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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.901 of 1990

This 2nd day of August, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Badri Dutt,
RZ-16, A-1 East Sagar Pur
Gali No.1,
New Delhi-46.

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Applicant

By Advocate: Ms. Sunita Tiwari, proxy counsel for
Shri P.P. Khurana, Counsel

VERSUS

1. Union of India, through:
Secretary,
Ministry of Labour,
Shramshakti Bhavan,
New Delhi.
2. The Director General,
Electrical & Mechanical Engineering,
Army Headquarters,
New Delhi.
3. The Director General,
Ordnance Factories,
44, Park Street,
Calcutta-16
4. The General Manager,
Small Arms Factory,
Kalpi Road,
Kanpur

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Respondents

By Advocate: Shri V.S.R. Krishna

O R D E R

Hon'ble Mr. B.K. Singh, M(A)

This application was filed on 14.5.1990 under Section 19 of the CAT Act, 1985 against the impugned order dated 13th March, 1989 challenging the fixation of the pay of the applicant ^{in the grade Rs.75-95} from the original grade of Rs.110-155 after he was rendered surplus.

2. The admitted facts of the case are these. The applicant was appointed in the C.V.D. Workshop, Delhi Cantt. after his recruitment on 16.4.1963 as Vehicle Mechanic in the pay-scale of Rs.110-155. The applicant

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was rendered surplus in CVD Workshop, Delhi Cantt. in 1965 under the provision of SDAQ/4/S/53: 'individuals rendered surplus in an establishment will first be considered for absorption in other equivalent or lower appointment in the same establishment and if vacancies are not available in the same establishment, the persons rendered surplus will be adjusted in other establishments after obtaining their consent.' The said circular also lays down that if the surplus individuals are unwilling to move outside from their present station, ^{they} will be retrenched on completion of the notice period. On being rendered surplus, the applicant was transferred to Small Arms Factory, Kanpur on the basis of his acceptance vide movement order dated 23.8.1965 and he was asked to join there by 30.11.65 and if he had not joined, he would have been retrenched from service.

It is admitted that at the relevant time, when he was transferred, he was drawing a basic pay of Rs.116 plus allowances. Copy of the movement order has been filed with the paperbook as annexure A-1.

3. The applicant was posted to Small Arms Factory, Kanpur only on the acceptance of the post offered to him. ~~xxxxxxx and the~~

He joined because if he had not done so, his retrenchment would have ~~been~~ followed. To avoid retrenchment the applicant moved to his new posting. It was also mentioned to him that failure to accept the offer of new appointment would lead to termination from service by 31.1.1966. The applicant was allowed normal TA/DA and also joining time consequent upon his acceptance to join the Small Arms Factory, Kanpur after his interview was conducted by the Selection Committee. It is admitted by the applicant himself on page 2 of his OA that he was interviewed by a selection committee and it was only after his due selection that he was transferred to SAF, Kanpur. There were 8 others who were

not selected. A perusal of the record clearly shows that the interview was called for posts carrying the pay-scale of Rs.75-95 and not Rs.110-155 as alleged by the applicant.

4. Some similarly placed employees working in 510 Army Base Workshop ^{Meerut who} were also appointed in the pay-scale of Rs.75-95, denying them the pay-scale of Rs.110-155, filed an application under Section 33-C(2) of the Industrial Dispute Act before the Labour Court, Jabalpur. The said Court held that the applicants were entitled to computation of benefits of the pay in the pay-scale of Rs.110-155. Aggrieved by this judgment of the Labour Court delivered in LCA 855/69, the respondents filed a writ petition in the Hon'ble High Court of M.P. and the Hon'ble High Court was pleased to allow the appeal. The workmen in LCA 280/70 thereafter filed a Special Leave Petition in the Hon'ble Supreme Court of India against the orders of the Hon'ble High Court for fresh decision in the matter. The Hon'ble Supreme Court decided the matter in Civil Appeal No.914(NL)/72, Sohan Singh & 6 Ors. vs. The General Manager, Ordnance Factory, Khamria & 2 Ors. This Civil Appeal was filed under Article 133 (1) (a) of the Constitution as it stood before 30th Constitution (Amendment) Act from the order of the Madhya Pradesh High Court passed in Misc. Petition No. 280/70 filed by the respondents. The appellants had filed 7 applications before the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur under Section 33-C(2) of the Industrial Disputes Act, 1947. The applications were allowed and certain directions were given by the Labour Court for quantification of the claims of the

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appellants. The High Court did not examine the claim of the respondents on merit. It set aside the order on the ground that on the facts of the case, the Labour Court did not have the jurisdiction in the case. Issue No.4 settled for trial by the ^{Hon'ble} Supreme Court was in the following terms, as contained in the judgment of N.L. Untwalia and V.R. Krishna Iyer, JJ:-

"Whether the applicants were transferred to Ordnance Factory, Khamria on same terms and conditions of service which they had at Meerut and they willingly accepted the reduced pay and a new assignment in Khamria Ordnance Factory?"

The Hon'ble Supreme Court remanded the case to the Hon'ble High Court, MP directing it to hear the Misc. Petition on merits and dispose of the same according to law. This judgment of the Hon'ble Supreme Court was delivered on March 18, 1975 by a Division Bench comprising V.R. Krishna Iyer and N.L. Untwalia, JJ.

5. The Hon'ble High Court thereafter heard the Misc. Petition 280/70 on its remand and rendered the judgment on 29.9.1977 dismissing the appeal of the respondents and upholding the judgment of the Labour Court which allowed the claims of the applicant in LCA 855/69.

6. It is claimed in the OA that the applicant was similarly situated and the benefit of the judgment of the Labour Court, upheld by the MP High Court, should have been extended to him also. The applicant filed LCA No.379/78 in the Central Labour Court, Delhi. The Central Labour Court presided over by Shri G.S. Kalra, vide its order dated 12.8.1986 held that the application was not maintainable under Section 33-C(2) of the Industrial Disputes Act on the ground that the claim was not the one which could be computed under Section 33-C(2) of the Act.

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7. The applicant filed a representation to the Central Government to refer the matter to the Industrial Tribunal under the Industrial Disputes Act. 1947. This representation was rejected vide the impugned order dated 13.3.1989.

8. The applicant has prayed for the following reliefs:


(i) to issue a writ of mandamus directing the respondents to pay to the applicant the arrears as the difference of pay of Rs.110-155 and Rs.75-95 w.e.f. 9.12.65 to 30.4.78 with 18% interest;

(ii) direct the respondents to pay over time allowance for the period he worked over time since the time he was put in the scale of Rs.75-95;

(iii) direct the respondents to give consequential benefits like increments, seniority and promotions by holding DPC, if necessary.

9. A notice was issued to the respondents who contested the application and the reliefs prayed for.

10. Heard the learned proxy counsel Ms. Sunita Tiwari for Shri P.P. Khurana, counsel for the applicant and Shri V.S.R. Krishna, counsel for the respondents, and perused the record of the case. Ms. Sunita Tiwari argued that the applicant is entitled to the benefits granted to other similarly situated persons as per directions of the MP High Court which upheld the orders of the Labour Court on the case being remitted to them by the Hon'ble Supreme Court in Civil Appeal No. 914(NL)/72. As stated above, the judgment was delivered by the Hon'ble SC on 18.3.1975. Learned proxy counsel also relied on the judgment of the Principal Bench, CAT, which was delivered by the



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coordinate Bench on 6.9.1991 in OA No.2596/89, Ramesh Kumar vs. Union of India. She argued that the case of the applicant is fully covered by the judgment and order of the Coordinate Bench comprising Hon'ble Mr. P.K. Kartha and Hon'ble Mr. B.N. Dhoundiyal. By this order the benefits were extended to the applicant, Ramesh Kumar raising his pay in the scale of Rs.110-155. The judgment relied on the ratio of the judgment of MP High Court and the Tribunal directed the respondents to extend the same benefits to the applicant, Ramesh Kumar.

11. The learned counsel for the respondents vehemently argued that the application is not maintainable under Section 19 of the CAT Act, 1985. The claim is for restoration of pay-scale of Rs.110-155 from 9.12.65 to 30.4.78 and arrears of pay and allowance for the said period. The Administrative Tribunal has a very limited scope under Section 21 of CAT Act, 1985 to condone delay. It cannot assume the power of the Hon'ble Supreme Court for condoning the delay in filing the application for grant of relief which pertains to the period 9.12.65 to 30.4.78.

Section 21 of the CAT Act, 1994 lays down that the application ^{has} to be (i) within one year from the date on which the order is passed (ii) stipulates that where an application or representation has been filed, a period of six months has to expire before the application ^{is filed} which means that it can be entertained after one-and-a-half years in case an appeal has ^{not} ~~not~~ been decided. The exception is only in case of ^{transferred} ~~transferred~~ applications from High Courts. This is not a transferred application from any High Court and the applicant never agitated this matter before a competent



forum. The Tribunal has been vested with limited power of entertaining an application which has arisen after 1st November 1982, that too when the applicant shows sufficient and reasonable cause for not making the application within the prescribed period.

12. Time runs from the date of communication of the order and not from the date when it is passed. The time has to be computed from the date the appellate/revisional order is passed and it is not reckoned from the date of ^{the} original order was passed as has been held in Karsanbhai vs. Union of India (1989) 11 ATC 446.

13. The second ground taken by the learned counsel for the respondents was that the applicant has not exhausted the departmental remedies as laid down under Section 20 of the CAT Act, 1985.

14. The third ground taken by the learned counsel for the respondents was regarding the principle of promissory estoppel since the applicant had accepted the lower pay-scale because the prospects of retrenchment were looming large before him.

15. After hearing the rival contentions, we find that the question of limitation has assumed great importance in the recent judgments of the Hon'ble Supreme Court. The service jurisprudence in case of limitation has undergone vast changes from the time the Division Bench of the Hon'ble S.C. remitted the case to the MP High Court for a decision on merits without taking into consideration the question of limitation vide its judgment delivered on 18.3.1975. The operative portion of the said judgment has been quoted in para 4 of this order. The Apex Court has dealt with these matters in a catena of judgments attaching great importance to the period of limitation. It has now laid ^{down} a new norm and this norm has been consistently followed by it (Supreme Court) in a series of judgments which are quoted below:-

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(i) (1991) 17 ATC 287 = (1991) 4 SCC 1, State of Punjab vs. Gurdev Singh. The ratio established in this judgment is that the party aggrieved by an order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation since after the expiry of the statutory limit the court cannot give the declaration sought for. Delay and laches defeat the remedy and ^{thus} ~~the~~ right also is lost.

(ii) In case of JT 1992 (3) SC 322, Bhoop Singh vs. U.O.I. the ratio established ~~in the judgment~~ is that the judgment and orders of the court in other cases do not give cause of action. The cause of action has to be reckoned from the actual date of passing of order by the competent/appellate authority.

(iii) The latest judgment on the subject is Ratan Chandra Samanta & Ors. vs. Union of India & ors. JT 1993 (3) SC 418. In this, the Hon'ble Supreme Court held that delay deprives a person of the remedy available in law. A person who has lost his remedy by lapse of time loses his right as well. Thus, only ^{on} the ground of limitation, the Hon'ble SC reversed the ^{earlier} judgment delivered by the CAT Bombay Bench in this case.

(iv) The same kind of view was also expressed by the Hon'ble Supreme Court in S.S. Rathore vs. State of M.P.



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AIR 1990 SCC 10.

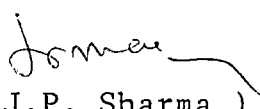
16. In the light of what has been ^{held} ~~said~~ recently and the proposition of law laid down by the Hon'ble Supreme Court has to be followed by the Tribunal and High Courts alike. The Hon'ble Supreme Court lays down new norms in respect of various new issues and these become the codified laws which serve as the guiding principles for all the courts below. Just to cite an instance, suicide or attempt to commit suicide was an offence but the Hon'ble Supreme Court has recently ruled that this is not an offence and this has to be deleted from the IPC as an offence. This is a new norm laid down by the Hon'ble Supreme Court and this has to be followed in the light of the latest judgement. Thus the present ^{case} / is hopelessly delayed and barred by limitation.

17. When the applicant was interviewed by the selection committee for new appointment in the Small Arms Factory, he was expected to know that he was going to join on a post carrying a lower pay-scale, and when he has accepted the appointment and worked on the post for such a long time, he cannot agitate it now. If he had a grievance against lowering his pay-scale, he should have agitated the matter in the competent forum at that time itself. The Central Labour Court, Delhi in the case of the present applicant refused to entertain the application saying it does not fall within the purview of Rule 33-C(2) of the Industrial Disputes Act, 1947 and being aggrieved by it he moved the concerned Ministry which also rejected the petition to refer the matter again to the Central

Industrial Court. This cannot be supposed to give a cause of action for taking up the matter now. The reliefs prayed relate to the period of 1965-1978 and this Tribunal is not competent to take cognizance of the grievance in the light of the period of limitation involved in the present case because the cause of action arose much before 1st November 1982. The new norm laid down by the Hon'ble SC in the rulings quoted above will prevail in lieu of the judgment of the Coordinate Bench delivered on 6.9.1991. Once the applicant has accepted and worked against a lower post for a long time, he is debarred from raising this grievance now. Here, the principle of promissory estoppel just comes into operation against him.

18. Thus the present application is dismissed on the ground of limitation and also as barred by the principle of promissory estoppel, but without any order as to costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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