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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 1058/88

New Delhi this the 17th day of November 1993

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

Shri M.N. Singh,
29 Vigyan Vihar,
New Delhi-110 092.
(By Advocate Shri S.P. Singh)

.... Petitioner

Vs

Union of India,
through
Secretary, Communications, now
Secretary, Dept. of Posts & Ex-officio
Director General, Directorate of Posts and
Ex-Officio Chairman,
Postal Board,
Dak Tar Bhawan,
New Delh-110 002.

Secretary,
Dept. of Telecommunication &
Ex-Officio Director General Telecommunications,
Directorate and Ex-Officio Chairman
Telecommunications Board
Sanchar Bhawan,
Ashoka Road,
New Delhi-110 001.
(By Advocate P.P. Khurana)

... Respondents

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant joined the services as Assistant Director General in P&T Directorate. He got a scale of Rs. 1100-1600 and a special pay of Rs. 100/- per month. He was promoted as Director (Hindi) in the P&T Directorate on 18.4.1973, a post in the junior administrative grade in the scale of Rs. 1300-1600 per month. On the implementation of the Third Pay Commission Report the applicant was given the scale of Rs. 1500-1800. The officers of the Indian Postal Services and Indian Telecommunication Services in the P&T Directorate promoted to the next higher level of Jr.

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Administrative grade were given the pay scale of Rs. 1500-2000. They also got a special pay of Rs. 300 per month. The applicant worked as DDG from 17.1.1984 to 29.2.1984 in the P&T Directorate in the scale of Rs. 2250-2500 and he retired thereafter on 29.2.1984. He was re-employed as Officer on Special Duty in the P&T Department in June 1984 for one year and worked till June 1985. On 20.5.1987 more than 3 years after his retirement and 2 years after his discharge from re-employment, he made a representation to the Secretary, Department of Posts, Government of India praying that he was re-fixed in the pay scale of Rs. 1500-2000 from April 1973 to February 1984 and June 1984 to June 1985 and accordingly he be given revised pensionary benefits on the above scale of pay and special pay. The respondents, Dept. of Posts through DDG (T&E) informed the applicant vide letter dated 31.8.1987 in reply to his representation dated 30.5.1987 that the post of Director (Official Language) in the Postal Directorate is in the General Central Service Group A and considering the duty attached to the post of Director in GCS Group A the pay scale of Rs. 1500-1800 with no special pay was recommended by the Third Pay Commission. Thus, it is not feasible to treat the post of Director (Official Language) at par with that of IPS/ITS.

On 2.6.1988 this application under Section 19 Administrative Tribunals Act, 1985 had been filed by the applicant praying for the grant of the reliefs that the order dated 31.8.1987 be declared illegal with the direction to the respondents to place the applicant in the pay scale of Rs. 1500-2000 from 18.4.1973 to 16.1.1984 and 16.6.1984 to 15.6.1985 when he worked as Officer on Special Duty in the

Directorate of Telecommunication after retirement. He has also prayed for grant of Special Pay at the rate of Rs. 300 per month for the aforesaid period. He has claimed interest at the rate of Rs. 15% per annum on the aforesaid arrears of pay and allowances. He also prayed for re-fixation of pension from 1.3.1984 taking into account the enhanced pay scale and the special pay of Rs. 300 per month. He also be paid arrears of leave encashment and gratuity accordingly at the rate of 15% interest per annum. He be also paid arrears of Dearness Allowance at enhanced rates admissible from time to time with interest at the rate of 15%.

The claim of the applicant is basically based as alleged on the principal of "Equal pay for equal Work". It is averred that while the applicant was working as ADG, Director, and DDG, he performed the same functions and duties as performed by the officers of the Indian Postal Services (IPS) and (ITS) of equal level working in the P&T Directorate. The Third Pay Commission granted to the Sr. Scale Officers of Group A belonging to IPS & ITS in the P&T Directorate on promotion to the next higher level of JAG a basic scale of Rs. 1500-2000. The applicant has been denied this scale. Further, these officers of IPS and ITS in the level of JAG working in the Department of Posts and Telecommunication Directorate are also given a special pay of Rs. 300 per month. The applicant was denied the special pay attached to this level of officers. It is further stated that the applicant performed the same functions and duties as performed by officers of IPS and ITS of equivalent level working in the P&T Directorate.

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The respondents in their reply contested the application and stated that the case of applicant suffers from serious laches which has been explained by the applicant. The pay scale common to various departments were notified by the Ministry of Finance and the Department has nothing to do with that. Thus, the plea of limitation has been taken by the respondents. The post of Director (Hindi) was created by the Memo dated 30.1.1973 in the JAG GCS Class I in the scale of Rs. 1300-1600. No special pay was attached to the post. The pay scale of Director (Hindi) in the erstwhile P&T Directorate as well as in the Department of Official Language was Rs. 1500-1800 on the recommendation of the Third Pay Commission and the applicant was eligible for this scale alone. The special pay is attached to cadre posts of IPS and ITS in P&T Directorate. The officers belonging to these cadres when posted in P&T Directorate on a tenure basis are eligible to draw special pay. The special pay is not attached to any post which is en-cadre in GCS and CSS. The representation made by the applicant on 20.5.1987 was rightly replied by the Impugned Letter dated 31.8.1987. The applicant has been given the pay as approved by the Government of India on the recommendation of the Third Pay Commission.

The applicant was admitted on 2.1.1990 leaving the question of limitation open at the time of final hearing.

We have heard the learned counsel for the parties at length and perused the record. The applicant in the rejoinder has stated that he strenuously knocking at the door of the respondents repeatedly whenever the occasion arose. However, he has not given any date when earlier to

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20.5.1987 he made any such representation for equation of his pay with the sr. officers of IPS/ITS in the higher level of JAG on the principal of "Equal pay for Equal Work". The application as observed above was filed in June 1988 while the applicant superannuated on 29.2.1984. He made a representation 3 years after his retirement for the equation of his pay with IPS/ITS Sr. officers in the higher level of JAG. No where in the application or in the rejoinder the applicant has given any explanation as to why he has come after such a long time having gracefully accepted his retirement benefits and also working on the re-employment for about a year from June 1984 to June 1985. The contention of the learned counsel that the respondents have given a reply on 31.8.1987 would not bring within limitation period his grievance for which cause of action arose on the implementation of the Third Pay Commission Report in 1973. The applicant should have represented to the authorities at the relevant time and thereafter if not satisfied by unfavourable reply or no reply, he should have sought an adjudication in the competent forum. The matter is not only stale but also delayed. The applicant cannot reopen all those matters which he has gracefully accepted during his active service. Even in service matters a declaration has to be sought within limitation or in a reasonable time. If there are certain hurdles in getting the relief at the proper time, then those hurdles should be explained satisfactorily which absolutely prevented the aggrieved person to seek his remedy under law. If a person has not awoken at the right time and remains indolent for decades together then he cannot revive the remedies which is lost by lapses of time.

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The learned counsel has also argued at a considerable length and referred to a number of citations. In the case of M/s. Dehri Rohtas Light Railway Company Limited, Appellant Vs. District Board, Bhojpur & Ors, Respondents reported in AIR 1993 SC P. 802 the Hon'ble Supreme Court considered the matter of delay and laches in case which was dismissed as a belated and stale claim. We have gone through the reported case and para 12 & 13 of the reports are material which are reproduced below: "

PARA 12 :

"The question thus for consideration is whether the appellant should be deprived of the relief on account of the laches and delay. It is true that the appellant could have even when instituting the suit agitated the question of legality of the demands and claimed relief in respect of the earlier years while challenging the demand for the subsequent years in the writ petition. But the failure to do so by itself in the circumstances of the case, in our opinion, does not disentitle the appellant from the remedies open under the law. The demand is per se not based on the net profits of the immovable property, but on the income of the business and is, therefore, without authority. The appellant has offered explanation for not raising the question of legality in the earlier proceedings. It appears that the authorities proceeded under a mistake of law as to the nature of the claim. The appellant did not include the earlier demand in the writ petition because the suit to enforce the agreement limiting the liability was pending in appeal, but the appellant did attempt to raise the question in the appeal itself. However, the Court declined to entertain the additional ground as it was beyond the scope of the suit.

Thereafter, the present writ petition was filed explaining all the circumstances. The High Court considered the delay as inordinate. In our view, the High Court failed to appreciate all material facts particularly the fact that the demand is illegal as already declared by it in the earlier case. "

PARA 13 :

"The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the right which have accrued to others by reasons of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributed to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifested cannot be sustained on the sole ground of laches. The decision in Trilok Chand (AIR 1970 SC 898) (supra) relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that the suit has been rightly dismissed."

A perusal of the above will show that there was sufficient ground adduced by the petitioner of that case in filing a belated and stale claim. The present claim is totally on different facts where equation of pay is sought

from a retrospective date i.e. 18.4.1973 with IPS/ITS Sr. scale officers in higher level of JAG and the applicant during his service never raised the issue. This authority, therefore, does not help the applicant.

The learned counsel has also referred to the case of A. Sangiathan Vs. Union of India reported in AIR 1991 SC P 424. in that case the petitioner has claimed promotion while his juniors were promoted from a much earlier date and the Tribunal dismissed the claim as barred by limitation. The Hon'ble Supreme Court directed that despite the delay in the facts and circumstances alleged by the petitioner required reconsideration. That situation is not here. The petitioner of that case had made representation for his promotion on alleging that his juniors have been promoted ignoring his claimed and he was at the relevant time in active service in such a case the Hon'ble Supreme Court directed that the matter may also be considered on merit. In the present case the facts are totally different as the applicant wants modification of pay scale held in force by the Government on the recommendation of Third Pay Commission at a time when the report of the Fourth Pay Commission have also been enforced.

The learned counsel has argued that there is no limitation provided for assailing a fundamental right in a Writ Jurisdiction under Article 226 of the Constitution and in this connection he has referred to a number of authorities particularly AIR 1974 SC P 259 P 265 (R.S. Deodar Vs. State of Maharashtra). Firstly, in Administrative Tribunals Act, 1985 Section 21 prescribes the period of limitation for filing an application under Section 19 of the Act. It lays down that if any grievance has arisen 3 years earlier to the

filing of the application then that cannot be entertained by the Tribunal and the jurisdiction itself is barred. The period of limitation is one year is one year in which the cause of action has arisen after the enforcement of the Act from 1.11.1985 either by an order of which a person is aggrieved or by any grievance where there is no specific order. In case of SS Rathore Vs. State of Madhya Pradesh AIR 1990 SC P 10 Constitutional Bench considered the matter of limitation and it has been held that cause of action shall be taken to arise on the date of the order of the higher authority disposing of the appeal or representation where no such order is made within six months after making such appeal or representation, the cause of action would arise from the date of expiry of six months of representation. Representation not provided by law do not enlarge the period of limitation. In the present case though the Impugned Order of 31.8.1987, and the application has been filed in June 1988 yet it does not fall within the jurisdiction of the Tribunal as the grievance of the applicant has arisen in 1973 and applicant has already retired from service on 29.2.1984. Merely because the respondents have responded to the representation made by the applicant four years after his retirement that will not bring the matter within the purview of Section 21 of Administrative Tribunals Act, 1985. The issue involved is also to be judged on the basis of which the applicant has filed his claim. The issue is equation of pay not given to the applicant at par with IPS/ITS sr. scale officers in higher level of JAG. The recommendation of the Third Pay Commission granted them higher pay scale the applicant was fixed in the scale of Rs. 1500-1800. The claim of the applicant therefore is totally barred irrespective of the order assailed dated 31.8.1987.

Again in the State of Punjab Vs. Gurdev Singh 1991 (4) SCC P 1, the Hon'ble Supreme Court held that the party aggrieved has to approach the court for a relief of declaration within the prescribed period of limitation, since after the expiry of the statutory time the court cannot give the declaration sought for. The Hon'ble Supreme Court has also considered the point of limitation in case of Ram Chander Samanta Vs. Union of India reported in 1973 JT Vol. III P 418 where it is held while dealing with a case of casual labour of railway that the delay defects the remedy and if remedy is not available the right is also lost.

In view of the above facts and circumstances we find that the present application is hopelessly barred by delay and laches and is dismissed as devoid of merit leaving the parties to bear their own costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 17/11/93.
Member (A)

J.P. Sharma
(J.P. Sharma) 17.11.93
Member (J)