case are that the applicant was working in June, 1966 in Group-C post as Research Assistant Grade-I (RAI) at the Forest Research Institute and Colleges in the scale of 210-425 when he was selected for deputation in the Preinvestment Survey of Forest Resources (PISFR), New Delhi, on a Group-B post in the scale of Rs.400-900. After the applicant joined on deputation in PISFR once Shri Bhatia, junior to the applicant was given adhoc promotion to the post of Research Officer at the Forest Research and Colleges Dehradun. The applicant was not asked about this

promotion and when the applicant returned from deputation on 1.8.72 he was given the promotion as Research Officer but his pay was fixed at Rs.400/- with reference to his pay as RAI ignoring the deputation to PISFR and the junior's pay. The case of the applicant ^{is} that had he not been on deputation, he would have been drawing Rs.500/- and the fixation of his pay at Rs.400/- is against the Fundamental Rights enshrined in CSR&R. It is also stated that the senior persons drawing less pay than his junior on promotion is against Govt. of India's Ministry of Finance O.M. No.F.2(78)-E.III(A)66 dated 4.2.1966. The applicant made several representations but in vain. The applicant has retired from service on 31.10.1985 and again represented on 15.1.1986. This representation was rejected on the ground that the case does not attract proviso-I(iii) of F.R.22 or F.R.30(2). The applicant made another representation on 2.1.88 with reminder on 3.8.88 and the same was rejected by the impugned order dt.22.11.88. Thus, the applicant claimed his refixation from 1.8.72 on the basis that his junior D.N. Bhatia, was promoted only one month after the applicant joining the deputation post with PISFR.

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4. The respondents contested the application and stated that the present application is hopelessly barred by time. The learned counsel has relied on a number of authorities in this regard :

V.K. Mehara Vs. Secretary I & B

1986 (1) ATR 203

K.R. Mudgal Vs. R.P. Singh

1987 (1) ATLT (S.C.) 129

P.L. Shah Vs. UOI 1989 (2)

SLJ (SC) 49.

C.N. Loknathan Vs. Union of India

1989 (4) ATC 61.

Respondents have stated that the representation of the applicant for fixation of his pay under the Proviso-I below F.R.22 or for allowing proforma promotion to the post of Research Officer under F.R.30(2) was rejected vide Ministry's letter No.2-15/86-P-II-FE dated 10.12.87. With reference to his representation dt. 11.2.86. His another representation dt. 3.8.88 was rejected on 2.11.88. Thus, according to the respondents, the present application is

hopelessly barred by time and hit by limitation, as prescribed under Section 21 of the Administrative Tribunals Act, 1985. The applicant has retired on 31.10.85. He made first representation on 8.10.79. He kept quiet thereafter and represented again on 15.5.85. Thus, the matter is very old and having its origin in 1972, his application is liable to be rejected summarily. The respondents have also agitated the matter on merits contending that the provisions of F.R.22 and F.R.30(2) cannot be applied to the case of the applicant. It is further stated that D.N. Bhatia as well as the applicant were not eligible to be appointed as Research Officer and only as a temporary measure D.N. Bhatia was given adhoc promotion as Research Officer which entitled to the applicant to be considered at that time for promotion to the post of Research Officer as he was on deputation at the relevant time.

5. I have heard the learned counsel of both parties at length and have gone through the records of the case. In fact, the application is awfully barred by time. There is no explanation on the part of the applicant as to why he has not come in proper time before the competent court and has filed this application even

very much after the retirement. The applicant also moved MP 1921/90 and amended prayer clause that the applicant should be deemed to have been promoted from the date his immediate junior, Shri Bhatia, had been promoted as Research Officer with all consequential benefits including revision of his terminal benefits. The respondents have taken plea of limitation and specifically mentioned in the counter that the present application is barred by Section 21 of the Limitation Act. The applicant had gone on deputation in June, 1966 and returned from there on 1.8.1972. The applicant had been made a representation and the applicant was specifically told that his case was not governed by (iii) proviso-1_u below F.R.22 or under F.R.30(2) by the Ministry's letter No.2-15/86-P-II/FE dated 10.12.1987 and this was specifically in reply of his representation dated 11.2.86. Thus, the present application, which has been filed on 16.8.1989 is much barred by time. Section 21, sub-section 1A lays down as follows :-

21. Limitation:- (1) A Tribunal shall not admit an application, -

- (a) in a case where a final order such as is mentioned in clause (a) of sub-section(2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section(2) of Section 20 has been made and a period of six months had expired thereafter

without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section(1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section(1) or within a period of six months from the said date, whichever period expires later.

In case of Dr.S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 page 10, the Hon'ble Supreme Court has held that the repeated representation will not give any extension to limitation, it has started running against the applicant. In the present case, the limitation against the applicant started running from the order dated 10.12.1987, referred to above & the applicant should have come within one year from the date of this order.

6. Another hurdle in the case of the applicant is that the applicant is claiming the relief of the period three years before coming into force of the Administrative Tribunals Act, 1985, and as has been clearly held in the case of V.K. Mehra Vs. Ministry of I & B, reported in 1986 ATR Volume-I CAT 203, that the relief claimed

for a period of earlier to 1982 shall be beyond the scope of jurisdiction of this Tribunal. In view of Section 21 sub-section 2 clause-a, the limitation which has started running against the applicant cannot be stopped. In the authority of P.L. Shah vs. UOI reported in 1989 (2) SLJ page-49 SC, the Hon'ble Supreme Court has held that so much of the relief which comes within the limitation can be granted to the applicant, but in this case the applicant had already ~~been~~ retired on 31.10.1985. The applicant by virtue of amended relief by way of MP 1921/90 as prayed that he should be deemed to have been promoted from the date his immediate junior, Shri Bhatia, had been promoted, clearly makes out that unless the applicant is given promotion on the basis of next below rule, his pay cannot be fixed and the matter of promotion cannot be said to be a recurring cause of action in the applicant. When he joined on 1.8.72 on return from the deputation, ^{he} was already promoted as Research Officer in the same grade in which Shri Bhatia was working.

7. In view of the above discussion, the present application is hopelessly barred by time and the applicant is not entitled to any relief. The application is, therefore, dismissed and devoid on merit leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 10.4.92
MEMBER (J)