

Central Administrative Tribunal
Principal Bench, New Delhi.

QA 2129/92

13th January, 1994

Hon'ble Shri JP Sharma, Member(J)

Shri DS Nakra, IDAS (Retd)
8, Munirka Marg,
Vasant Vihar
New Delhi - 110 057

..Applicant

By Advocate; Shri MN Krishnamani, Senior Advocate
Shri VK Rao, Advocate

Versus

Union of India Through

1. Secretary
Ministry of Finance
Department of Expenditure
New Delhi.
2. Secretary
Ministry of Personnel
Public Grievances and Pension
(Department of Pension & Pensioners Welfare)

...Respondents

By Advocate Shri NS Mehta

O R D E R (Oral)

Hon'ble Shri JP Sharma, Member(J).

The applicant retired from Indian Defence Accounts Services on 8-10-1972 and was sanctioned a monthly pension of Rs.675/-. The Government of India liberalised pensionary benefits on the recommendations of Third Pay Commission. These pensionary benefits were, however, liberalised in 1979 with effect from 31-3-1979. Since the applicant could not get the benefit of the liberalised pension rules, he filed a writ petition in 1980 in the Supreme Court questioning the validity of the order of Ministry of Finance issued on 25th May 1979. The Hon'ble Supreme Court delivered the judgement on 17-12-1982 reported in AIR 1983 SC 130. It has held that any mini classification of one and the same class of pensioners is violative of article 14 of the Constitution. In pursuance of the direction of the Hon'ble Supreme Court, the respondents granted him the benefit with effect from 1-4-1979.

...2/-

2. In the present application filed in Nov 1991 that the ratio of the Hon'ble Supreme Court Judgement dated 17-12-1982 be equally made applicable to liberalised pension introduced from 1-1-1973 and he should be allowed arrears and resulting revision for the period 1-1-73 to 31-3-1979.

3. The respondents contested the application and took the preliminary objection that the present application is barred by the principle of constructive resjudicata and further that by limitation, the applicant had no case. Cause of action to the complaint arisen in 1972 and he made a representation on 21-7-1984 (Annexure II and III). In the meantime the All India Service Pensioners' Association filed a writ petition 2709/86 in Delhi High Court which came on transfer to CAT, registered as TA 853/85 and was decided on 5th August 1986 and allowed the writ petition on the basis of judgement rendered in Shri Gautama case (1984) LIC page 154) holding that all the members of All India Services will be entitled to the benefits of the amended retirements benefit rules (which came into force on 31 Dec 1972) w.e.f 1st Jan 1973 to 31 Mar 1979 irrespective of whether one retired prior to 1-1-1973 or thereafter. Thus Shri VP Gautama (writ petition 465 of 1973) claimed enhanced pension. This petition was allowed by the single judge of the High Court on 15-7-1983. This decision was based on the Nakra case referred to above. The Hon'ble Supreme Court also dismissed the SLP against the above judgement in Feb 1985.

4. Union of India filed a civil appeal 897/87 against the judgement of the CAT Principal Bench of TA 853/85 which was decided by the Hon'ble Supreme Court on 25th July 1991. The Hon'ble Supreme Court allowed the civil appeal and as such the judgement of the Tribunal was set aside. The order of Hon'ble Supreme Court dated 25 Apr 1991 is quoted below:

"The All India Services Pensioners Association claiming the arrears of pension from 1-1-1973 to 31-3-1979 on the basis of amendment of the All India Services(Death-cum-Retirement Benefits) Rules enforced on 31-12-1972 filed writ petition being C.W. No.2709 of 1985 in the High Court which was subsequently transferred to the Central Administrative Tribunal vide order dated Aug 5, 1986 allowed the writ petition on the basis of the judgement rendered in Gautam's case(1984 Labour and Industrial cases, 154) holding that all the members of the All India Services will be entitled to the benefits of the amended All India Services(Death cum- Retirement Benefit) Rules which came into force from December 31, 1972 from 1-1-1973 to 31-3-1979 irrespective of whether they retired prior to 1.1.1973 or thereafter. The Tribunal, however, did not at all consider the question of the claim being barred by limitation raised in the counter-affidavit filed on behalf of the Union of India that the amendment of the said Rules took place in 1975 (effective from 31-12-1972) whereas the petitioners-respondents filed the petition in October 1985, after 10 years of these benefits were announced.

The only submission made before us was that the respondents went on making representations to the appellant since September 18, 1975. At last when the judgement of the Supreme Court in Gautama's case referred to hereinbefore was rendered, the respondents filed the writ petition on February 12, 1985. There is no explanation for the long delay of 10 years in moving the court and as such on this ground alone we allow the civil appeal and set aside the judgement and order rendered by the Central Administrative Tribunal in Registration No.T-853/85 on August 5, 1986 as in our opinion no sufficient cause was made out to explain the long delay of 10 years. There will be no order as to costs."

5. The applicant's representation was rejected in August 1984. He has come to the Tribunal in Nov 1991. Thus the application is totally hit by the limitation as laid down under Section 21 of the CAT Act 1985.

6. From another point also the Tribunal can not exercise any jurisdiction in those cases where the cause of action has arisen three years before coming into force of the Act of CAT 1985. The claim of the applicant is for relief of revised pension with effect from 1-1-1973 to 31-3-1979 on the basis of the amendment of the All India Services(Death cum Retirement) Rules enforced on 31-12-1972. The applicant was free to take this plea also in the writ petition which he has filed before the Hon'ble Supreme Court in 1980 (writ petition 5939-41 of 1980) which was decided as Nakra case referred to above. The principles of constructive resjudicata unequivocally apply to the present case. Thus the preliminary objections taken by the respondents gets fully supported from the following decisions of the Hon'ble Supreme Court:-

Rethore

(i) Shri SS Rato Vs State of MP reported in AIR 1990 SC Page 10 which lays down that repeated representations do not give any fresh cause of action.

(ii) In the case of State of Punjab Vs Gurday Singh reported in 1991 Volume 4 SC page 1 where it is held that even in service matters aggrieved parties for seeking a declaration for a relief is to come within a period of limitation laid down under the statutory law.

(iii) In the case of Bheep Singh Vs Union of India reported in AIR, 1992(2)SC 278 it has been laid down that if a party approaches the Tribunal or court after sufficiently unexplained long time then he cannot be granted relief.

/ra Sammanta/

(iv) In the case of SM RattanChand/Vs Union of India reported in Judgement Today 1993(3)P.418 it has been held by the Hon'ble Supreme Court that if the aggrieved party approached for the judicial remedy after a long time in this case after 15 years then the delay deprives the person of remedy available under law. A person who has lost the remedy by lapse of time loses his right as well.

7. I heard the applicant in person at a considerable length of time yesterday and the learned counsel to-day as well on the point of limitation. The learned counsel for the applicant pointed out that the respondents were the trustees for public money and in such an event when the Government was under obligation to discharge trust towards in a particular manner, the provision of limitation cannot be applied. Firstly, a Trust has to be created by the Act of the parties or by operation of law. This is not the case here. The prayer is for grant of relief from the Government not as a trustee but

on account of amended Rules which came into effect from 31-12-1972. To my mind, therefore, the authority of trust is not applicable in the circumstances of the present case.

7. In view of the said circumstances, I allow the preliminary objections taken by the respondent and the application is therefore dismissed as barred by time as also by principles of constructive res judicata. Parties to bear their own costs.

JP Sharma

(JP Sharma)
Member(J)

LCP