

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 2600/93

New Delhi, the 16th day of December, 1993

HON'BLE MR. J.P. SHARMA, MEMBER (J)

HON'BLE MR. B.K. SINGH, MEMBER (A)

Umesh Chandra Misra,
Son of Late Shri R.G. Misra,
Resident of Katghar Garikhana,
Moradabad Divisional,
Northern Railway,
Moradabad.

(By Advocate Shri N.B.Sinha)

Vs

Union of India, through
The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.

General Manager,
Northern Railways
Baroda House,
New Delhi

Divisional Railway Manager,
Northern Railway,
Moradabad Division,
Moradabad.

(None)

O R D E R (Oral)

The grievance of the applicant is that he was working as Assistant Station Master, Moradabad Station. He was convicted by criminal court in November, 1975 as a result of which he was suspended from the active service. It appears that the applicant has pursued certain remedies under Section 15 of the Payment of Wages Act 1966 regarding deduction of his wages by the respondents railways.

Against the conviction, in the meanwhile, the applicant went to the Hon'ble High Court and has appeal against the conviction was dismissed whereby the order of conviction was maintained by the order dated 17.2.1977. The controversy regarding the payment of substantial allowance before the prescribed authority remained pending and that ultimately culminated in SLP No. 3350-3350A/87 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its judgement dated 14.10.1992 annexed to the petition at page 26 allowed certain claims to the applicant and he has been allowed increased substantial allowance upto 17.2.1977 when the appeal by the High court was dismissed. Here it may be recorded that the respondents had dismissed the applicant with effect from 13.4.1976. Hon'ble Supreme Court relied on the Circular of the Railway Board observed that till the decision of the Appellate Court against the conviction, the order of dismissal cannot have its effect and the substantial allowances were allowed to the applicant at 75% and from 26.9.1979 interest at 10% till the date of payment. The payment would naturally be after the order of the Hon'ble Supreme Court after October 14, 1992. After the applicant had got the benefit of this Judgement, the present application has been filed on 6.9.1993. We have heard the learned counsel on the reliefs prayed for in this application which is to the effect that a declaration be made that the applicant be in service till the date of his superannuation i.e. 30.9.1990 and that he may also be declared to be entitled to necessary promotion on the basis of N.B.R with all consequential benefits

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of salary, allowances etc. and after retirement the terminal benefits on the same rate alongwith interest at 20% per annum. The main contention of the learned counsel is that this was not an issue in the proceedings under the Payment and Wages Act 1936 and further the order of dismissal was never conveyed which naturally according to the learned counsel is not in consonance with the spirit of Discipline and Appeal Rules, 1968.

The learned counsel has highlighted the reply by the Railway dated 18.2.1993 that nothing is due against the railway and in reply to that the applicant again made a representation in April 1993.

Firstly the contention of the learned counsel that the matter was not in issue in the proceedings under Payment of Wages Act 1966 cannot be accepted as the correct statement of facts. As early as in November 1980 in the supplementary written statement filed by the railways before the prescribed authority, it was revealed that the applicant was dismissed from the service. A notice to a person is a knowledge about the fact which he may derive either by a communication addressed to him or indirectly of his own his own sources or by which the proceedings filed in a court of law. In November, 1980 the applicant was aware and still he pursued only for his suspension allowance and what is averred in the application is that he may be deemed in continuous service and be

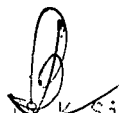
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paid salary till the date of superannuation. This perception even though projected by the learned counsel cannot be accepted besides the claim not at all maintainable. It is barred by delay, laches, stale and belated. In the case of State of Punjab Vs. Gurdev Singh 1991 Vol. 4 SCC P 1 even in a case where there is a void order a declaration cannot be given unless in service matter aggrieved persons come within the statutory period provided under the rules. The jurisdiction of the Tribunal extends to those cause of action which has arisen three years earlier to coming into force of Administrative Tribunals Act 1985 i.e. 3 years earlier to 1st November, 1985.

The learned counsel for the applicant has argued of Rule 10 of the D.A.R. 1968 of non observance of certain disciplinary rules is a question of merit. This cannot be given into a claim which is not at all maintainable and is barred.

It only appears to be a test case to bring life to a covered matter. The application, therefore, is not maintainable and is dismissed in limine not making a prima facie case in the section 19(3) of Administrative Tribunals Act, 1985.

We do not wish to impose any cost as the respondents have not been served.


(K. Singh)
Member(A)


(J.P. Sharma)
Member (J)

Mittal