

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 9 DAY OF 2 2010)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Original Application No. 1341 of 2004

(U/S 19, Administrative Tribunal Act, 1985)

M.M. Kumar, Ex store Keeper gde-II of GE (West), New Cantt.
Allahabad and R/o 112/3, Bhawapur, Allahabad.

..... Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, DHQ, PO New Delhi.
2. The Engineer-in Chief, Army Headquarters, Kashmir House, DHQ PO New Dehi 11.
3. The Chief Engineer, Head Quarters Central Command, Lucknow-2.
4. Garrison Engineer (West), New Cantt., Allahabad.

..... Respondents

Present for Applicant : Col. S.D. Tiwari

Present for Respondents : Shri R.K. Tiwari

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

This is the second round of litigation in which applicant has prayed following main reliefs:

- "i) To issue a suitable order or direction for quashing the speaking order dated 10.8.2004(enclosed as Annexure 29) to the original Application.
- (ii) To issue a suitable order or direction commanding the respondents to protect the initial pay (as he was drawing in CVD

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Panagarh) alongwith promotion and consequential benefits with effect from 01.10.1966 to the applicant.

- (iii) *To issue a suitable order or direction to the respondents to pay the total amount alongwith increments and consequential benefits to the applicant”.*

2. Brief facts of the case are that the applicant was initially appointed as Storeman, a class III post in Central Vehicle Depot (in short C.V.D.) Panagarh. After serving there for about 1 year 4 months, the services were regularized. Due to reduction in strength in C.V.D Panagarh, the applicant was rendered surplus. Under Surplus/Deficiency Scheme, he was transferred and absorbed as a Store man in Military Engineering Service. According to the applicant, since the applicant was granted to avail preparatory/joining time for 10 days under the Rules before joining M.E.S. Applicant was no more a casual employee. The applicant after joining in M.E.S. was adjusted as Store Man in the pay scale of Rs.80-110. The applicant was aggrieved that his pay was not protected and as such he preferred representation to the Garrison Engineer, Bamrauli but later on the same was reduced to the scale of Rs.80-110. The applicant was under impression that by virtue of academic qualification and successful working as Store Keeper Grade I examination, he would be placed in next higher grade of either Store Keeper Grade I or Supervisor B/S Grade-II. Applicant was fully qualified to hold the post of Store Keeper Grade I but was getting the pay scale of Class IV

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employee. The applicant was fully qualified to become Supervisor B/S Grade II but he was not even promoted to Store Keeper Grade II till 1991. During the year 1991, the post of Store Man was re-designated as Store Keeper Grade II. The applicant was promoted as Store Keeper Grade II before his retirement even after putting 35 ½ years of excellent service. The applicant preferred first representation on 09.10.1989. The grievance of the applicant is that the similar protection of pay was given to several employees but the case of the applicant was fully ignored. A number of persons junior to the applicant were given more pay, but the same was denied to the applicant. As the applicant was allowed to perform the duty of Store Keeper, he made a representation to the Competent Authority on 7.4.1990 (Annexure 13). Having received no reply, he submitted another representation dated 03.12.1991 (Annexure 14). Applicant thereafter preferred several representations dated 22.4.1993, 26.2.1996 27.1.1997, 17.9.1999, 17.4.2000 and 08.12.2000 (Annexures 15 to 20 respectively). During November 2001, a letter dated 29.10.2001 from Chief Engineer, Central Command (respondent No.3) addressed to Engineer-in-Chief was received by the applicant in which the protection of initial pay (i.e. the pay scale given by C.V.D. Panagarh) was rejected. A copy of the same has been filed as Annexure 23. It is alleged that order dated

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29.10.2001 has been passed in an arbitrary manner by the respondent No. 3. The applicant again preferred a representation dated 17.12.2001 and 21.8.2002 (Annexures 24 and 25). As the applicant had preferred several representations, but no fruitful result was received, he was constrained to file O.A No. 479 of 2003, which was finally decided by the order dated 05.01.2004 directing the respondents to decide the representation of the applicant dated 14.2.2003 within a period of four months from the date of receipt of the certified copy of the judgment. Copy of said judgment has been filed as Annexure 27. In pursuance of the direction of the Tribunal, the representation of the applicant was rejected vide order dated 10.8.2004 (Annexure 29).

3. In counter reply filed by the respondents, it is submitted that the applicant was initially appointed as Casual Storeman on 17.05.1965 by Central Vehicle Depot, Panagarh and he continued to work upto 30.9.1966 for a total period of one year and four months. He was declared surplus in Central Vehicle Depot Panagarh and was posted to G.E. (A.F) Bamrauli under surplus/deficiency scheme under the scheme of 4/S/53. According to the respondents, applicant joined his services in MES on 11.10.1966 and made representation on 09.10.1989 i.e. after a gap of 23 years, which is highly


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time barred and not entertainable under any law. It was paramount duty of the applicant to approach the department immediately after joining in M.E.S or within reasonable period. Since, the applicant was transferred under the Scheme of SAO 4/S/53 and not under SAO 8/S/76, as such he has no right or authority to claim the benefit available under SAO 8/S/76. The case of the applicant suffers from delay and laches and the same deserves to be dismissed on this ground alone.

4. Applicant has filed rejoinder reply and reiterated the facts enumerated in the O.A.

5. We have heard Col. S.D. Tiwari, learned counsel for the applicant and Shri R.K. Tiwari, learned counsel for the respondents and perused the written argument filed by the parties counsel.

6. We have carefully considered the preliminary objection advanced by the learned counsel for the respondents and we are fully convinced with the same. In any view of the matter the Original Application filed by the applicant is not maintainable and deserves to be dismissed on the ground of delay and laches. The Hon'ble Supreme Court has also clearly laid down in its several decisions that every representation to Government for



relief may not be replied on merits. Representations relating to matters which have become stale and barred by limitation can be rejected on that ground alone, and without examining the merits of the claim. Replies to such representations cannot create a fresh cause of action for reviewing a stale or dead claim. It would be profitable to quote certain observations of Hon'ble Supreme Court in the decision rendered in **(2008) 10 Supreme Court Cases 115 – C. Jacob Vs. Director of Geology and Mining and another**. For the sake of convenience, paragraph Nos. 7 and 8 are being reproduced hereinunder:-

- “7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which ~~become~~ become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.
8. When a direction is issued by a Court/Tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the Court or Tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action”.

7. We have noticed that since applicant was adjusted under Surplus/Deficiency Scheme and appointment of the applicant prior to joining of M.E.S was casual and

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therefore, protection of pay on new post is not applicable in his case.

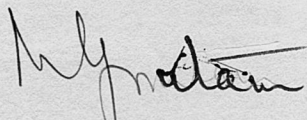
8. It is also settled principle of law that a series of representation will not confer the benefit of period of period of limitation. In support of this contention reliance has been placed on the decision reported in **2006 SCC (L&S) 791 - Karnataka Power Corporation Vs. K. Thangappa.n,**

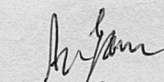
9. Having given our anxious thought to the preliminary objection raised by the learned counsel for the respondents and written arguments submitted by the learned counsel for the parties. We are firmly of the view that when a person approaches the Court or Tribunal after two or three decades, the burden would be on him to prove what he alleges. Order dated 10.8.2004 has been passed by the Competent Authority on the representation of the applicant because of innocuous directions of the Tribunal to consider and decide the representation relating to stale issue. The competent authority in its order dated 10.8.2004 has rightly come to the conclusion that the applicant prior to joining the M.E.S was casual, therefore, protection of pay in new post was not applicable in his case as per Rules. This reply of representation may not be treated as reply on

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merits. The Apex Court has clearly held in **C. Jacob's case (supra)** that representations relating to matters which have become stale or barred by limitation can be rejected on that ground alone, without examining the merits of the claim. We may also observe that when a direction is issued by a Court/Tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the Court or Tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

10. In view of the aforesaid observations, preliminary objection raised by the respondents is sustained in law and hence is liable to be dismissed on the ground of delay and laches. Accordingly, Original Application is dismissed. No costs.


Member (A)


Member (J)

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