

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 9TH DAY OF SEPTEMBER, 2003

Original Application No.1157 of 1996

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

Ganesh prasad Samsiya, aged about  
73 years, son of late Udho  
Ram, R/o House No.97/3M near Khati  
Baba Mandir, Isai Tola, Jhansi.

.. Applicant

(By Adv: Shri R.P.Srivastava)

Versus

1. Union of India through the  
Secretary, Govt. of India,  
Ministry of Railways, New Delhi.
2. General Manager, Central Railway  
Bombay V.T.
3. Divisional Railway manager,  
Central Railway, Jhansi.

.. Respondents

(By Adv: Shri A.K.Gaur)

O R D E R (Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this application n/s 19 of A.T.Act 1985 applicant  
has prayed to quash orders dated 21.10.1995(Annexure 3),  
21.11.1995(Annexure 4) and 5.6.1996 (Annexure 5). The  
applicant has also prayed for a direction to the  
respondents to pay Rs 5315/- as arrears of pay and  
allowances <sup>in payables</sup> ~~made~~ to the applicant as consequential relief  
with interest @ 14% <sup>or</sup> per annum.



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The facts of the case are that applicant joined service in Railways in 1944 as Trains Clerk and retired from service on 31.7.1981 from the post of Guard 'A' (Spl). The grievance of the applicant is that the pay of the applicant was not correctly fixed in the pay scale of different categories of guards. The applicant was substantiably promoted to the higher post of guard 'A'(Spl) from 19/27.8.1978. Thus the cause of action for the applicant arose in the year 1978. The applicant did not make any effort to get his pay fixation corrected during the period between 1978 and 31.7.1981 when he retired from service. The learned counsel for the applicant has submitted that the OA is within time <sup>9/8/95</sup> ~~27.10.1995~~ representations were rejected on 27.10.1995, 21.11.1995 and 5.6.1996. The learned counsel for the applicant has also placed reliance in the judgment of Hon'ble Supreme court in case of 'Hindustan Petroleum Corporation Ltd &

Another Vs. Dolly Das, (1999) 4 SCC 450

2) M.R.Gupta Vs. Union of India & Ors,

A.I.R 1996 Supreme Court 669

3) K.C.Sharma & Ors Vs Union of India & Ors

AIR 1997 Supreme Court 3588

4) Rajendra Bahadur Srivastava Vs. State of

U.P. & Ors, (1993) 3 UPLBEC 927.

5) Ajit Singh Vs. Union of India and Ors

2002(1) SLJ pg 188

The learned counsel for the respondents on the other hand submitted that the cause of action in the present OA arose to applicant between 1974 to 1978 as clear from the narration of facts. It is submitted that u/s 21 of A.T.Act 1985 the limitation provided is one year for challenging the orders. So far as the cause of action which arose before the establishment of the Tribunal, The provision <sup>u/s 21</sup> contained in Section 21(2) clause (a) which reads as under:-



"Notwithstanding anything contained in Sub section (1), where-

- a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- b) no proceedings for the redressal of such grievance had been commenced before the said date before any High court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub section (1) or within a period of six months from the said date, whichever period expires later."

From the aforesaid, it is clear that this Tribunal could entertain the disputes, <sup>for</sup> The cause of action <sup>for</sup> which arose within three years from the establishment of this Tribunal. The Tribunal was constituted on 1.11.1985. The cause of action arose to applicant between 1974 to 1978. Thus, it was beyond the period of three years provided u/s 21 of the Administrative Tribunals Act.

The learned counsel for the respondents has also placed reliance in case of 'Ramesh Chandra Sharma Vs. Udham Singh Kamal & Ors, 2000 Supreme Court Cases (L&S) 53. It is submitted that as the application is time barred it cannot be entertained by the Tribunal <sup>and</sup> the Tribunal has no jurisdiction to entertain the same. It is also submitted that by making frequent representations the period of limitation could not be extended.

We have carefully considered the submissions made by the counsel for the parties. The functioning of this Tribunal is governed by the provisions contained in Administrative Tribunals Act 1985. The period of limitation for entertaining the OA <sup>is</sup> filed u/s 19 of A.T.Act is provided u/s 21. The limitation provided under sub section (1) of Section 21 is one year from the <sup>date</sup> cause of action arose. In respect of the cause of action which arose before the establishment of this Tribunal clause (a) of sub section(2) of Section 21 contains provision that if it is within three years from the establishment of the Tribunal the OA may be filed within six months from the date of establishment of the Tribunal. This OA has been filed in 1996 long after the period of six months. Thus in no way the application can be termed within limitation. Alongwith the OA no application has been filed separately seeking condonation of delay. In paragraph 12(a) and 12(b) which were added by amendment on 10.11.1997 the delay has been tried to be explained on the ground that after retirement applicant made vigorous efforts by making several representations. However, legal position is well settled that the period of limitation <sup>in the</sup> provide <sup>by</sup> statute cannot be extended by making successive representations. Thus, we do not find that the explanation contained in para 12(a) and 12(b) even if <sup>is</sup> correct, helps applicant in any manner. The cases cited on behalf of the applicant are distinguishable on facts. The judgment of Lucknow bench of Hon'ble High court is with regard to exercise of jurisdiction under Article 226 of the Constitution. It is well known that for exercising power under Article 226

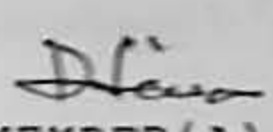


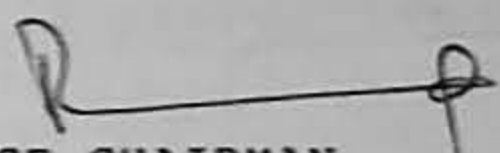
no limitation is prescribed under law. The judgment thus does not help the applicant in the present case. In case of 'M.R.Gupta (Supra), Hon'ble Supreme Court held that there is recurring cause of action in case of pay fixation in different facts and circumstances where wrong pay <sup>was</sup> paid to the employee every month. In the present case the applicant retired from service on 31.7.1981 and from that date question of payment of pay was not there. So far fixation of pension is concerned, it is <sup>done</sup> ~~then~~ only once at the time of retirement. Thus, the judgment of Hon'ble Supreme court in 'M.R.Gupta's case is not applicable. On the other hand, Hon'ble Supreme court in case of 'Ramesh Chandra Sharma Vs. Udham Singh Kamal (Supra) has held as under:-

"In our opinion, the OA filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled (See Secy. to Govt of India Vs. Shivram Mahadu Gaikwad) 1995 Supp(3) SCC 231 "

Thus, in our opinion, the submissions made on behalf of the counsel for the respondents that OA is highly time barred and cannot be entertained by this Tribunal is correct and accordingly accepted.

The OA is dismissed as time barred. No order as to costs.

  
MEMBER(A)

  
VICE CHAIRMAN

Dated: 9th September, 2003

Uv/