

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 708/89.  
~~TXAXXN8.~~

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DATE OF DECISION 6.3.1991.

|  |                                |
|--|--------------------------------|
| <u>Shri S.C. Mittal</u>                | Petitioner                     |
| <u>Shri R.L. Sethi</u>                 | Advocate for the Petitioner(s) |
| Versus                                 |                                |
| <u>Delhi Administration &amp; Ors.</u> | Respondent                     |
| <u>None.</u>                           | Advocate for the Respondent(s) |

### CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

*(Signature)*  
 (AMITAV BANERJI)  
 CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

REGN. NO. O.A. 708/89.

DATE OF DECISION: March 6, 1991.

Shri S.C. Mittal ... Applicant.

Versus

Delhi Administration  
through Director of  
Education & Ors. ... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.  
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant. ... Shri R.L. Sethi,  
Counsel.

For the Respondents. ... None present.

(Judgement of the Bench delivered  
by Hon'ble Mr. Justice Amitav  
Banerji, Chairman)

The applicant Shri S.C. Mittal, who was appointed as a Physical Education Teacher in the Directorate of Technical Education, Delhi Administration, has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved by an order passed in September, 1980 reducing the scale of pay of the applicant w.e.f. 1.12.1975. He has prayed that the respondents be directed to give the applicant the Grade of Rs.440-750 from the date of his transfer to the Directorate of Education from the Technical Education Department i.e. 1.12.1975; a further direction to refund the arrears of applicant, as a result of the reduction of salary of the applicant in the year 1978, with 18% interest; not to de-grade

the applicant in future and for grant of consequential relief and costs.

The following facts will be relevant to appreciate the case of the applicant:

The applicant was initially appointed as a Physical Education Teacher in the Directorate of Technical Education in the scale of pay of Rs.130-300 w.e.f. 24.9.1970. The said scale of pay was revised to Rs.220-500 and further revised to Rs.250-550. Subsequently, on 1.9.1976, the said scale was revised to Rs.440-750. The applicant availed all the scales as revised from time to time. The Lt. Governor of Delhi passed specific order on 1.12.1975 that the Technical Schools of Narela, Kashmere Gate and Okhla would be absorbed in the Directorate of Education. The surplus staff of two closed down schools i.e. Technical Schools Kashmere Gate and Narela were declared surplus on 1.12.1975. The applicant was also affected and declared surplus on that account.

After having been declared surplus, the applicant was appointed as Physical Training Instructor (P.T.I.) in the Directorate of Education vide order dated 23.12.1975 in the pay scale of Rs.440-750 w.e.f. 1.12.1975. This appointment was on ad hoc basis, but it was subsequently regularised. Subsequently, the Govt. of India had also agreed to the revision of pay scale of all the post of P.T.I. in the pay scale of Rs.220-500 to Rs.250-500. Government held that only three persons were entitled to the higher scale.

Thereafter, the applicant's pay was fixed at Rs.500/- in June, 1980 but with effect from 1.12.1975 in the pay scale of Rs.425-640 and over payment of Rs.1409.70 was recovered from his pay w.e.f. September, 1980 at the rate of Rs.60/- per month. The applicant made more than one representation and the last representation was rejected on 3.10.1988. Thereafter, he had filed the present O.A. on 28.2.1989.

On behalf of the respondents, a plea has been taken that there are no merits in this O.A. and that the Application is barred by time.

We have heard Shri R.L. Sethi, learned counsel for the applicant. None appeared for the respondents. We take up the question of the Application being barred by time. When did the cause of action arise to file this Application? The answer will depend on what the applicant is aggrieved by. The applicant is aggrieved by an order reducing his pay scale and recovering from him excess amount paid. The revision of the pay scale, which was said to be wrong, took place in June, 1980 and the recovery of the over paid amount in instalments commenced in September, 1980. Although it was to have effect on the salary and the pay scale from 1.12.1975, the applicant was affected only when that order was passed.

The applicant thereafter went on making representations and the last representation was rejected on 3.10.1988

and he had filed the O.A. in February, 1989. It is well settled that making of repeated representations do not extend the period of limitation. (See S.S. RATHORE Vs. U.O.I., AIR 1990 SC P-10). Can a representation be entertained unless <sup>it is</sup> statutorily provided? A departmental representation made many years after the accrual of the cause of action does not stop limitation, which has begun to run. (See V.S. Raghavan Vs. Secy., Ministry of Def. (1987) 3 ATC 602).

The cause of action in this case arose in 1980 and not in 1988. The applicant was aggrieved by the reduction of his pay scale and the order for recovering excess over paid amount. That was an one time order. If that order was a valid order, then there was no question recurring cause of action month by month.

It is a fact that the applicant did not approach in Court in 1980 to 1985. He also did not approach the Tribunal when it started functioning from 1.11.1985 and waited till February, 1989 to file his Application. It is well settled that the Tribunal's jurisdiction under Section 21 is limited to orders, which had been passed within three years preceding 1.11.1985. The impugned order in the present case was passed even before 1.11.1982 and was, therefore, not within the cognizance. In the case of V.K. Mehra Vs. The Secretary, Ministry of Information and Broadcasting, New Delhi, (ATR 1986-CAT 203), it is held

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that 'the Act does not vest any power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1.11.1982'. Reference may also be made to the case of Amin Singh Tyagi, Harpal Singh Vs. Delhi Administration ( A.T.R. 1989(1)CAT 227).

A Division Bench of the Principal Bench of the Tribunal for a period earlier than 3-yr has held that the Application claiming reliefs prior to the constitution of the Tribunal, is not entertainable and the Application was dismissed. It is also well settled that successive representations would not revive the claim, which is barred by limitation (See. R.L. Bakshi Vs. Ministry of Defence (Delhi) (ATR 1988(1) C.A.T. 149). Reference may also be made to the case of Satyabir Singh Vs. Union of India (ATR 1987(2)CAT 265).

We are, therefore, of the opinion that the C.A. filed before the Principal Bench is hopelessly barred by time. The cause of action arose in 1980 and the applicant is not entitled to derive any benefit of the rejection of his latest non-statutory representation in October, 1980.

Normally, a decision on the ground of an Application being barred by limitation does not require any discussion on the merits of the case, but we think it would be relevant to point out that the applicant has no case on the merits either.

His services came to an end on the absorption of the several technical schools and he was declared surplus. Thereafter, he had been given an appointment as Physical Training Instructor in the Directorate of Education, Delhi Administration w.e.f. 1.12.1975. His appointment was on ad hoc basis. He had been given certain increments in the pay scales, but in 1978 it was found by the administration that the higher pay scale granted to the applicant was wrong and on the direction of Govt. of India, the same was corrected. His pay scale was fixed on the basis of a Last Pay Certificate, issued by the Department of Technical Education (Pusa Polytechnic) which was inadmissible as he had been given a new post after having been<sup>rendered</sup> surplus. He could lay no claim to the Last Pay Certificate issued by the Department of Technical Education while he was employed by the Department of Education, Delhi Administration. When the appointment letter was issued to treat the applicant as a fresh appointee, it was made clear that he would have no right whatsoever to count his past service rendered by him under the Department of Technical Education. The name of the post and pay scales were corrected as Jr. P.E.T. of Rs.425-640. The applicant had joined on 29.1.1976 and had accepted these

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conditions. The fixing of his pay on the basis of L.P.C. was wrong and subsequently corrected. This was in accordance with Rules and was not contrary to law. Consequently, the recovery of the amount paid in excess over the years was also justified. The applicant thus had no case against the respondents for giving him higher pay scale or for refunding of the amount, which had been recovered from him as over-paid. It is evident from the above that the cause of action arose when the pay scale was corrected and the arrear for recovery of over-payment was passed. We find no merits in the case of the applicant.

In the result, therefore, the O.A. fails and is accordingly dismissed. However, there will be no order as to costs.

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER(A)  
6.3.1991.

*Ad. 6.3.91*  
(AMITAV BANERJI)  
CHAIRMAN  
6.3.1991.

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