

Reserved.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

....

Original Application No. 471 of 1996.

this the 28th day of May'2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

1. Girish Chand Srivastava, aged about 41 years.
 2. Ashok Kumar Srivastava, aged about 36 years.
 3. Ravish Kumar Srivastava, aged about 22 years.
- All sons of late V.N.L. Srivastava, R/o Mohalla
Baddha Village & Post Sikandarpur, District Ballia

Applicants.

By Advocate : Sri O.P. Gupta.

Versus.

Chief Commercial Manager, Claims Office, N.R. Varanasi.

2. General Manager (P), N.R. Baroda House, New Delhi
3. Union of India through Secretary, Ministry of
Railways, Government of India, New Delhi.

Respondents.

By Advocate : Sri D.C. Saxena.

ORDER

It is a classic case of latches and stale demands. The present applicants are the legal representatives of late Sri V.N.L. Srivastava (original applicant), who died on 14.8.1997.

2. The original applicant joined the railway department as Clerk on 7.2.1949 and retired as Chief Commercial Inspector (Claims) (the date of his retirement has not been disclosed in the O.A.). The original applicant has filed this O.A. for issuing directions to the respondents to provide protection of pay to him, while he was selected

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on the post of Claims Tracer (C.T. in short) and to fix the his pay as per/time scale of pay Rs. 130-300 on the post of Senior Clerk. The original applicant has also sought quashing of the order dated 4.1.1996 passed by the Chief Commercial Manager, N.R. Varanasi (respondent no.1).

2. In short, the case of the original applicant is that when he was promoted as C.T. in the year 1972, his pay was fixed at Rs. 181/- and his pay was not fixed on the basis of his pay drawn by him as Senior Clerk. It was clearly mentioned in his promotion order dated 8.2.1972 that his pay as C.T. in the grade of Rs. 150-240/- has been fixed at Rs. ~~181/-~~ ^{R 181/-} on the basis of his pay in substantive grade i.e. as Clerk grade Rs. 110-180/- as no protection of pay as Clerk Grade Rs. 130-300 is to be given to him. The original applicant claims that he drew attention of the concerned authority about the anomaly in his pay and moved several representations for stepping up and re-fixation of his pay, but nothing was done. The original applicant made last representation on 29.6.1995 to the respondent no.2 but vide impugned order dated 4.1.1996 the original applicant was informed that his case is very old, therefore, no action could be taken regarding fixation of seniority and pay of the applicant, and even the records pertaining to the period from the year 1949 to 1964 were not traceable in his office.

3. I have heard the learned counsel for the parties at length and perused the pleadings on record.

4. The claim of the original applicant obviously, time barred. The original applicant has not filed any application for condoning the delay in filing the present O.A. It is, however, contended by the learned counsel for the applicant that in case of wrong fixation of pay, a recurring cause of action would be available to

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the applicant, hence the present O.A. is within time. In support of his contention, the learned counsel for the applicant has relied upon a decision in the case of M.R. Gupta Vs. Union of India & Others (1995 SCC (L&S) 1273). The relevant part of the decision is as under :

"---The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules."

5. It is clear from the observations made by the apex court, cited above, that fresh cause of action arise only when the applicant is in service. In the case, in hand, the original applicant had admittedly retired. Even in the last representation submitted by the original applicant, he had not disclosed his date of retirement. Thus, the application of the original applicant is hopelessly time barred and cannot be decided on merit. It may be cited the decision in the case of Ramesh Chand Sharma Vs. Udham Singh Kamal & others (1999 8 SCC 304) in which it was held that time barred application for which condonation of delay^h not sought under section 21(3) of the A.T. Act, 1985, the Tribunal should not admit such application and such application cannot be considered on merits.

6. For the reasons stated above, the O.A. has no the same merit and^h is liable to be dismissed and is dismissed. No costs.

Rafiqulddin
MEMBER (J)

GIRISH/-