

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI

OA 1648 of 1988

Decided on 14-9-89

Piara Singh

...

Applicant

Versus

Union of India and others

Respondents.

For the Applicant -

Mr. M.K.Gupta, Advocate

For the respondents -

Mr. A.K.Sikri, Advocate.

B.S.SEKHON:

Aggrieved by the refusal of the respondents to permit him to exercise option for switching over to the Pensionable Service in accordance with the provisions of O.M.No.3(2)-PU/79 dated 9th August, 1979 enclosed to the communication No.1(11)/79-Pen (Annexure A-2) dated 1-9-1979, Applicant has preferred the instant Application.

2. Applicant retired from the National Physical Laboratory on October 31, 1983 after attaining the age of superannuation. It is common ground between the parties that the Applicant was borne on the Contributory Provident Fund Scheme. By virtue of the O.M. dated 9th August, 1979, Govt. servants borne on the Contributory Provident Fund Scheme were given the option to switch over to Pensionable Service. By virtue of Annexure A-2, the benefit of Pensionable Service was extended to the employees of C.S.I.R. borne on C.P.F. Scheme.

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This O.M., inter-alia, stipulated that the option should be exercised by such employees within a period of six months from the date of issue thereof and that the contents of O.M. may be brought to the notice of all concerned Council Servants individually, who are on C.P.F. Scheme of the CSIR and their signatures in token of having done this be obtained/kept on record.

3. As per the case set up in the Application, respondent No.2 never brought the contents of OM dated September 1, 1979 to the notice of the Applicant and thus he could not exercise <sup>the</sup> option in time. He learnt about this OM in 1982 and immediately submitted a representation dated February 3, 1982 for exercising the option to switch over to the Pensionable Service, but his request was turned down in April, 1982 vide Annexure A-4. By virtue of the communication dated October 20, 1982 (copy Annexure A-5), respondent No.1 informed respondent No.2 that the proposal for giving opportunity for exercising option for pensionary benefits to nine members of Class IV staff mooted vide his letter dated October 7, 1982 could not be agreed to at that belated stage and that the employees may be advised to exercise their options as and when the next opportunity is provided.

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In 1985, Government of India gave another opportunity to the Government servants to exercise their options for coming over <sup>to</sup> the Pensionable Scheme. His repeated representations made on 16-9-85, 19-9-85, 2-12-85, 24-4-87 (copies Annexure A-6, A-9, A-11 and A-13 respectively) ended in vain. The same were rejected vide orders

dated July 30, 1985, November 8, 1985, November 21, 1986 and order dated 17-6-88, hereafter termed as the impugned order. The impugned order reads:

"With reference to your representation addressed to Hon. Prime Minister of India and President, Council of Scientific & Industrial Research on the above subject, I am directed to inform you that the representation made by you has been reconsidered in consultation with the Sr. Dy. Financial Adviser to CSIR, but it is regretted that it has not been found possible to accept your request as you did not give your option to come over to the pension Scheme of the CSIR in the light of the orders contained in the Govt. of India Min. of Home Affairs O.M.No.31(2)-PU/79 dated 9th Aug., 1979 circulated vide CSIR letter No. 1(11)79-Pen dated 1st Sept., 1979, a copy of which was duly endorsed to you after obtaining your signatures.

4. The salient grounds on which the action of the respondents and the impugned order have been challenged by the Applicant are that he had never been communicated the contents of the OM dated September 1, 1979, his signatures were never taken, as enjoined by the said OM; action of the respondents is illegal, arbitrary, discriminatory, violative of Article 14 of the Constitution as also of the principles enunciated by the Supreme Court in D.S.Nakra v. Union of India & others 1983(1)SCC305 and that the impugned order suffers from the vice of non-application of mind.

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5. Apart from raising the pleas of limitation & estoppel, respondents have resisted the Application on merits also. As per the defence set out in the counter, Applicant has made the Application on false and contradictory allegations including the allegation that OM dated September 1, 1979

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demanding the options came to his knowledge in Jan., 1982 only. According to the respondents, there are about 40 Laboratories and Institutes of the CSIR throughout the country. The aforesaid OM was circulated to each and every Section and Division and each employee knew about the same; thousands of employees exercised their options for Pensionable Schemes and signatures of Heads of all the Divisions were obtained; and that the Applicant did not exercise his option during the relevant period and before had retired in 1985. Respondents have also refuted the averments about their action and the impugned order being illegal, arbitrary, discriminatory, violative of Article 14 of the Constitution and the dictum of the Supreme Court in D.S.Nakra (supra).

6. In the rejoinder, Applicant has more or less reiterated his case adding that the Application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985 (for short 'the Act'), as the respondents have reconsidered his representation and rejected the same, by virtue of the impugned order and that he was never communicated either in writing or verbally about the Pensionable Scheme contained in OM dated September 1, 1979.

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7. Taking up the first question first, it would appear to be expedient and appropriate to deal with the plea of limitation raised by the respondents. The learned counsel for the respondents contended that the period of limitation started running as far back as April 1982, when the representation of the

Applicant, Annexure A-3 was rejected vide— Annexure A-4; and the repeated representations do not have the effect of extending the period of limitation or furnishing a fresh cause for the purpose of limitation. Reliance was placed by the learned counsel for the respondents upon the dictum of the Supreme Court in S.S.Rathore v. State of Madhya Pradesh, 1989(3)SC 530. The Judgment Today learned counsel for the Applicant met the aforesaid submission on the reasoning that in case the authorities concerned choose to entertain and reject the representation, it will furnish the aggrieved person with a fresh cause of action and the limitation is to be computed from the date of such rejection. In respect of this submission, the learned counsel pressed into service the decision rendered in 'B.Kumar v. Union of India and others', ATR 1988(1) CAT. 1. The following observations made in paragraph 12 in 'B.Kumar'(supra) are pertinent to the submission of the learned counsel for the Applicant:

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"In regard to the second part of Shri Gupta's argument regarding limitation, while it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is, in any case, open to the Department concerned to consider a matter at any stage and redress the grievance or grant the relief, even though, earlier representations have been rejected, it would be inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it. This is what exactly has happened in the present case."

The submission made by the learned counsel for the Applicant is supported by the observations made in paragraph 12 above. As the decision in 'B.Kumar'(supra) has been rendered by a Bench of coordinate jurisdiction, we would have normally followed this view in conformity with judicial discipline and comity. With profound respect, we are, however, impelled to take a different view for the reasons set out hereinbelow:

i.) After setting out the provisions of sub-sections (2) and (3) of Section 20 of the Act in Paragraph 19 of S.S.Rathore(supra), the Supreme Court has made the following weighty observations in paragraph 20. The same may usefully be reproduced:

" We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six month's period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

ii) As per the mandate of Article 141 of the Constitution, the law declared by the Supreme Court is binding on all the Courts in India. The law declared by the Supreme Court is thus the law of the land. In view thereof, we are bound by the judgment of the Supreme

Court. It may be incidentally mentioned that S.S.Rathore (supra) has been decided by a Full Bench of seven Judges.

iii) The next point to see is as to what is the dictum of the Supreme Court laid down in paragraph 20 of the aforesaid judgment. It would appear to be safe to say on the basis of the dictum of the Supreme Court in S.S.Rathore (supra) that rejection of a representation long after the expiry of the period of limitation would not furnish a fresh cause of action to the person aggrieved by the rejection. This would appear to follow from the observations of the Supreme Court in paragraph 20 of the judgment extracted hereinabove. It may not be inappropriate to add that the view we are taking is also in accord with the well settled principle that except in certain recognised situations like extension of the period of limitation by acknowledgement in writing specified in Sections 18 & 20 of the Limitation Act, 1963, part payment referred to in Section 19 of that Act and the contingency visualised by Section 9 of the said Act nothing stops limitation from running once it has started running and mere making of representations will not have the effect of extending the period of limitation. We are at one with the learned counsel for the respondents that the limitation can at the latest be said to have started running from April, 1982. Computing the period of limitation from 1982, the instant Applicant seems to be clearly barred by limitation. We would, therefore, sustain the plea of limitation raised by the respondents.

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8. Turning to merits, it may be stated that in view of our findings on the plea of limitation, it may not be necessary to go into the merits. Nonetheless, we are recording our findings on merits also, so that necessity of remand is obviated, in case a contrary view on the point of limitation finally prevails.

9. During the course of arguments, the learned counsel for the Applicant strenuously urged that unnumbered para 2 of Annexure A-2 imposed an obligation on the respondents to bring the contents of the O.M. dated August 9, 1979 to the notice of all concerned Council Servants individually, who were on C.P.F. Scheme of the CSIR and they were also to obtain the signatures of the employees concerned in token of having fulfilled this obligation and the same were to be kept on record. Inviting our attention to Annexure R-II and the signatures appearing against Sr. Nos 29, 47, 48, 58, 72, 87, 90, 105 and 115, the learned counsel submitted that the respondents have neither brought the contents of the OM to the notice of the Applicant, nor had obtained his signatures in token of having done this. It was also added by the learned counsel that the signatures against the name of the Applicant at Sr. No. 90 are not that of the Applicant, but are of one Shri Naranjan Lal, who had signed for several persons. This assertion has not been controverted. Instead, the learned counsel for the respondents countered by stating that the OM was very much within the notice of the Applicant, which fact is borne out from his representation dated February 3, 1982 (Annexure A-3); and that it is common practice

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that such information is given through the Heads of the Divisions/Sections concerned, as also by affixing copies of the OM on the Notice Board, which had also been done in the instant case.

10. Other points made by the learned counsel for the respondents in this behalf were that in none of the representations submitted by the Applicant he had raised this point; and that the making of inconsistent and contradictory averments in paras 6 (d) & (e) and 9 of the Application shows that the Applicant is making mis-statements with a view to sustain his claim. Elaborating, the learned counsel stated that in para 6(d), the Applicant has averred that in the year 1982 when he came to know about this, he immediately represented vide letter dated Feb., 3, 1982 and exercised the option to convert himself from CPF Scheme to Pensionable Scheme; and that in paragraph 6(e) <sup>and</sup> ground (B) of paragraph 9, Applicant has incorrectly stated that he was never communicated the contents of the OM dated September 1, 1979. All that could be said on the basis of the aforesaid submissions made by the learned counsel for the respondents, including the representation dated February 3, 1982 (Annexure A-3) is that the Applicant was aware of the options for switching over to the Pension Scheme.

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11. On the basis of the foregoing, it cannot, however, be held that the contents of the OM were brought to the notice of the Applicant. The factum of signing by

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Shri Naranjan Lal against the name of the Applicant in Annexure R-II also supports the Applicant's case that the contents of the OM had not been brought to his notice and his signatures were also not obtained in token of having done this. We are, therefore, constrained to hold that the respondents did not fulfil the obligation, which seems to be of a mandatory character, of bringing the contents of the OM to the notice of the Applicant and also did not obtain his signatures in token of having done the needful.

12. As regards the plea of estoppel, suffice it to point out that the contents of the OM were not brought to the notice of the Applicant in terms of Annexure R-2, it would be correct to say that the Applicant accepted the dues admissible under the Contributory Fund Scheme without knowledge of contents thereof. In such a situation, the doctrine of estoppel would not debar the Applicant from making a claim for switching over to the Pension Scheme. The question of issuing a direction requiring the Applicant to refund the amounts drawn by him in the event of acceptance of his claim is, however, a separate question.

13. In view of our findings on the plea of limitation raised by the respondents, the Application merits rejection on the ground of its being barred by limitation. Notwithstanding the aforesaid, as a model employer like the Government should not reject

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the well founded claims of its employees on the  
technical plea of limitation, we would like to enter a  
caveat for the Applicant to the effect that the  
Government may consider the request of the Applicant  
for exercising <sup>to</sup> option to switch over the Pension  
Scheme.

14. In fine, the Application is hereby rejected  
as being barred by limitation. In the circumstances,  
the parties are left to bear their own costs.

Chakravorty -  
(O.K.Chakravorty)  
AM  
14-9-1989

B.S.Sekhon  
(B.S.Sekhon)  
VC  
14-9-89

IRK