

14

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1160/1991.

DATE OF DECISION: March 26, 1993.

Ajendra Kumar Mittal

.....

Applicant.

V/s.

Union of India & Anr.

.....

Respondents.

CORAM: Hon'ble Mr. J.P. Sharma, Member (J).  
Hon'ble Mr. S.R. Adige, Member (A).

Shri S.K. Sharma, counsel for the Applicant.  
Shri Shyam Moorjani, counsel for the respondents.

(Judgment of the Bench delivered by  
Hon'ble Shri J.P. Sharma, Member(J)).

JUDGMENT

The applicant, who was working as Deputy C.O.S., North-Eastern Railway, Gorakhpur, filed the present application under Section 19 of the A.T. Act, 1985, on the grievance that when he joined the Indian Railway Stores Service (Class I) on 6.12.1974, his pay should have been fixed at Rs.780/- per month in the scale of Rs.700-1300 under Article 156A of Civil Service Regulations.

2. The applicant has prayed that a direction be issued to the respondents for fixation of his initial pay at Rs.780/- per month with effect from 6.12.74 (AN) and accordingly payment of all the arrears (estimated amount Rs.9,600/-), along with 12% per annum interest on the arrears. He has also prayed for award of Rs.5,000/- as damages for ~~for~~ physical discomfort and mental agony. Further, he has also prayed that suitable action against respondents for violating Fundamental Rights be also taken. He also claimed the cost of application, which he has valued at Rs.1,000/-.



3. The present application has been filed on 29.4.1991 and was refiled on 3.5.1991, after removal of certain objections.

4. M.P. No.1526/1991 was also filed by the applicant for condonation of delay. In this petition, the applicant has contended that he had filed a writ petition in Allahabad High Court in 1983, which was transferred to the Allahabad Bench of the CAT and registered as T.A. 1370/1987 and was later decided on 30.3.1990. The said T.A. was decided against him; therefore, he preferred an S.L.P. before the Hon'ble Supreme Court, which was also dismissed on 26.4.1991. Since the applicant was in the process of filing these petitions, he could not pursue the remedy for fixation of his pay in time.

5. The respondents have contested the application and in the reply took a preliminary objection that the application is hopelessly barred by time. It is also barred by the principle of res-judicata. A reply to the M.P. has also been filed on the ground that there is no sufficient and reasonable cause for condonation of delay.

6. We have heard the learned counsel for both the parties at length and perused the record. The applicant joined the Central Engineering Service (Class II) in the year 1969 in the pay scale of Rs.650-1200. He took the Engineering Service Examination in 1973 and was recommended by the UPSC for appointment to the Indian Railway Stores Service (Class I) where he joined on 6.12.1974 (AN) at Gorakhpur in the North-Eastern Railway and his pay was fixed at the minimum of the scale at Rs.700/- in the scale of Rs.700-1300. The contention of the applicant is that he was drawing at that time the basic pay of Rs.740/- per month in the pay scale of Rs.650-1200 in Central Engineering Service (Class II) in CPWD. The applicant could have



made a representation and in the event of the Department not giving him the appropriate relief, he should have sought judicial review in the competent forum, but the applicant has not done that. In the year 1983, he filed a writ petition before the Hon'ble High Court Civil Writ Petition No.9069 of 1983. In the application itself, the applicant has stated that in the writ petition, he had raised the issue of fixation of pay by filing a supplementary affidavit, but his plea was not accepted by the Allahabad Bench of the CAT, nor that issue was discussed in the judgment dismissing his writ petition on 30.3.90. In fact, the applicant should have filed a fresh writ petition to assail the non-fixation of his pay instead of filing supplementary affidavit in the writ petition No.9069/1983. The applicant, even when the matter was transferred to the Central Administrative Tribunal, could have filed a separate application under Section 19 for the fixation of pay if he was aggrieved. There is no reason for the applicant to wait for all these long years and file this application only in May, 1991. Thus, the present application for the relief claimed for fixation of pay with effect from 6.12.74 (AN) is hopelessly barred by limitation.

7. It appears from the records that the applicant for the first time made a representation in September, 1983 and earlier to that, he did not even make a representation to the Department or Administration for fixation of his pay as per his allegations under CSR 156A. Article 156A of the CSR is the corresponding provision of Rule 1316 of the Railway Establishment Manual Vol.II, 1987 Edition as well as FR 22 of the Fundamental Rules. There is also no document on the record to show that the applicant had been pursuing his



remedy departmentally. In the case of State of Punjab Vs. Gurdev Singh (1991) the Hon'ble Supreme Court has held against the judgment of the Punjab High Court that the aggrieved party has to approach the court for the relief sought within the period of limitation. In the case of S.S. Rathore Vs. State of Madhya Pradesh AIR 1990 SC p.10, the Hon'ble Supreme Court has observed that repeated unsuccessful representations not provided by law do not enlarge the period of limitation. Further, in view of the provisions of Section 21, the Tribunal has been conferred with jurisdiction with effect from 1.11.1985 and any order or grievance arising earlier to three years period from the enforcement of the Act, i.e., prior to 1.11.1982 shall not come within the jurisdiction of the Tribunal. In this case, the applicant has claimed relief for fixation of his pay with effect from 6.12.1974. The contention of the learned counsel for the respondents, therefore, so far as the preliminary objection is concerned, has to be accepted, and it is held that the present application is barred by time.

8. Coming to the M.P. for condonation of delay, firstly the cause of action had arisen prior to three years of the commencement of the AT Act, 1985 and secondly in the M.P., the applicant has not given any any ground which could be said to be reasonable or valid, preventing him from claiming his relief in the competent forum at the relevant point of time. What is stated in the M.P. is that the applicant had filed a writ petition before the Allahabad High Court. In that writ petition, the applicant should have assailed non-fixation of his pay properly when he joined Indian Railways Stores Service in December, 1974. The contention of the applicant



that he was pursuing his remedies in the High Court and was busy in filing SLP in the Hon'ble Supreme Court, cannot be taken to reasonable and good grounds to prevent the applicant from approaching the competent forum for redressal of his grievance for non-fixation of pay. The cause of his grievance had arisen in December, 1974. The applicant has been serving in Class I post in the Railways and it cannot be said that he could not avail of the opportunities available to him to assail the grievance of non-fixation of his pay at the proper time. Thus, the M.P. for condonation of delay does not make out any reasonable cause for condoning the delay. The M.P. for condonation of delay being totally devoid of merit is hereby rejected.

9. The respondents, while filing their reply, have also taken the stand that the applicant has misunderstood the provisions of Article 156A of the Civil Service Regulations. In fact, the applicant was appointed on the recommendations of the UPSC in the Indian Railway Stores Service on probation, and the case of the applicant shall be covered by the provisions of F.R. 22-B or Rule 1315 of RII/1987 Edition. The applicant has not filed his appointment letter. Obviously, it is clear that when the applicant has been recruited to Class I Service on the recommendations of the UPSC, he was placed on probation and he cannot get the benefit of Article 156A of CSR. Learned counsel for the applicant could not show as to how the case of the applicant is not covered under FR-22B as the applicant was placed in a different service known as Indian Railway Stores Service, which is Class I Service and under different jurisdiction.

10. The respondents have also stated in their reply that the pay of the applicant was fixed with proforma in the scale of Rs.1200-1600 and accordingly his pay was fixed at Rs.1250/- in the



scale of Rs.1200 - 1600. The applicant has not denied this fact in the rejoinder.

11. - In view of the above facts, the present application is, therefore, hopelessly barred by time and is hereby dismissed and so also the M.P. for condonation of delay, leaving the parties to bear their own costs.

*S.R. Adige*  
(S.R. ADIGE)  
MEMBER (A)

*J.P. Sharma*  
(J.P. SHARMA) 26.3.93  
MEMBER (J)