

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

~~O.A. No.~~
~~T.A. No.~~

CA No. 1350/92

20

DATE OF DECISION 8-1-98

V. D. Sharma Applicant(s)

(By Advocate Shri D.R. Gupta)

Versus

Union of India Respondent(s)

(By Advocate Shri M.K. Gupta)

(For Instructions)

1. Whether it be referred to the Reporter or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO

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(Dr. A. Veeravalli)
M (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1350/92
MP No.827/93

(21)

New Delhi this the 8th day of January, 1998.

HON'BLE MR. N. SAHU, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

V.D. Sharma,
S/o Late Shri Kanti Prasad Sharma,
R/o K-56, Sector 11, NOIDA,
Distt. Ghaziabad (UP).

...Applicant

(By Advocate Shri D.R. Gupta)

-Versus-

1. Union of India through
the Secretary,
Government of India,
Ministry of Environment & Forest,
Pariyavaran Bhavan,
New Delhi.

2. The Director,
Delhi Zoological Park,
New Delhi.


...Respondents

(By Advocate Shri M.K. Gupta)

O R D E R

HON'BLE DR. A. VEDAVALLI, MEMBER (J):

The applicant Shri V.D. Sharma seeks in this O.A. a direction to the respondents to pay his G.P. Fund togetherwith interest thereon and his pensionary benefits including gratuity of pro rata basis for the period he has rendered service under the Government prior to his absorption on permanent basis in the New Okhla Industrial Development Authority, District Ghaziabad U.P. (NOIDA). He has not impugned any specific order of the respondents as such in this application.

2. The facts of this case, briefly stated, are as under: 

2.1 The applicant joined the Delhi Zoo on 2.3.70 and was confirmed against the post of Garden Supervisor on 11.7.79. He applied for the post of Horticulture Officer in the University of Roorkee and was selected for the said post. Thereafter he requested the Director, Delhi Zoo (respondent No.2) to relieve him from the said post to take up his new assignment. He was relieved of his duties w.e.f. 2.11.79 and was informed that the question of keeping his lien will be decided in due course by a letter dated 31.10.79 (Annexure A-3). The applicant joined the University of Roorkee on 3.11.79. Subsequently he applied for the post of Assistant Director (Land Scape) on permanent basis in NOIDA through the Roorkee University which forwarded his application by a letter dated 15.4.80. A copy of the said letter was endorsed to respondent No.2 with a request that 'no objection certificate' may be sent to NOIDA for consideration of the application of the applicant (Annexure A-5). Thereafter 'no objection certificate' was sent to NOIDA by a letter dated 19.5.80 (Annexure A-6). The applicant on his selection to the said post by NOIDA joined his duties on 29.8.80 and this fact was intimated to respondent No.2 for information by NOIDA (Annexure A-7). A request to respondent No.2 was made by the applicant on 14.4.80 to take a decision regarding the retention of his lien against the post of Garden Supervisor held by him earlier. He reminded respondent No.2 about this by letter dated 12.6.81 and made a request to let him know the rate of his pension contribution which he was required to deposit. Further reminders were also made from time to time (Annexure A-8 colly). The last letter included a request to settle finally his pension gratuity, provident fund etc. which was stated to have been sent to the Ministry of

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Environment and Forest (respondent No.1) acknowledged on 19.9.91. As there was no response to his request, this OA was filed on 18.5.92.

3. The O.A. was admitted by this Tribunal on 18.12.92 subject to limitation. The respondents have contested the O.A. and have filed their reply. Rejoinder has not been filed by the applicant in spite of several opportunities given.

4. The grounds on which the applicant sought the relief in this OA, briefly stated, are twofold.

4.1 The first ground is that the respondents have failed to communicate their decision about the retention of the applicant's lien in spite of their responsibility to do so and this has resulted in causing prejudice to him and that the respondents could not have terminated his lien without his prior consent or giving him option for reversion.

4.2 The second ground is that as per instructions, the respondents are under a duty to communicate the rate of contribution towards leave and pensionary benefits which is required to be paid either by the transferee department or the applicant himself which they failed to do so despite repeated requests orally or in writing which has delayed the settlement of his retirement benefits and that this action/inaction on the part of the respondents is violative of the principles of natural justice, Article 14 of the Constitution and the relevant instructions, namely, OM No.26(18)E-5(B)75 dated

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8.4.1976 of the Ministry of Finance, Department of Expenditure readwith Ministry of Home Affairs, (Department of P & AR) OM No.28/10/84 Pension Unit dated 19.8.1984.

5. We have heard the learned counsel for both the parties and have perused the pleadings and the relevant materials and documents placed on record.

6. In the first instance we have to consider the preliminary objection raised by the respondents in their reply as to limitation, which was also pressed by their learned counsel at the outset during hearing.

7. It is submitted by the respondents that the applicant's representation dated 27.12.84 was replied to by memo dated 18.2.84 (Annexure R-2). English version of the said reply is as under:

"No: 2.2.70-DZP

Govt. of India,
National Zoological Park,
New Delhi-110003.

Dated : 18.2.95.

MEMORANDUM

With reference to your letter dated 27.12.1984 you are hereby informed that you have been relieved of the charge of the post in this department w.e.f. 2.11.1979. According to the Ministry of Home Affairs your lien against the post held by you can be retained for a period of two years. Besides the post of Garden Supervisor in this department has been abolished w.e.f. 16.4.82. Accordingly your lien is terminated."

Sd/- Dr.J.N. Desai
Director.

To

Shri V.D. Sharma,
Asstt. Development Manager-cum-
Asstt. Director (Horticulture).

[Signature]

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Horticulture Deptt.
Office Sector-18 Noida
Distt. Ghaziabad, (UP)"

8. It is argued by the learned counsel for the respondents that the said reply is quite clear and the applicant, if aggrieved, ought to have moved the competent judicial forum within the prescribed period of limitation. He contended that the cause of action, if any, had arisen in February, 1985 whereas the applicant had filed the present OA belatedly on 18.5.92. He submitted that the repeated representations dated 6.9.91, 10.9.91 and 19.9.91 do not extend the period of limitation and the OA, therefore, deserves to be dismissed on this preliminary objection itself, as it is hit by the provisions of Sections 20 and 21 of the Administrative Tribunals Act, 1985.

9. The applicant, as already noted supra, has not filed any rejoinder to the reply filed by the respondents. However, learned counsel for the applicant in his reply to the arguments advanced by the learned counsel for the respondents regarding the above preliminary objection argued that the OA is within time and is not barred by limitation, as the cause of action in the present case is a continuous one. In this connection he relied upon a decision of the Apex Court in C.S. Thiruvengadam vs. Secy. to Govt. of India (JT 1993 (1) SC 609).

10. We have considered the aforesaid question of limitation very carefully. It is quite obvious that the cause of action, if any, regarding the termination of the applicant's lien on abolition of the post in question arose at least in 1985, if not earlier, since the receipt of the said memo dated 18.2.85 had not been denied by the applicant by

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filing a rejoinder nor during the course of arguments. While so, the present OA has been filed only on 18.5.92. The applicant has not filed any application for condonation of delay and it is well settled that repeated representations do not extend the period of limitation, as held by the Hon'ble Supreme Court in a catena of cases, including State of M.P. vs. S.S. Rathore (AIR 1990 SC 10). It is also well settled that delay deprives the person of the remedy available in law. A person who has lost his remedy by lapse of time loses his right as well. This position is well settled according to the law laid down by the Hon'ble Supreme Court in a number of cases, including Ratam Chandra Samanta & ORs. vs. U.O.I. & Ors (JT 1993 (3) SC 418). Even if it is the stand of the applicant that the cause of action is a continuous one, he should have taken this plea in an application for seeking condonation of delay and cannot claim exemption from the bar of limitation as of right. In the circumstances we would be justified in rejecting the OA on the ground of limitation straightaway. However, the facts in this case, we find, are peculiar. The respondents have raised the preliminary objection regarding limitation only with respect to the first ground raised by the applicant regarding the relief sought by him in the OA, as noted supra, with reference to 'lien' only and not in respect of the second ground thereof relating to the duties of the respondents to intimate the rate of contribution towards leave and pensionary benefits etc. to the applicant. The respondents cannot also perhaps raise the plea of limitation regarding the said second ground since they themselves appear to be taking steps to ascertain information from NOIDA regarding the pensionary benefits of the applicant as is seen from the letter of respondent No.2 dated 31.3.89 annexed to MP No.827/93 filed by the applicant on 1.3.93. The

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said letter itself refers to an earlier letter dated 18.12.87. The respondents have not filed any reply to the said MP and there is no denial of the aforesaid document by the respondents as per the record. Moreover, the first ground relating to the applicant's lien as per the averments made in the OA is interlinked with the second ground as to the contribution towards leave and pensionary benefits etc. and as such these two grounds may not be capable of being put into watertight compartments as per the pleadings on record. Further, as per the judgement of the Hon'ble Supreme Court in a number of cases including the recent decision in S.R. Bhanrale vs. Union of India (1996 (10) SCC 172) also indicate that it will not be proper for the Government to take the plea regarding the bar of limitation where claims relating to pension and other related benefits of Government servants are concerned, particularly when representations were being made by the aggrieved party.

11. On the peculiar facts of this case and in view of the foregoing discussion we are of the considered opinion that the preliminary objection raised by the respondents regarding limitation is not tenable in the eye of law. The said objection is, therefore, over-ruled and we now proceed to consider the case on merits.

12. Re the first ground raised in this OA as to the failure on the part of the respondents to communicate their decision about the retention of his lien and the illegal termination of the same without obtaining his prior consent or giving him option for reversion, learned counsel for the applicant argued that the applicant's lien continues till he is permanently absorbed in the autonomous body or Corporation.

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which he has joined and that abolition of the post in the parent department will not have the effect of terminating his lien. He also contended that the lien period should also be treated as qualifying service for pension purposes. In this connection he submitted that he is relying on Rule 26 clause (2) of the CCS (Pension) Rules, 1972 and the provisions of OM dated 8.4.76 read with OM dated 28.10.84 mentioned supra. He also relies on an order of this Tribunal dated 3.9.93 in N.B. Jain vs. Union of India & Ors. (OA No.177/93 given in the light of a judgment of the Hon'ble Supreme Court in T.S. Thiruvengadam vs. U.O.I. (JT 1993 (1) SC 609).

13. In reply to the aforesaid argument, learned counsel for the respondents contended that on abolition of the concerned post itself in the parent department the question of retention of any 'lien' against the said post does not arise and the applicant was already informed of this fact by the respondents' memo dated 18.2.85 (Annexure R-2) and hence the ground of retention of lien is not sustainable in law. In support of his argument he relied upon the provisions of Rule 2, Rule 3 (q) of the aforesaid Pension Rules. However, nothing has been brought to our notice to indicate that the aforesaid order of this Tribunal dated 3.9.93 in N.B. Jain's case (supra) has not become final.

14. Re the second ground raised in the OA with reference to failure of the duty on the part of the respondents to communicate the rate of contribution towards leave and pensionary benefits required either to be paid by the transferee department or the applicant himself etc. learned counsel for the applicant placed reliance on the relevant provisions of the aforesaid OMs noted supra and Rule

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37 of the said Pension Rules. He contended that the applicant is entitled for the reliefs sought regarding the pensionary benefits in view of the aforesaid provisions.

15. In reply, learned counsel for the respondents submitted that the applicant has never expressed his desire to come back to the parent department and his lien has already been terminated. Applicant's claim as to the leave salary and pension contribution is not tenable since he has not put in pensionable service of a minimum period of 10 years as required under the rules. In this connection he relied upon Rule 49 of the Pension Rules. It was also contended that the OMs mentioned supra are not applicable to the applicant and that he is not entitled to the reliefs which he has sought in the OA since he has failed to prove his case.

16. So far as the payment of the PF amount is concerned, learned counsel for the respondents drew our attention to the relevant averments in the reply filed by the respondents and submitted that a sum of Rs.17,127/- has already been paid to the applicant on account of G.P. Fund and that he is not entitled to any other pensionary benefits.

17. As already noted supra, applicant has not filed any rejoinder to the reply of the respondents.

18. We have heard the learned counsel for both the sides and perused the pleadings and the documents placed on record. Rival submissions and contentions of the parties have been considered with utmost care.

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19. Re the claims and the reliefs sought by the applicant it is noticed, inter alia, that he was selected and appointed against the concerned post by the University of Roorkee and NOIDA as a direct recruit and he was not on deputation. While so, the applicant has not filed any material or documents to indicate the exact status of the University of Roorkee and NOIDA. He has not furnished any information as to whether he sought permanent absorption in the University of Roorkee and in NOIDA. Whether his service in NOIDA is pensionable or not is also not indicated. No information as to whether reciprocal arrangements exist between the respondents and NOIDA regarding the pension contribution and leave salary etc. has been given. Specific provisions of the relevant rules and the OMs etc. on which he relies have also not been spelt out clearly. The fact situation as seen from the OA, documents and material placed on record, to say the least, is very vague and relevant information for disposal of the case is sadly lacking. The applicant, in our view, has failed to establish his case as to the existence of any enforceable legal right and his entitlement to relief as claimed by him. The question of application of any legal provisions to the facts in the case would not obviously arise if the fact situation and the information furnished themselves are very vague and incomplete. In the circumstances, we would be justified in dismissing the OA for the above reasons straightaway. However, the reply filed by the respondents also equally is not clear and specific in several respects and the information furnished by them is also sketchy and incomplete. For instance, there is no answer from them as to why the applicant was not informed about the termination of his lien and the abolition of the post till the issue of their memo dated

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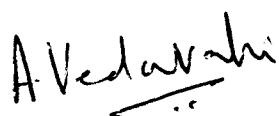
18.2.85 (Annexure R-2) and as to how they have linked the termination of lien with the abolition of post in question w.e.f. 16.4.82, if the lien stands terminated after two years from the date of relief, i.e., on 2.11.81 as per their stand taken in para 4.12 and 4.13 readwith para 5 of their reply stated to be in pursuance of an OM dated 22.1.66. A copy of the said OM was also not filed with the reply, nor was it made available for perusal during the hearing. Moreover, it appears from the respondents' letter dated 31.3.89 (Annexure A-1 to MP No.827/93 addressed to NOIDA with a copy endorsed to the applicant and filed by the applicant) which was not denied that the matter relating to the pensionary benefits of the applicant was under consideration even after termination of his lien. Respondents have not furnished any information as to the further developments in this matter and as to the reply sent to the applicant with reference to his representations including the ones received in 1991. It is, therefore, presumed that the representations are still pending and the question of pensionary benefits is under consideration.

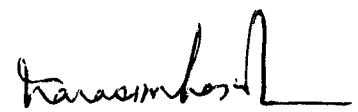
20. Since the applicant, admittedly, has completed more than 9 years of service under the respondents before he was relieved and he should not be denied the benefits, if any, arising therefrom to which he may be entitled to under the law and in view of the peculiar facts and circumstances of this case and the foregoing discussion, we are of the considered opinion that the interest of justice would be served adequately by disposing of this OA with the following directions:-

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1. The applicant is given the liberty to submit a detailed, comprehensive and self contained representation to the respondents regarding his grievances within a month from the date of receipt of a copy of this order.
2. In the event of such a representation being submitted by the applicant, the respondents should consider the same on merits in the light of all the relevant rules and instructions, including inter alia Fundamental Rules 9 (13) 13, 14, 14 - A and 14 - B and pass appropriate orders in accordance with law and communicate the same to the applicant within two months thereafter.
3. If any grievance still survives thereafter it will be open for the applicant to approach this Tribunal in fresh original proceedings, if so advised, in accordance with law.

21. The OA and MP No.827/93 are disposed of accordingly. No costs.


(DR. A. VEDAVALLI)
MEMBER (J)


(N. SAHU)
MEMBER (A)

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