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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1086
T.A. No.

1988

DATE OF DECISION 27.7.1988.

Shri I.C. Mittal, Petitioner

Shri A.K. Sharma, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

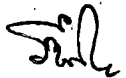
Shri M.L. Verma, Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (Judicial).

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*


(S.P. Mukerji)
Administrative Member


(P.K. Kartha)
Vice Chairman (Judl.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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Regn.No.OA-1086/88

Date of Decision: 27.7.88

Shri I.C.Mittal

.... Applicant.

Vs.

Union of India & Ors.

.... Respondents.

For the applicant

.... Shri A.K.Sharma,
Advocate.

For the respondents.

.... Shri M.L.Verma,
Advocate.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman (Judl.)
Hon'ble Mr. S.P. Mukerji, Administrative Member.

JUDGEMENT

(Judgement of the Bench delivered
by Shri P.K.Kartha,Vice Chairman(Judl.)

The applicant who is working as Executive Engineer in the Ministry of Surface Transport has filed this application under Section 19 of the Administrative Tribunals Act,1985, praying that the impugned order dated 7.10.1987 issued by the Deputy Secretary, Ministry of Transport (Roads Wing) be quashed and that the Secretary, Ministry of Surface Transport, New Delhi be directed to count the service of the applicant which he has rendered from 12.4.57 to 7.1.1965 for the purposes of pension, gratuity and relief etc. The Secretary, Ministry of Personnel Administrative Reforms, pension and Public Grievances, has been impleaded as the first respondents; the Secretary, Ministry of Surface Transport as second respondents; the Secretary, Ministry of Urban Development as third respondent and the General Manager, Central Railway as the fourth respondent.

2. It may be stated at the outset that the applicant had earlier filed OA-375/87 in this Tribunal wherein he had sought substantially the same relief, namely, counting of the past service rendered in CPWD from 12.4.57 to 7.1.1965 for the purposes of pension, leave, gratuity etc. The said application was disposed of by the order of the Tribunal

dated 30.3.1987. The Tribunal noted in its order that by memorandum dated 18.4.1983, the applicant had been informed in unmistakeable terms that his request for counting the past service in the CPWD towards pensionary benefits cannot be acceded to under the existing rules. The application had been filed only on 27.2.1987. The applicant had filed a petition of condonation of delay urging therein that in view of the representations to the Ministers or the Head of the Departments, he did not approach the Court of Law in time. From the averments in the application it was clear that the first representation, if at all it could be taken into account in this matter, was filed only on 22.5.1986. Faced with this obstacle regarding the bar of limitation, the applicant submitted that he ^{may} be permitted to withdraw the application. Accordingly, the Tribunal passed an order to the effect that "since the applicant does not desire to pursue the matter as it stands, permission is granted for withdrawal."

3. The present application came up for admission on 21.7.1988. Shri A.K.Sharma, the learned Counsel for the applicant stated that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985. He referred to the various representations sent by the applicant dating from 7.4.1965 to 22.5.1986. The representation dated 22.5.1986 was addressed to the Minister of State, Department of Surface Transport. The facts given in the present application are almost similar to those given in the earlier OA-375/87. The only substantial addition, if at all, is reference to the letter of Deputy Secretary, Ministry of Surface Transport dated 7.10.1987 addressed to his counter-part in the Ministry of Personnel Public Grievances and Pension, with a copy to the applicant stating that the request of the applicant cannot be acceded to.

4. Shri M.L.Verma, learned Counsel for the respondents relied upon the order passed by this Tribunal in OA-375/85 and contended that the application is liable to be dismissed as being time barred by limitation. He also relied upon the decisions of the Supreme Court in Sarguja Transport Service Vs. State Transport Appellate Tribunal, Madhya Pradesh Gwalior and Others, 1987(1) SCC-5 and in B.Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, AIR 1986 SC 210.

5. In Prabhakar Rao's case a writ petition similar to the petitions before the ^{Supreme} Court had been dismissed in limine by a Bench of the Supreme Court. It was observed that "such a dismissal in limine ^{may} ~~inhibit~~ our discretion but not our jurisdiction." In view of this, it was contended that this Tribunal should not exercise its discretion and entertain the present application.

6. In the case of Sarguja Transport Service, the Supreme Court considered the question whether a petitioner ^{or withdrawing} after ~~after~~ a writ petition filed by him in the High Court under Article 226 of the Constitution without the permission to institute a fresh petition, can file a fresh writ petition in the High Court under the Article. The Supreme Court observed that the principle underlying Rule 1 of Order XXIII of the Code of Civil Procedure should be extended in the interests of administration of justice to cases of withdrawal of writ petitions also, not on the ground of res judicata but on the ground of Public Policy. The principle underlying Rule 1 of Order ^{XXIII} ~~is~~ is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under ~~law~~, ^{the} he cannot be permitted to institute a fresh suit in respect of the same subject matter again after abandoning ^{the} ~~earlier~~ suit or by withdrawing it without the permission of the Court to file fresh suit. In order

to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason, the Code of Civil Procedure insists that he should obtain the permission of the Court to file a fresh suit. The principle underlying this rule is founded on public policy. In such a case, the remedy should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.

7. Admittedly, in the present case, the cause of action accrued with effect from 12.4.57 to 7.1.1965. It is true that the applicant had been sending representations during the period from April, 1965 to May, 1986. The applicant has not stated that these representations were made pursuant to any statutory rule or service rule.

8. We have carefully gone through the records and have heard the learned Counsel for both the parties. We agree with the contention of the learned Counsel for the respondents that in the instant case, the application is barred by limitation. This conclusion is supported not only by the two decisions of the Supreme Court relied upon by the learned Counsel for the respondents but also ^{by} a catena of decisions of this Tribunal. In V.K. Mehta Vs. The Secretary Ministry of Information and Broadcasting, ATR 1986 C.A.T. 203 it was observed that the Administrative Tribunal's 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. In that case, the impugned order was dated 22.5.1981. It was beyond three years of the constitution of the Tribunal. The petitioner stated that he had made oral representations and appeals to his 'seniors'. The Tribunal observed that though the petition was filed within six months of the constitution of the Tribunal in respect of

an order made prior to 1.11.1985 as contemplated by sub Section (3) of Section 21, since it relates to a grievance arising out of an order dated 22.5.1981, a date more than three years immediately preceding the constitution of the Tribunal, the Tribunal has no jurisdiction, power or authority to entertain the petition.

9. The aforesaid decision in Mehra's case was followed in a subsequent case, R.L. Bakshi Vs. Ministry of Defence, A.T.R. 1988(1) C.A.T. 149. In Bakshi's case this Tribunal also relied upon a decision of the Supreme Court in Gian Singh Vs. Punjab & Haryana High Court, AIR 1980 SC 1984, wherein it was observed that making successive representations to the administrative authorities would not revive the claim which was barred by limitation or which had become stale by efflux of time.


10. In N.V. Subramanian and Others Vs. Controller and Auditor General of India, New Delhi, 1988(1) SLJ CAT 465, this Tribunal has held that an application filed in 1986 with respect to the cause of action which arose in 1963 to 1971 is barred by Section 21(2) of the Administrative Tribunals Act.

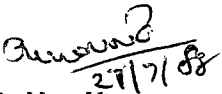
11. In B.A. Sarjaro Vs. Union of India, 1988(1) SLJ-CAT 102, this Tribunal has held that where the cause of action arose due to promotion of others from 1972, an application filed in 1986 was barred by limitation. The mere fact that the applicant made various representations which were rejected would not be sufficient cause to condone the delay.

12. The mere fact that non-statutory representations have been filed from time to time would not enlarge the period of limitation. In this context reference may be

made to the judgements of this Tribunal in Mangan Vs. Security Officer, RPF, S.Railway, 1986(3) SLJ CAT 136, Mahindra Chakraborty Vs. Union of India and Others, 1986(3) SLJ CAT 439, Surendra Mishra Vs. Union of India and Others, ATR 1986 CAT 372, and Dr. (Smt.) Kshama Kapoor Vs. Union of India, 1988 (1) SLJ- CAT 548.

13. In the light of the foregoing discussion, we uphold the preliminary objection raised by the learned Counsel for the respondents and do not consider it necessary to examine the merits of the claim put forward by the applicant. In the result, the application is dismissed in limine under Section 19(3) of the Administrative Tribunals Act, 1985. There will be no order as to costs.


(S.P. Mukerji)
Administrative Member


(P.K. Kartha)
Vice Chairman (Judl.)