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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 12 March 1992

OA 190/86

I.S. SAROHA

... APPLICANT.

VERSUS

THE DIRECTOR,
CENTRAL BUREAU OF
INVESTIGATION,
NORTH BLOCK,
NEW DELHI & ANOTHER

..RESPONDENTS.

For the applicant

...Shri S.K. Sawhney, Counsel.

For the respondents

...Mrs. Raj Kumari Chopra, Counsel.

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN.

THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER (A).

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Member(A).)

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The applicant, who is a Deputy Superintendent of Police, Central Bureau of Investigation, New Delhi, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 assailing the orders dated 16.1.76, 22.12.81 and 24.10.85 regarding fixation of his pay on his permanent absorption in CBI on 1.4.75 as Inspector. He has prayed for fixation of his pay at Rs.650/- p.m. as

on 1.4.75 in the scale of Rs.550-900 at the first instance and the benefit of special pay and ADA to be given thereafter

2. The applicant, who belonged to the U.P. Police, joined on deputation at the Lucknow Branch of Special Police Establishment (SPE), Central Bureau of Investigation (CBI) as Inspector of Police in September, 1970. He was permanently absorbed in SPE/CBI with effect from 1.4.75. His grievance is that his pay was not properly fixed in accordance with the instructions dated 21.9.66, issued by the Ministry of Home Affairs (MHA). He contends that on permanent absorption his basic pay should have been Rs. 650/- instead of 550/- and he should have been allowed a personal pay of Rs.12.30 to be absorbed in his future increments. Subsequent to his absorption a special pay of Rs.75/- was attached to the post of Inspector with retrospective effect and 5 installments of Additional Dearness Allowance (ADA) were also sanctioned with retrospective effect from various dates. He was promoted as Dy. Supdt. of Police in November, 1979 in the pay scale of Rs.650-1200, in which scale he was due to cross the Efficiency Bar from Rs.810 to 845 in October, 1981. Instead of allowing him to cross EB, CBI, Head Office refixed his pay wrongly at Rs.550/- as on 1.4.75. Further, he was denied the benefit of Ministry of Home Affairs letter dated 18.2.80 which modified the September, 1966 formula of pay fixation on permanent absorption with retrospective effect from 1.1.73.

3. The applicant contends that although MHA letter dated 18.2.80 enjoined that past cases will normally not be re-opened, and individual case of hardship could be considered on merits, his pay was refixed by further reducing his basic pay and causing more hardship.

Such refixation was done maliciously and to harrass the applicant. This was violative of the principles laid down by the Supreme Court in N.C. Singhal's case (AIR 1972 SC 628) wherein it is held that the government has no power to prejudicially alter or modify the condition of service of a government servant with retrospective effect. In support of his contention the applicant also relies on the judgement of the Rajasthan High Court in an absolutely identical case of Shri J.S. Bagaria, who also got absorbed in CBI w.e.f. 1.4.75. The appeal filed by the Government of India against the above judgement, firstly in the court of District Judge, Jaipur City and thereafter in the High Court of Rajasthan at Jaipur, was dismissed by the High Court on 2.1.84. Applicant prays that the judgement in the case of Bagaria should be extended to his case also.

4. In pages 17-18 of the paper book, the applicant has given a chronological account of the representations made by him and the outcome of the such representations, which is reproduced below :-

SN.	Date of representation of applicant	Date of forwarding of the office to which the applicant was attached	Outcome intimated by the CBI Head Office
1.	15.1.82	15.1.82	Nil
2.	9.2.82	10.2.82	Nil
3.	2.7.82	2.7.82	CBI Head Office vide their letter No.A/19036/25/79/Ad. V dt.25.11.82 had intimated to me that they have examined with consultation with the M/o Finance and the contention of the applicant was not in order and fixation of pay vide their letter No. A/19036/25/79/AD.V dt.22.12.81 was in order.

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4. 1.2.83 2.2.83 I had been intimated by the CBI Head Office that the representation of the applicant had once again examined and found no force vide their letter No.A/19036/25/79/Ad.V dt.1.3.83. The fixation of pay vide their letter dt.22.12.81 was in order.
 5. 29.10.83 14.11.83 Vide letter No.A/19036/25/79/Ad.V dt.22.11.83 the CBI Head Office intimated the order of Head Office refixing the pay of the applicant DSP may be given effect as and when Sh.Bagaria's case is finally decided the position will be re-examined.
 6. 19.7.84 28.7.84 Nil
 7. 28.8.84 13.9.84 Vide their letter No.A/19036/25/79/Ad.V dt.21.9.84 the CBI Head Office intimated that the matter is still under examination in the DP & AR.
Idt.
 8. 22.10.84 27.11.84 Vide letter No.A/19036/25/79/Ad.V dt.5.12.84 intimated that the M/o Finance/DP&AR have advised that the case of Sh.Bagaria decided by the court, cannot be extended to other cases.
 9. 16.4.85 26.4.85 Nil
 10. 1.6.85 10.7.85 Vide letter No.A/19036/25/79/Ad.V dt.18.7.85, CBI, Head Office informed me to see the DCBI on 5.8.85 at 10.30 A.M.
"Applicant sought interview with Director, CBI on 5.8.85 and the Director also told that the matter had already been sent to the Govt. for consideration and I must wait the Govt. decision".
Vide letter No.A/19036/25/79/Ad.V Govt. of India/DP&T, CBI, Kotah House, New Delhi dt.14.6.85 intimated that the matter regarding fixation of pay of the applicant on absorption as P.1 in the CBI has once again been taken up with the D.P&T and he may be advised to await for the decision of the Govt.
Again vide letter No.A/19036/25/79/Ad.V dt.30.8.85, CBI Head Office intimated that matter is under consideration with the D.P. & T.

Again vide letter No.A/19036/25/79/Ad.V dt.24.10.85, CBI, Head Office intimated that the M/o Finance have not agreed for extending the benefit of the judgement in the case of Sh.J.S. Bagaria to other officials

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5. The application has been contested by the respondents. In their counter the respondents have taken the preliminary objection that the application is barred by limitation in terms of Section 21(1) of the Administrative Tribunals Act, 1985, as the claim relates to the period January, 1976 which was rejected in 1981. The respondents have also stated that the applicant did not make any representation to the Secretary, Department of Personnel & Training, who has now been impleaded as respondent No.2. To this extent he has not exhausted all the remedies available. Respondents have also stated that the applicant's pay had been fixed strictly in accordance with the rules and there is no merit in this case. Further, the applicant has not been adversely affected in refixation of the pay in accordance with the rules, for which no consent was required to be taken from him. The case of Shri Bagaria is not relevant since the judgement in each case is delivered on its own merit. The relief given to one individual is not applicable to other persons. Accordingly, the applicant is not entitled to any reliefs or benefits.

6. We have heard the learned counsel for both parties and have carefully gone through the records of the case. During the hearing, the learned counsel for the applicant strenuously argued that the applicant's claim was finally rejected by the respondents only under respondents' letter dated 24.10.85. Being aggrieved, within a period of 5 months the applicant filed this OA on 21.3.86. Accordingly, the application is within the limitation period prescribed in the Administrative Tribunals Act, 1985. This was vehemently opposed by the learned counsel for the respondents.

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made by the learned counsel for the
7. We see considerable force in the submissions/respts. in
the case of Shri S.S. Rathore Vs. State of Madhya Pradesh
(AIR 1990 SC 10), a constitution Bench of the apex
court has held as follows :-

/remedy has been
availed of, a
six months

" 20. 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 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.

21. It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section(3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be

taken into consideration in the matter of fixing limitation."

8. His grievance started with the issue of the first impugned order dated 16.1.1976. A mere glance at the chronological list of representations made by the applicant, as reproduced in paragraph 4 supra, establishes the fact that the applicant has been making repeated representations from time to time from 15.1.1982 onwards. His representation of January, 1982 had been rejected way back on 25.11.82. Instead of seeking legal remedies in time, he started making further representations. Even if we were to extend to him the benefit of submitting a fresh representation after the judgement in the case of Shri Bagaria was available, by following the ratio of the judgement in the case of Amrit Lal Berry Vs. Collector of Central Excise (1975 SCC (LS) 412), he should have moved the appropriate legal forum within the prescribed period. The Judgement by the Munsif and Judicial Magistrate, Court No.2, Jaipur City in favour of Shri Bagaria was pronounced on 29.7.1981. The second appeal by the Govt. of India against that judgement was dismissed by the High Court at Jaipur on 2.1.84, but the applicant still went on making representations. The applicant approached this Tribunal more than two years later on 21.3.86. The application is clearly barred by limitation and laches.

9. In the light of the above discussion we do not consider it necessary to go into the merits of the case. We hold that the application is barred by limitation and dismiss the same.

There will be no order as to costs.

D. K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)

12/3/1992

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN