

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 910/1991. DATE OF DECISION: 30.4.91

Shri Nand Kishore Gupta Applicant.

V/s.

Union of India & Anr. Respondents.

CORAM: Hon'ble Mr. T.S. Oberoi, Member (J).
 Hon'ble Mr. P.C. Jain, Member (A).

Shri B.B. Srivastava, counsel for the applicant.

P.C. JAIN:

Aggrieved by not being allowed to cross the Efficiency Bar at the stage of Rs.290/- in the then applicable scale of Rs.180-10-290-EB-15-350-EB-15-440 with effect from 6.8.1972, the applicant, who is now working as Divisional Accounts Officer, Lok Nirman Vibhag, Ghaziabad, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, with the following prayers: -

- (a) to direct the respondents to produce the record of the case;
- (b) to direct the respondents to treat the applicant as having been eligible for crossing the Efficiency Bar w.e.f. 6.8.72 at the stage of Rs.290/- in the scale of Rs.180-10-290-EB-15-350-EB-15-440 and to disburse to him all arrears due to him by way of increment, promotion and fixation of pay in the revised scale;
- (c) to allow interest at market rate on the arrears; and
- (d) to award the cost of the application, i.e. the Court fee, the Counsel's fee and incidental expenses, etc.

2. We heard the learned counsel for the applicant on admission and limitation. For purposes of limitation, the applicant has relied on letter dated 5.9.90 (Annexure A1)

by which he has been informed that his case for crossing E.B. w.e.f. 6.8.72 was put up to the appellate authority i.e., Accountant General (A&E) II along with his representations and that the appellate authority after careful consideration of his representations and his all the ACRs for the period upto 31.3.1972 has found that he is not 'fit' to cross the E.B. at the stage of Rs.290/- w.e.f. 6.8.72. However, we are of the view that for purposes of computing limitation, the above order cannot be made the basis. The relevant facts in this connection are stated below.

3. The applicant's case is that he was due to cross the Efficiency Bar with effect from 6.8.72. This fact cannot be disputed after perusal of the departmental replies, which have been filed by the applicant along with the O.A. With reference to his application dated 20.8.80, the applicant was informed vide letter dated 29.9.80 (Annexure A-5) that his E.B. case was duly considered by the appropriate authority but on the basis of his performance during the relevant period, he was not found fit to cross E.B. due on 6.8.72 at the stage of Rs.290/- in Divisional Accountant's old scale. Thus, the cause of action can be said to have accrued to him on or about the date of 29.9.80. As this cause of action had arisen before 1.11.1982, i.e., three years prior to the date on which the Central Administrative Tribunal came into existence, in such a case, the C.A.T. has no jurisdiction either to adjudicate in the matter or grant condonation of delay (V.K. Mehra Vs. The Secretary, Ministry of Information & Broadcasting, New Delhi - ATR 1986 (1) CAT 203; Sukumar Dey v. Union of India, (1987) 3 ATC 427 (CAT)(Calcutta); V.S. Raghavan v. Secretary, Ministry of Defence (1987) 3 ATC 602 (CAT)(Madras).

4. In view of the subsequent developments, however, we are of the view that the cause of action in this case

cannot be taken to have arisen ^{only} on or about 29.9.80. Vide order dated 16.4.1985 (Annexure A-7), the applicant was allowed to cross the Efficiency Bar at the stage of Rs.290/- in the old scale with effect from 1.4.80; again vide letter dated 29.10.87 (Annexure A-11), he was allowed to cross the E.B. at the stage of Rs.290/- with effect from 6.8.73 (if he had retained old scale upto that date) in the time scale of Rs.180 - 440. He made a representation dated 3.12.87 (Annexure A-12) against the aforesaid order, in which he prayed for reconsideration of the order issued on 29.10.87 and to allow him to cross the E.B. with effect from 6.8.72. His representation was replied on 6.1.1988 (Annexure A-13). Thus, the cause of action in this case can be taken to have arisen on or about 6.1.88 and the applicant should have approached the Tribunal within one year from that date. However, he filed this O.A. on 15.4.1991, in which he seeks relief with effect from 6.8.72 with all consequential benefits by way of increment, promotion and fixation of pay in the revised scale, as also interest at the market rate on the arrears.

5. The learned counsel for the applicant urged that as his appeal dated 27.9.89 (Annexure A-2) addressed to the Comptroller & Auditor General of India, has been disposed of only by order dated 5.9.90 (Annexure A-1), his application is within time. We are unable to uphold this contention, firstly, because we have not been shown any provision under which an appeal lay to the C&AG. Secondly, he should have waited for six months from 27.9.89 for the reply to the so-called appeal. This period would have been over on 26.3.90 and counting one year from that date, the O.A. should have been filed by 25.3.91. Even from this angle, the O.A. is barred by limitation. There is no prayer for condonation of delay. It is well settled that repeated representations do not extend the period of limitation (Gian Singh Mann v.

High Court of Punjab & Haryana & Another, 1980(4) SCC 266);
S.S. Rathore v. State of Madhya Pradesh, AIR 1990 SC p.10).

6. The learned counsel for the applicant also urged before us that it is a case of continuing cause of action inasmuch as he is being denied the benefit of the increment in his pay, which was due to him with effect from 6.8.72, but it has been allowed only with effect from 6.8.73. We are unable to uphold this contention also. It is true that the cause of action in regard to payment of salary as admissible under the rules arises from month to month, but it is only if his salary is not paid during a particular period. Admissibility of pay in the applicable time scale of pay will depend on more than one factor, including the one relating to the crossing / non-crossing of the Efficiency Bar in a particular scale of pay. The cause of action in such a case would arise when a Government servant is not allowed to cross the Efficiency Bar in the time scale of pay and such an action can by no stretch of imagination be treated to be a continuous cause of action.

6. In view of the foregoing discussion, we are of the view that the O.A. is barred by limitation and it is disposed of as non-maintainable under Section 21 of the Administrative Tribunals Act, 1985.

Decd 30/4/85
(P.C. JAIN)
Member(A)

Decd 30.4.91
(T.S. OBEROI)
Member(J)