

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Reg. No. O.A. 1751/1989. DATE OF DECISION: 9-11-1990.

Shri R.C. Ahuja Applicant.
Shri B.B. Srivastava Counsel for the Applicant.
V/s.
Union of India Respondents.
through Chairman,
U.P.S.C.
Shri M.L. Verma Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A)).

JUDGEMENT

The applicant, who was working as U.D.C. in the office of the respondents, viz., Union Public Service Commission, and has retired on superannuation with effect from 31.12.1980, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter to be referred as the Act), praying that (i) order dated 27.9.1975 retiring the applicant prematurely under F.R. 56(j) (Annexure A-3), (ii) order dated 13.7.1979 reinstating the applicant on his lower substantive post of U.D.C. with effect from 28.9.1975 (Annexure A-4), and order dated 30.7.1979 fixing the pay of the applicant in the scale of U.D.C. with effect from 28.9.1975 and regulating the period of absence from 28.9.75 to 17.7.79 (Annexure A-5), be quashed, and that all consequential benefits i.e., reinstatement in service with effect from 28.9.75 in the post of Assistant, treatment of the intervening period from 28.9.75 to 17.7.79 as duty on full pay and allowances in the grade of Assistant and thereafter in the same grade upto the date of his superannuation, be allowed. He has also prayed for a direction to the respondents to recompute his pension and pensionary benefits based on the above reliefs and to make payment together with interest thereon at the market rate.

2. The respondents have contested this application and have also raised preliminary objections on the point of res-judicata and on limitation.

3. We have perused the material on record and have also heard the learned counsel for the parties. In view of the preliminary objections raised by the respondents and our findings thereon, we do not consider it necessary to mention herein and discuss the rival contentions of the parties on the merits of the case. Briefly stated, it should suffice to mention that the applicant joined the office of the respondent UPSC on 1.4.1971 as Assistant on transfer from the Ministry of Commerce. He was retired from service with effect from the forenoon of 28.9.1975 by means of an order dated 27.9.1975 passed under F.R. 56(j). In partial modification of the above order, on the recommendations of the Review Committee set up in terms of the Department of Personnel and Administrative Reforms O.M. dated 15th October, 1977 and after obtaining his willingness to revert him to his substantive post, the applicant, who was officiating as Assistant, was reinstated in his lower substantive post of U.D.C. with effect from the forenoon of 28.9.1975. The pay on the post of U.D.C. with effect from 28.9.1975 and the treatment of the intervening period from that date till 17.7.1979 was fixed / regulated vide order dated 30.7.1979. He retired on reaching the age of superannuation on the afternoon of 31.12.1980.

4. The first preliminary objection of the respondents is that the application is barred under the doctrine of res-judicata and under the public policy as the Civil Writ Petition No.1653/80 filed by the applicant in the Delhi High Court with the same cause of action and with similar relief had already been dismissed by a Division Bench of the Delhi High Court on 28.1.1981. In reply to this objection, the applicant stated in his rejoinder-affidavit that the above

(Signature)

plea "is not tenable inasmuch as neither a copy of the C.W. 1653/80 stated to have been filed in the Delhi High Court has been appended to, nor the copy of order dated 28.1.81 dismissing the same has been annexed with the Counter Reply. At this distant date, the applicant does not remember, whether and if so what Writ Petition was filed by him. Since the applicant retired on 31-12-80, he could not have agitated the same issues in the said Writ Petition and as such the doctrine of res-judicata is not attracted here." The learned counsel for the respondents produced at the bar a copy of the order passed by a Division Bench of the Delhi High Court in Civil Writ Petition No.1653/1980. The applicant was the petitioner in that case and the Union Public Service Commission, the respondents herein, and the Union of India through Ministry of Home Affairs, were the respondents. The order shows that the petitioner (applicant herein) had prayed for quashing the orders dated 27.9.1975 and 13.7.1979. He had also prayed for a declaration that he continued as officiating Assistant from 27.9.1975 till date and he was entitled to receive his salary and all the allowances and pension and gratuity. A further direction to the respondents to pay all the salaries and allowances to which he was entitled as officiating Assistant without any break, with effect from 1.4.1971 till date, was also sought. The petition was dismissed by a Division Bench of the Delhi High Court vide order dated 28.1.1981.

5. In the reliefs prayed for in the application before us, the orders dated 27.9.1975 and 13.7.1979 are the same which were sought to be quashed in the Writ Petition *ibid*. Similarly, the prayer for salary and allowances in the grade of Assistant is also identical. The learned counsel for the applicant argued that order dated 30.7.1979 (Annexure A-5 to the O.A.), which has been impugned herein was not

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the subject-matter of the above Writ Petition. This is only a technical plea in the sense that this order was not specifically impugned in the Writ Petition, but the reliefs prayed for covered fully the subject-matter of this order as well. The learned counsel for the applicant further argued that the relief for re-computation of pension and pensionary benefits was also not the subject-matter of the above Writ Petition. We are not impressed by this argument because this prayer has been made on the basis of the other prayer for quashing the impugned orders and the declaration sought for in regard to pay and allowances in the grade of Assistant. Even otherwise, the question of recomputation would arise only if the other relief asked for is granted and there is no other ground for seeking this relief. We are surprised with the reply of the applicant in the rejoinder-affidavit with regard to this Writ Petition. We find it difficult to believe that the applicant had any reason not to remember the contents of the Writ Petition filed by him and the order passed by the Delhi High Court thereon. In view of the above, we are of the considered view that the issues for adjudication in the case before us have already been adjudicated between the same parties and, as such, this O.A. is barred by the doctrine of res-judicata and constructive res-judicata.

6. The second preliminary objection raised by the respondents is that the application is a very belated one and the same is barred under Sections 20 and 21 of the Act. Para 1 of the Application states that this Application is made in compliance to order dated 20.4.1989 (Annexure A-1) of the Hon'ble Supreme Court of India on applicant's Civil Writ Petition No.247 of 1989 in which the following order was passed: -

"The Writ Petition is permitted to be withdrawn with liberty to approach the High Court."

(Cen.)

In para 3 of the Application, it is stated that in view of the above order of the Hon'ble Supreme Court which amounts to a law declared by the Supreme Court and is binding on all courts under Article 141 of the Constitution, the application is within limitation. However, as a measure of abundant caution, the applicant submits an application for condonation of delay. In the application for condonation of delay, it is stated that since his premature retirement with effect from 28.9.75, the applicant has been making his representations, appeals and petitions to the respondent, Home Secretary, Minister of State, Prime Minister, President of India and the Chief Justices Shri P.N. Bhagwati and Shri R.S. Pathak, but to no avail. It is further stated that in compliance with the directions of the Hon'ble Chief Justice, the case was referred to the Supreme Court Legal Aid Committee, who filed the Writ Petition No.247 of 1989 in the Hon'ble Supreme Court and the present O.A. has been filed in pursuance of the orders passed thereon. It is also stated that the applicant is now aggrieved because of his reduced pension and pensionary benefits and that limitation is not applicable to pension matters. The delay between the dismissal of the Writ Petition by the Delhi High Court and filing of the Writ Petition before the Supreme Court has not even been touched upon what to say of being explained.

7. We have considered the contentions of the applicant on the point of limitation and do not consider the same as legally tenable. The first impugned order was passed in September, 1975 while the other two impugned orders were passed in 1979. The applicant retired on reaching the age of superannuation on 31.12.1980. His pensionary benefits thus must have been sanctioned taking the average emoluments with reference to that date and the cause of action, if any, would have arisen with the orders sanctioning his pensionary

(Cen.)

benefits. When the prayer for recomputation of pensionary benefits is solely based on the challenge to the above three impugned orders and there is neither any averment nor any new fact which may lead to the need for recomputation, the prayer for recomputation of pension at this stage in the above background is not legally tenable even though we accept that the cause of action in regard to pension arises from month to month, though the same cannot be said in regard to payment of Death-cum-Retirement gratuity and the commutation of pension. Further, withdrawal of a writ petition with permission to file fresh proceedings does not necessarily have the effect of extending the limitation. Instead of approaching the High Court, the applicant rightly chose to come to the Central Administrative Tribunal, which is a substitute forum for service matters for the Central Government employees/are covered by the Act. There is no specific limitation prescribed for filing a writ petition in the High Court or in the Supreme Court, but for purposes of proceedings before the Central Administrative Tribunal, specific limitation is prescribed under Section 21 of the Act. Even in writ petitions, the question of laches and delays is often considered. In the absence of any explanation for delay, what to say of explaining each day's delay, as is the law laid down, the applicant has not given any explanation whatsoever on the point of delay. Repeated representations do not have the effect of extending limitation (Gian Singh Mann Vs. High Court of Punjab and Haryana and Another - 1980 (4) SCC 266; S.S. Rathore Vs. State of Madhya Pradesh - AIR 1990 SC 10). The cause of action having accrued before 1.11.1982, the application is barred by limitation in accordance with the provisions of Section 21(2) of the Act and in such a case, the Tribunal has no power even to condone delay (V.K. Mehra Vs. The Secretary, Ministry of Information & Broadcasting, New Delhi - AIR 1986 (1) CAT 203). Thus, we are of the considered view that

this application is also barred by limitation.

8. In view of the foregoing discussion, the application is barred by the doctrine of res-judicata and constructive res-judicata and is also barred by limitation and merits rejection. The Application is accordingly dismissed. We leave the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)

Member (J)

P. C. Jain
(P.C. JAIN)
Member (A)