

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 2106/90
T.A. No.

199

DATE OF DECISION 17.5.91

Shri Chandan Singh Manral Petitioner

Shri D.C. Vohra Advocate for the Petitioner(s)
 Versus

Union of India Respondent

Shri Romesh Gautam Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Mr. P.C. Jain, Member (A).

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

(P.C. JAIN)

Member (A)

Ram Pal Singh
 (RAM PAL SINGH)

Vice-Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 2106/90

Date of decision: 14.5.91

Shri Chandan Singh Manral

Applicant

vs.

Union of India

Respondents

PRESENT

Shri D.C. Vaghra, counsel for the applicant.

Shri Romesh Gautam, counsel for the respondents.

CORAM

Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble Shri P.C. Jain, Member (A).

(Judgment of the Bench delivered by Hon'ble

Shri Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

By this O.A., filed under section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred as 'Act'), the applicant prays for the following reliefs:

1. Back wages to be calculated and paid on each promotion retrospectively from the day his juniors were promoted as Shroff, Sr. Shroff and Head Shroff counting his services with respondents since 1962 and not from 1973 in the scale of Rs. 260-400, Rs 330-560 and Rs. 425-640 on the same lines as respondents have paid to Shri R.S. Sharma, alongwith 12% interest thereon.
2. Payment of honorarium at the rate of 200 hrs. p.m. and 2400 hours p.m. p.m. which the applicant would have been paid had he been allowed to work in his post.
3. Restoration of two withheld increments since 1.1.84 as would have been released to him

on 1.1.86.

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4. Because of his loyalty to the Department during Railway strike, his daughter be given appointment.

2. According to the carelessly drafted OA, the applicant joined the Railway service on 1.8.62 as a peon in the office of Respondent No. 3 and worked as Shroff from 13.1.65 to 28.2.66. After that he fell ill on 8.3.67 in his village in District Almora and remained sick till 20.8.70. He submitted fitness report to Respondents No. 2 & 3 for joining his duties. Vide order dated 4.1.73 he was ordered to join his duties as a peon. In the year 1977, the applicant appeared in the departmental examination for the post of a clerk but he failed. Respondents accounted his service from the year 1973 and not from 1962. On 1.1.79, the applicant was appointed in the post of Shroff, but was falsely implicated in a case of departmental currency racket. On 2.3.84, the applicant was issued a charge sheet and by order dated 1.5.84 he was punished with the withholding of his two increments since 1.5.84. He was suspended and a charge sheet of major penalty was issued on 11.6.84. Eventually, he was removed from service on 25.4.85. The applicant filed a writ petition under Article 226 of the Constitution in the High Court of Delhi and on coming into force of the Act, it stood transferred to the Tribunal. It was finally decided on 30.6.86 by the Tribunal (Annexure B). According to the O.A., the applicant filed a representation before the respondents for implementing the directions of the judgment of this Tribunal, on 1.8.86. According to the applicant, he remained filing representations on 23.9.86, 4.11.86, 31.12.86, 15.1.90 and 2.4.90. The present O.A. was filed on 4.10.90.

3. Respondents on notice filed their counter by which they have controverted the contents of the O.A. They contend that the applicant was appointed as temporary peon

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on 23.4.63 and not on 1.8.62. They denied that the applicant worked as a Shroff from 13.1.65 to 28.2.66. According to them, during KUMBH MELA, the applicant was engaged as a casual/temporary Shroff only from 13.1.66 to 28.2.66 i.e. for 57 days only. The request of the applicant for leave was turned down by the respondents and he was directed to resume his duties. As he failed to join, action was proposed to be taken under D & A R for his unauthorised absence but the applicant tendered his resignation on 6.4.68. That resignation was accepted on 13.9.68 with retrospective effect from 8.3.67 and all his dues were settled and paid to him on 25.7.70. On the intervention and recommendations of one of the recognised Unions, the Railway Board ordered the re-appointment of the applicant on humanitarian grounds. Hence, he was appointed as Chowkidar on 16.6.73 (Annexures 3 and 4). Vide Annexure 5, the application of the applicant for condonation of break in service and restoration of seniority was turned down by the Railway Board. According to the return, the notice of major penalty was issued on 11.5.84 and thereafter the applicant was removed from service after due enquiry. Respondents assert that the directions of the Tribunal were fully complied with and all the dues were paid to the applicant. Honorarium could not be paid to the applicant because under the rules he was not entitled to get it. So far as employment to the daughter is concerned, she was underage as she was born in the year 1965 etc.

4. We have heard the learned counsel for the applicant and respondents and gone through the documents filed by them. Annexure B is the judgment of this Tribunal, in T-705/85, delivered on 30.6.86. Three reliefs were prayed for in this T.A.

1. Order dated 25.4.85 holding the applicant guilty under Rule 3(ii) of the Railway Servants (Conduct) Rules, 1965, and removing him from service, be set aside.

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2. The removal of the applicant from service and appellate order dated 2.7.85, dismissing the appeal, be quashed.
3. Reinstatement in service with consequential benefits be awarded.

5. The Tribunal in its judgment held:

1. The impugned disciplinary proceedings cannot be sustained. Hence, they are quashed with the direction that no further disciplinary proceedings be taken on the subject of those allegations.
2. The suspension order dated 25.4.84 was obviously continued in view of the contemplated disciplinary proceedings for major penalty. Now, that the entire disciplinary proceedings which subsequently culminated in the order of removal are quashed, Respondents are directed to reinstate the petitioner in service with all consequential benefits.
3. The order of reinstatement shall be implemented within two weeks of the receipt of this order and all consequential benefits shall be calculated and paid to the petitioner within four months of the receipt of this order.

6. None of the reliefs prayed for, in this O.A. was prayed for in Annexure B, the judgement of this Tribunal dated 30.6.86. The applicant, then filed C.C.P. No. 59/87 in T.A. 706/85 before this Tribunal. This Tribunal by its judgment dated 22.6.89 disposed of the petition after discussing in great detail, all the facts involved in the judgment in T.A. 706/85. In the judgment in C.C.P. No. 59/87, the Tribunal has dealt the matters raised exhaustively and for convenience they are reproduced:-

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(i) According to the petitioner, the back wages are to be calculated and paid in the pay scale of Rs. 425-640. According to the respondents, at the time of his removal from service on 25.4.1985, he was drawing pay of Rs. 290.00 plus allowances in the pay-scale of Rs. 260-400 and back wages were calculated on that basis and nothing more than what was paid is due to him. Further, the next promotion of the petitioner is as Junior Head Shroff in the scale of Rs. 330-530 which is a selection post. At the time when his juniors were promoted in the scale of Rs. 330-560, he was not in service. Keeping in view the court case, one vacancy in the scale of Rs. 330-560 was kept apart. His case for promotion in the scale of Rs. 330-560 will now be processed and if he qualifies in the selection and is considered fit for promotion by the Selection Board, he will be placed in the scale of Rs. 330-560 and not in the scale of Rs. 425-640, as claimed by him.

(ii) The petitioner claims that honorarium at the rate of 200 hours per month and 2,400 hours per year has not been paid to him. The respondents contend that honorarium is not a part of pay as a regular measure but additional remuneration for extra work. As the petitioner did not perform any duty, even the normal duty, his claim for honorarium is not, therefore, tenable.

(iii) The petitioner claims that two annual increments of Rs. 20 each that were temporarily withheld and became due w.e.f. 1.1.1986, should be restored. The version of the respondents is that on his reinstatement, the penalty was operative. His increment falls on 1st January and

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as such, his increments for the year 1985 and for 1986 falling due on 1.1.1985 and 1.1.1986 were withheld and these two increments have been allowed on 1.1.1987 and paid to him.

(iv) The applicant claims that his pay is to be refixed as Rs. 1290/- per month instead of Rs. 1070/- per month. According to the respondents, his pay has been fixed at Rs. 1050 w.e.f. 1.1.86 in the new pay-scale of Rs. 950-1400 and Rs. 1,110 w.e.f. 1.1.1987 after giving him the benefit of two increments which were temporarily withheld. On his promotion in the new scale, if considered fit by the Selection Board, his pay will be fixed under the normal rules.

(v) The applicant has claimed payment of interest on the outstanding amounts at the rate of 12% per annum. According to the respondents, as no amount is outstanding, the question of payment of any interest does not arise.

(vi) The applicant claims that he is entitled to promotion as Junior Cashier as he has passed the required test in the year 1983. The respondents contend that though he qualified in the written test, he did not qualify in the viva-voce test and, therefore, the Selection Board did not recommend his name to be placed on the panel.

5. From the foregoing, it will be seen that the respondents have substantially complied with the directions contained in the Tribunal's judgment dated 30.6.1986. They have reinstated the petitioner in service within two weeks of the receipt of the order of the Tribunal and have paid him a sum of Rs. 19,783.40 towards back wages, including the difference of pay and allowances for the period of suspension which

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was treated as duty. There is no indication that the respondents have not complied with the judgment wilfully or deliberately. No doubt, the direction contained in the judgment is not only to reinstate the petitioner in service but also to give him "all consequential benefits". Such benefits have not been spelt out in the judgment. The applicant has enumerated them in the present petition and the respondents have given their stand in respect of each of them. In our opinion, adjudication of these claims will not come within the scope of a contempt of court petition and we do not express our views one way or the other in respect of the rival contentions. Disputed questions of law and fact cannot be gone into while adjudicating on such a petition. We, however, make it clear that if the petitioner feels that he is entitled to the benefits claimed by him in the C.C.P. which have been denied by the respondents, he will be at liberty to seek redress by filing fresh application/applications in accordance with law, if so advised."

This judgment in the C.C.P. was delivered on 28.3.89. The applicant filed the present O.A. on 4.10.90.

7. In para 7 of the O.A., under heading LIMITATION the applicant has declared that the application has been filed within the limitation period prescribed under Section 21 of the Act. As usual, in the O.A., no particulars have been mentioned as to when and by what document the cause of action for filing this application under Section 19 of the Act arose. First representation was filed by the applicant before the respondents on 1.8.86 and then a chain of representations were filed subsequently as on 23.9.86, 7.11.86, 31.12.86, 15.1.90 and 2.4.90. First relief, as prayed for in the O.A. under the head "Relief sought" is from year 1962 to 1973, Landly and the second relief for payment of honorarium is also for

the same period. Third relief as prayed for is from 1.1.84 to 1.1.86. Fourth relief for fixation of pay is from 1.1.86. Fifth relief as prayed for the employment of applicant's daughter concerns Annexure F2 which is dated 31.12.86. All these reliefs, as prayed for, appear *prima facie*, to be barred by the law of limitation contained in Section 21 of the Act. First representation was filed on 1.8.86. In the counter filed by the respondents, no objection to limitation was raised nor the learned counsel for the respondents raised it at the Bar. No application for condoning the delay appears to have been filed by the applicant. The learned counsel for the applicant failed to address us at the Bar that his O.A. has been filed within the prescribed period of limitation. He has also failed to inform us as to from which date, according to him, the limitation starts running for the purpose of filing this O.A.

8. From the averments made in paras 12 and 13 of the O.A., it can be gathered that the applicant is aggrieved by the "lopsided implementation" of the judgment of this Tribunal dated 30.6.86 by the respondents for the implementation of the orders passed in the judgment, the applicant, therefore, filed the above mentioned C.C.P. in which the order was passed by the Tribunal on 22.6.89. Respondents in that C.C.P. as well as in their reply to the I.A. contended that they have implemented all the directions given in the judgment of this Tribunal dated 30.6.86 and hence they paid and settled all the post retirement benefits to the applicant. It is, therefore, to be seen whether the reliefs, as prayed for in this O.A., can be granted to the applicant, if they are within the period of limitation. If any of the reliefs concern with the judgment of this Tribunal dated 30.6.86, then they will be governed by the principles of *Res judicata*.

9. Section 21 of the Act prescribes the period of limitation of one year within which an O.A. has to be filed before the Tribunal in connection with the grievance. In

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the wordings of this Section, the command is strict that the "Tribunal shall not admit an application" unless the application is made within one year Sub-section (b) of Section 21(1) further provides that where an appeal or representation has been made and a period of six months had expired thereafter without such order being made, then the aggrieved employee can file the O.A. Thus, if representation or appeal is made by the employee against his grievance or final order, the O.A. should be filed before the Tribunal within a total period of 18 months. Sub-section 3 of Section 21 of the Act further provides that notwithstanding anything contained in Sub-section (1) and (2), an application can be admitted after the herein-above mentioned period of limitation if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. This sub-section (3) of Section 21 of the Act contains the spirit and body of Section 5 of the Limitation Act. Unfortunately, no application has been filed under sub-section (3) of Section 21 of the Act by the applicant, for the condonation of delay in filing this O.A.

10. It has been observed that in almost all the applications filed, the limitation is quoted as of formality, reproducing the words contained in clause 3 of the proforma for O.A. provided in Appendix A (form I) of the C.A.T. (Procedure) Rules of 1987. While drafting an O.A., care should be taken to mention clearly as to when (date) cause of action arose or when the order impugned was passed, or when the appeal or representation was filed, so that at one glance it may be assessed whether the O.A. has been filed within the period prescribed under the law. We had the occasion to observe that in the Registry, which checks the O.A. no regard is paid to this important aspect and the person in Registry who is entrusted with the work of checking fills up the proforma of checking writes 'yes' against the clause of limitation. We expect Registry to be more vigilant in future so far as the clause of limitation is concerned.

11. This Bench in O.A. No. 1073/91, judgment dated 10.5.91 (Rajan Sarda Vs. U.O.I), has dealt exhaustively with the subject in hand. Furthermore, the apex court of the country in the case of S.S. Rathor (AIR 1990 S.C. page 10) has laid down the law in clear terms. We need not dwell unnecessarily upon this subject. It is well settled that by filing repeated representations, the clock of the limitation which always runs onward, cannot be set back. First representation was filed by the applicant on 1.8.86. The period of limitation started running since that date. Subsequent representations filed by the applicant on 23.9.86, 7.11.86, 31.12.86, 15.1.90 and 2.4.90 before the respondents shall not revive the period of limitation which has expired.

13. Consequently, it is held that all the reliefs, as prayed for in this O.A., are barred by the law of limitation as provided in Section 21(1)(a)(b) of the Act. This O.A. is, therefore, dismissed with the directions to the parties to bear their own costs.

Dec 17/1991
(P.C. JAIN)

MEMBER (A)

Dec 17/1991
(RAM PAL SINGH)

VICE-CHAIRMAN (J)