

(S)

Reserved

Central Administrative Tribunal, Allahabad.

Registration No. C.A.173 of 1986

L.R.Khandekar ..... Applicant

Vs.

Union of India and another ..... Respondents.

CONNECTED WITH

Registration No. C.A.298 of 1986

Union of India and another ..... Applicants

Vs.

L.R.Khandekar ..... Respondent.

Hon. D.S.Misra, AM  
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

These are two connected cases filed under section 19 of the Administrative Tribunals Act XIII of 1985 (hereinafter referred to as the Act) and are proposed to be decided by this common order.

2. The applicant L.R.Khandekar had joined the Postal Service in 1947 as a time scale Clerk. Prior to that he had served in the Army as LDC for about 3 years w.e.f. 10.7.1944. In 1980, when he was posted as LSG in Jhansi, he filed suit no.137 of 1980 in the Court of Munsif, Jhansi against the Union of India for a declaration that he is entitled to promotion in the lower selection grade w.e.f. 1.11.1971 and for ~~accounting~~ his war service for the purpose of seniority. The said suit was decreed with costs by VII Munsif Jhansi on 11.1.1983 vide copy of judgment *(Annexure 3Y)*. The Union of India filed civil appeal no. 47 of 1984 in the Court of District Judge, Jhansi, which was heard and partly allowed by the II Additional District Judge, Jhansi on 28.7.1984.

2

.2.

declaration granted by the Munsif to the plaintiff for his promotion in the lower selection grade w.e.f.1.11.1971 with all consequential benefits was upheld but the declaration for counting his war service from 10.7.1944 to 5.10.1944 for the purpose of seniority was set aside vide copy of judgment (annexure 5). The Union of India thereafter slept over the matter and neither granted the necessary seniority nor paid the salary of that post to Sri Khandekar nor preferred any appeal in the High Court against the decision in appeal. Original application no.173 of 1986 was thereafter filed by Sri Khandekar before this Bench of the Tribunal in April, 1986 for a direction to the respondents (Union of India and Post Master General, U.P., Lucknow) to pay a sum of Rs.10,000/- as arrears of pay and allowances from 1.11.1971 to 31.5.1984, the date of retirement of the applicant, with interest at 12 per cent per annum with the allegation that despite the decree of the Civil Court, the respondents did not give him the due seniority nor paid the arrears of his salary and allowances in spite of his reminders- annexures B, C and a notice under section 80 Code of Civil Procedure, annexure 'D' filed with the application. This application was contested on behalf of the respondents and in the counter affidavit filed by them, it was pleaded that on seeking the opinion from the legal authorities and the Ministry of Law, the respondents were advised to challenge the decision of II Additional District Judge, Jhansi by filing second appeal in the High Court. The file of the applicant was misplaced and the second appeal could not be filed in time. The respondents thereafter filed C.A. no.298 of 1986 under section 19 of the Act before this Bench in July 1986. It was further pleaded by the respondents that due to mistake, the respondents

(6)

Arsh  
3

.3.

could not file in the civil Court the circle gradation list printed and issued by respondent no.2 corrected upto 28.2.1985 and as such, the seniority of the applicant was wrongly fixed by the Civil Court. The applicant wrongly got the seniority in that case without impleading the other employees who were adversely affected by the decree in his favour and as such, the seniority claimed by him is not correct and he is not entitled to the sum of Rs.10,000/- claimed by him as the arrears of pay and allowances. In the rejoinder filed by the applicant- L.R. Khandekar, he reiterated the grounds taken by him in his application and disputed the correctness of the fact that his file was misplaced in the office of the respondents and the appeal could not be filed in time and alleged that after the decree in his favour, the applicant was knocking the doors of the respondents by sending representations and notice under section 80 Code of Civil Procedure and he is entitled to the seniority as well as consequent increase in pay and allowances in accordance with the decree passed in his favour as above.

3. Registration no. O.A.298 of 1986, as pointed out above, is in the nature of second appeal against the judgement and decree dated 28.7.1984 passed by the II Additional District Judge, Jhansi in favour of L.R. Khandekar against the union of India allowing the appeal in part. It has been alleged in the application that the judgment of the II Additional District Judge passed in appeal is against the facts established on record and it being perverse, is liable to be set aside because the applicant could not get the seniority w.e.f. 1.11.1971

16  
14

.4.

after refusing the other declaration for accounting his war service. The applicants of this case have also moved an application under section 5 of the Indian Limitation Act to condone the delay. This appeal has been contested on behalf of the respondent L.R.Khandekar and his contention is that it does not lie and is badly barred by time.

4. In view of the facts stated above, the registration no. O.A.173 of 1986 is in the nature of an execution application for reaping the fruits of the decree passed in favour of L.R.Khandekar in suit no. 137 of 1980 while registration no. O.A.298 of 1986 is in the nature of second appeal for setting aside the judgment and decree passed in the suit as well as in the appeal arising therefrom.

5. It will be convenient to consider the maintainability of registration no. O.A.298 of 1986. This case was filed on 8.7.1986. The original Act XIII of 1985 passed by the Parliament did not contain any provision for filing an appeal. By introducing Section 29 A by Administrative Tribunals (Amendment) Act XIII of 1986, a forum for appeals was provided and it was laid down that where any decree or order has been made or passed by any Court in any suit or proceeding before the establishment of a Tribunal and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force has not expired before such establishment, such appeal will lie to the Central Administrative Tribunal within 90 days from the date on which Administrative Tribunals (Amendment) Act ,1986

8

APM/5

.5.

receives the assent of the President or within 90 days from the date of the receipt of the copy of such decree or order, whichever is later. Section 29-A thus clearly laid down that this new forum of appeal could be utilised only by such appellants who could not prefer an appeal in the competent Court due to the establishment of Central Administrative Tribunals and by that time the period of their appeal had been expired. In the instant case, the decree in appeal was passed by the II Additional District Judge, Jhansi on 28.7.1984. The applications for obtaining the copies of ~~the~~ judgment and decree were moved and they were issued to the Union of India on 12.11.1984. The Union of India could prefer the appeal within 90 days from 12.11.1984 but no appeal was preferred till 1.11.85 when the Administrative Tribunals Act came into force and this Tribunal was established. The appeal preferred by the Union of India had <sup>thus</sup> already become time barred and is not maintainable under section 29-A of the Act.

6. Regarding the application under section 5 of the Indian Limitation Act moved by the Union of India and the Post Master General, U.P., Lucknow, we are of the view that the Act XIII of 1985 is a self contained and special enactment and we have great doubt in our mind that Section 5 of the Limitation Act can be applied to the proceedings under this Act before the Tribunal. We are further of the view that Section 29-A does not empower the Tribunal to condone the delay in any case. Act XIII of 1985 was enacted in accordance with the provisions of Article 323-A of the Constitution of India which provided that the Parliament may by law

APR 16  
9

provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitments and conditions of service and the law made under this Article may provide for the procedure including provisions as to limitation and rules of evidence to be followed by the said Tribunals. The Parliament accordingly provided the provisions of limitation for moving applications under section 19 <sup>XIII of 1985</sup> of the Act under section 21 of the said Act. Sub sections (1) and (2) of Section 21 provide the period of limitation while sub section (3) of this section authorises the Tribunal to condone the delay in case the application is filed beyond the period prescribed under sub section (1) and (2) on showing sufficient cause. Sub section (3) does not provide to condone the delay in the cases which were already time barred when Act XIII of 1985 came into force and only in suitable cases, the delay can be condoned when the cases could be within limitation provided by sub-section (1) and (2), if filed earlier after 1.11.1985.

7. Section 29-A was introduced by amendment in March, 1986 and as the Parliament already condoned delay in filing appeal from 1.11.1985 to 25.3.1986, the date when the amendment Act got the assent of the President, and further provided a period of 90 days for filing such appeals and as such, the law makers did not feel it necessary to empower the tribunal to condone the delay in filing the appeals after 90 days prescribed for such appeals. Not only the case no. 298 of 1986 was filed more than 90 days after the addition of Section 29-A, it was already time barred when the Act XIII of 1985 came into force on 1.11.1985. We, thus, do not possess any power to condone the

inordinate delay made by the Union of India in filing the second appeal against the judgment and decree of the II Additional District Judge, Jhansi. Registration No. O.A.298 of 1986 thus being time barred and we having no power to condone the delay, we refuse to entertain this appeal in the nature of an application under section 19 of the Act. We further feel that cause shown for condoning such a long delay is not sufficient. 8. Now coming to the merits of the case no. O.A.173 of 1986, we find that the applicant has not given the necessary data for working out the arrears of pay and allowances claimed by him on the basis of the decree of the Civil Court in his favour. The counter affidavit is also silent in this respect and we have no material before us to determine the amount payable to the applicant in terms of the declaratory decree passed in his favour. The applicant has already retired from service and we will direct that treating the dispute closed by the decree passed in suit no.137 of 1980 as modified by the appellate decree, the respondents shall calculate the dues in the form of arrears of pay and allowances payable to the applicant and pay the same within 3 months. In the case before us, we are not in a position to give the direction for the payment of any specific amount. The other case no.298 of 1986 is not maintainable.

9. We accordingly direct the respondents to work out the arrears of pay and allowances payable to the applicant L.R.Khandekar in accordance with

10

11

the declaration granted in his favour in suit no. 137 of 1980 as modified by the Court of appeal and pay the same within 3 months of this order, failing which the applicant shall be entitled to claim interest at 12 per cent per annum. Application filed by L.R.Khandekar ( O.A. No.173 of 1986) is disposed of accordingly. Application filed by Union of India and another ( O.A.No.298 of 1986) is dismissed. Parties are directed to bear their own costs in both the cases.

*fbm 8/10/86*  
Member (A)

*Zirbhavar*  
8/10/86  
Member (J)

Dated: Oct. 8, 1986  
kkb