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Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.1113/91

New Delhi this the 3rd Day of April, 1995.

Hon'ble Shri B.K. Singh, Member(A)

Smt. Nirmal Choudhry,
C/o G.K. Aggarwal,
G-82, Ashok Vihar-I
Delhi-110052 Applicant

(By Advocate : Shri G.K. Aggarwal)

Versus

UNION OF INDIA, THROUGH

The Secretary,
Ministry of Urban Development,
Nirman Bhavan, New Delhi. .. Respondent No.1

The Director General (Works)
C.P.W.D.
Nirman Bhavan, New Delhi-11 .. Respondent No.2

(By Advocate : None)

Judgement

(By Hon'ble Shri B.K. Singh, Member (A))

This O.A. No.1113/91 is directed against the Order No.A-20012/3/87-ECIV(CO dated 20.11.90 vide Annexure A-1 of the Paper-book issued from the office of Director General of Works, Central Public Works Department.

2. The applicant was appointed as Lower Division Clerk in C.P.W.D. on 29.10.1956 and was promoted as Steno typist on 26.12.1964. She was promoted as Senior Stenographer on 25.10.1979.

3. The applicant was in the pay scale of Rs.130-5-160-8-200-EB-8-256-EB-8-280-10-300 prior

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to 1.1.1973. The recommendations of the Third Pay Commission were made effective from 1.1.1973. The basic pay of the applicant as on 31.12.1972 was Rs.192/-.

4. The implementation Cell of the department of Expenditure, Ministry of Finance issued Memo no.60/17/IC/78 dated 29.9.1978 which reads as follows;

"The president was pleased to decide that the pay of all Central Government servants who opt for the revised scales of pay from a date not later than 31.12.1975 in respect of the posts held by them on 1.1.1973 may also be fixed under the provisions of Rule 7 of Central Civil Services (Revised Pay) Rules, 1973. The employees who want their pay to be fixed in the revised scales from a date not later than 31st December, 1975, may be allowed a fresh period of 3 months with effect from the date of issue of these orders to enable them to indicate their option in regard to the date from which they want their pay to be fixed in the revised scales...." The time to exercise option was later extended upto 30.4.1979 vide GIMF (Deptt Expdr) E.III(A)OM No. 60/17/10/78 dated 27.1.79.

Vide GIMF (Deptt Expdr) OM 7(66)-E.III/83 dated 13.3.1984 (A/2 hereto),", the President was pleased to decide that the pay of Central Govt employees who opt to come over to

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the revised scales of pay from a date not later than 31.12.79 in respect of posts held by them on 1.1.73 may also be fixed under the provisions of Rule 7 of Central Civil Services (Revised Pay) Rules, 1973. The employees who want their pay to be fixed in the revised scales from a date not later than 31.12.79 may be allowed time upto 31.5.1984 to indicate their option in regard to the date from which they want their pay to be fixed in the revised scales. However, the pay of employees who exercise their option for the revised scales with effect from any date subsequent to 31.12.79 shall be fixed in those scales under Rule 9 of the rules ibid....."

5. It has been stated in the Original Application that O.M dated 29.9.1978, OM dt 27.01.79, and OM dated 13.3.1984 were not circulated to the applicant and was not brought to her notice and in this connection, he has reproduced the letter sent from the Office of the Chief Engineer (Design), to the Dy Director of (Admn), EC-IV, Nirman Bhavan, New Delhi, which reads as under ;

"Mrs Choudhry has again stated that she had not seen the orders No. OM 16/17/IC/78 dt 29.9.78 issued by the Ministry of Finance (Deptt of Expenditure) for exercising an option when she was working in the office of the Executive Engr (Electrical Divn 3, IP Bhavan, New Delhi). She has further stated that there was another similar

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circular issued by the Min of Finance (Deptt of Expenditure) O.M. No.7(66)-E.III/83 dated 13th March, 1984 allowing another chance to those who could not exercise their option earlier. This circular was also not seen by her. It has been verified from the receipt register that the aforesaid circular was not received by this office. In view of this it is requested that as due to no fault of the part of Mrs Nirmal Chaudhry, she could not exercise her option, the relaxatio for exercising an option, may please be allowed to her. S/Book of Mrs Nirma Chaudhry is sent herewith for necessary action."

6. The applicant came to know of, the denial of opprtunity to exercise option under O.M. dated 29.9.78 or O.M. dated 13.3.84 vide Annexure A-II, for the first time after the Fourth Pay Commission's recommendations were announced and orders were issued for its implementation. When she found that her juniors Smt Lalita Sarin and Shri Surjeet Singh were fixed in a higher scale than her in terms of IV Central Pay Commission Recommendations. She made several representations vide Annexure A-3, A-4, A-5, A-6, A-7, and A-8, the last representation being sent on 23.8.89 (Annexure A-8) which was rejected and is the impugned order quoted above i.e Annexure A-1 dated 20.11.1990, which reads as under;

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"I am directed to refer to your representation dated 13.6.90 on the above subject and to regret that on account of implementation of the IV Pay Commission report, the request for allowing to submit a fresh option on the basis of 3rd Pay Commission Report cannot be acceded to."

7. In the prayer clause the declaration has been sought to issue an order that the applicant is entitled to change over to the revised pay scale under III Pay Commission, effective from 10.8.1975, with arrears since dated 1.1.1973 with all consequential benefits including those of the Third Pay Commission and also those flowing from the IV Central Pay Commission.

8. A notice was issued to the respondents to file their reply and contested the application on the grant of the reliefs prayed for.

9. I heard the learned counsel Shri G.K. Aggarwal for the applicant and Shri M.L. Verma for the Respondents. The learned counsel for the applicant argued that although the applicant never gave the option even during the extended period which was 31.12.79 and which was further extended to 13.03.1984 but she should be deemed to have exercised the option since she had the right to exercise the option to change over to the revised pay scale under the Third Central Pay Commission recommendations. As regards the O.M. issued dated 29.9.78 and 13.3.1984, he admitted

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that being a Class 3 employee and being unaware of these options, she did not exercise option, and vide G-I and G-II it is admitted that the applicant did not exercise option to O.M. dated 29.09.78 and 13.03.84. The only ground taken is that these O.Ms were not brought to her notice. This is G-3 of the Paper-book. It has been averred that the applicant became aware of the O.Ms. dated 29.9.78 and 13.03.84 only after the implementation of the IV Pay Commission when her juniors Smt. Lalita Sarin and Shri Surjit Singh were given higher pay scales under the Central Fourth Pay Commissions. This is G-4 of the Paper-book. The other is a chronological history that she went on filing her representations vide G-6, G-7 and G-8 but to no avail. During the course of the arguments, the learned counsel for the applicant stated that she belongs to the weaker section of the society and she being a lady deserves sympathetic consideration. The learned counsel for the respondents Shri M.L. Verma categorically stated that the applicant claims benefit w.e.f. 1.1.1973 under Third Central Pay Commission. This Tribunal is not competent to take cognisance of any relief before 01.11.1982, i.e. three years prior to the coming into being of the C.A.T. Act 1985. The benefit has been claimed from 8.10.1975 and is barred under Section 21 of the C.A.T. Act which permits only a maximum period of 1 1/2 years for filing a writ or suit pertaining to a grievance, under service rules.

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10. It was vehemently argued that the applicant did not exercise option is fully admitted by her and once she did not exercise the option at the proper time she cannot approach Court after the expiry of that period. The relief is being sought from 8.10.1975 and that too after the implementation of the Fourth Pay Commission i.e. after a gap of practically more than a decade. Thus she is not entitled to the relief prayed for. The application, according to him is badly hit by delay and laches. The Hon'ble Supreme Court has categorically laid down the law in case of State of Punjab Vs Gurdev Singh; (1991) 4 SCC 1; that the party aggrieved by an order is to approach the Court for relief of the declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation, since after the expiry of this statutory time limit, the court cannot give the declaration sought for. The same view was earlier held in ATR 1986 C.A.T. 203 V.K. Mehra Vs Secretary Information and Broadcasting. The Administrative Tribunals Act does not vest any power or authority to take cognisance of a grievance arising out of an order prior to 1.11.1982. The limited power that is vested to condone the delay in filing the application is prescribed under section 21 provided the grievance is in respect of an order made within 3 years of the constitution of the Tribunal. In the case of S.S. Rathore Vs State

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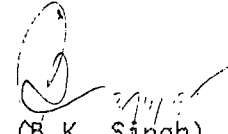
of M.P., AIR 1990 S.C. 10; the Hon'ble Supreme Court have categorically stated that the cause of action shall be taken to arise on the date of the order passed by the higher authority disposing of the appeal or representation and where no such order is made within six months after making such an appeal or representation the cause of action would arise from the date of expiry of six months. It has been further laid down that repeated unsuccessful representations not provided by law, do not enlarge the period of limitation. It was further held that repeated representations and memorials to the President etc do not enlarge the period of limitation. The delay and laches defeat the right and if the right is defeated the remedy is automatically lost.

11. It has been held in the case of Ratam Chandra Samanta & Ors Vs Union of India Ors JT 1993 (3) SC 418; that delay itself deprives the person of his right and if the right is lost remedy is also lost. In view of the various rulings of the Supreme Court this application needs no adjudication on merits and is dismissed on grounds of delay and laches alone. The law is the ^{epitome} ~~fontain~~ of wisdom and in case of L.I.C. of India Vs Asha Ambekar; the Hon'ble Supreme Court categorically laid down the norm that the

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Tribunals and High courts must follow the cold logic of law and should not be guided by their emotions and feelings.


(B.K. Singh)
Member (A)

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