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Central Administrative Tribunal, Allahabad.

Registration T.A.No. 736 of 1986

M.P.Agnihotri Plaintiff

Vs.

Union of India Defendant.

Hon. D.S.Misra, AM

Hon. G.S.Sharma, JM

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

This suit no.546 of 1981 for recovery of Rs. 2315.55 as arrears of salary has been received by transfer from the III Additional Munsif, Jhansi under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff was employed in the Central Railway as a Clerk at Jhansi and he retired from service on 1.1.1985 on reaching the age of superannuation. There was some dispute regarding the date of upgradation of the plaintiff on account of which he had to file suit no. 323 of 1963 in the Court of I Munsif, Jhansi which was dismissed ^{but in} ~~and~~ ^{and} ~~and~~ it was held that the plaintiff be deemed to have been appointed to the upgraded post w.e.f.1.4.1956. The defendant filed second appeal against the decree of the first appellate Court but the second appeal no.2873 of 1968 was dismissed on 21.8.74 and the decree passed by the first appellate Court was upheld. In consequence, the Divisional Railway Manager (in short DRM) Jhansi vide letter dated 16.3.1978 revised the pay of the plaintiff w.e.f.1.4.1967 to

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31.12.1974 and the necessary difference in pay was paid to him but a sum of Rs.1560.45P for the period 25.9.56 to 31.3.67 was not paid. The plaintiff has claimed a decree for Rs.1631.45 as arrears of pay w.e.f.1.4.56 to 31.3.67 and a sum of Rs.684.10P has been claimed as interest at 15 per cent per annum.

3. The suit has been contested on behalf of the defendant and in the written statement filed on its behalf, it has been pleaded that in the earlier suit no. 323 of 1963, as the plaintiff did not claim any arrears, the present suit is barred by Order II Rule 2 of the Code of Civil Procedure. The plaintiff cannot claim arrears of pay from 1.4.1956. His suit is barred by Section 52 of the Payment of Wages Act and the Court has no jurisdiction to try it. The bar of ^{Section 1} 80CPC was also pleaded.

4. We have heard the learned counsel for the parties and have also perused ^{the} necessary record. By moving the application 37-C dated 22.11.1984, certain documents including personal file were summoned by the plaintiff from the defendant but the defendant did not produce the same before us despite a direction. Paper no. 47-C and 51-C are the copies of judgment and decree passed by the II Civil and Sessions Judge, Jhansi allowing Civil Appeal no.142 of 1965 filed by the plaintiff against the decree passed in suit no.323 of 1963. These documents go to show that the suit of the

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plaintiff was decreed granting a declaration in his favour to the effect that he is entitled to the upgraded scale of Rs.100-185 w.e.f.1.4.1956 together with emoluments arising therefrom. The decree thus did include the emoluments accruing due to the plaintiff in accordance with the declaration granted in favour of the plaintiff by the Court. Paper no.50-C is the copy of the judgment dated 21.8.1984 of the Allahabad High Court dismissing the appeal of the defendant against the aforesaid appellate decree in favour of the plaintiff and it was held that the plaintiff must be deemed to have been appointed to the upgraded post w.e.f. 1.4.1956.

5. In view of the above decrees, the plaintiff became entitled to get his pay according to the upgradation for the first time ^{date of first decree in his favour} on 7.5.1966, and he could make his claim in Court within 3 years from this date for the difference in his pay. The suit was however, filed by the plaintiff on 11.3.1981 and as such, ^{apparently} is barred by limitation. ^{from the said date} The plea that the suit is time barred was also taken by the defendant in its written statement.

6. It, however, appears from paragraph 4 of the plaint that in pursuance of the aforesaid decree in favour of the plaintiff, the DRM vide his letter dated 16.3.1978 fixed and revised the pay of the plaintiff with retros-

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pective effect and the arrears for the period 1.4.1967 to 31.12.1974 amounting to Rs.3907.45P were allowed to the plaintiff and a sum of Rs.1560.45P from 25.9.1956 to 31.3.1967 was with-held though the DRM had passed the orders even for this payment. There is a letter dated 16.3.1978 issued on behalf of the DRM Jhansi on the record, which is paper no.18-B. It states that the payment of arrears for the period from 1.4.1967 to 31.12.1974 amounting to Rs.3907.45P has been passed by cheque payable through State Bank of India, Jhansi. The letter further states that a sum of Rs.1507.45P was due to the plaintiff as arrears from 25.9.1956 to 31.3.1967 and the CPO, BB has been requested to obtain complete sanction for waiver of internal check. In our opinion, this letter, contains an admission and acknowledgement of the competent authority of the defendant in favour of the plaintiff that a sum of Rs.1507.45P was due to the plaintiff from 25.9.1956 to 31.3.1967. The arrears of pay and necessary orders for its payment were already issued. The suit having been filed by the plaintiff within 3 years from the date (16.3.1978) of acknowledgement is thus, within time to the extent of Rs.1507.45P. The plaintiff has claimed a sum of Rs.71/- as arrears w.e.f. 1.4.56 to 24.9.1956. The acknowledgement does not save this claim of the plaintiff from the bar of limitation. We further find that the plaintiff has claimed a sum of Rs.1560.45P for the period

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w.e.f.25.9.56 to 31.3.67 but the acknowledgment is regarding a sum of Rs.1507.45 vide paper no.18-B. The remaining claim of the plaintiff even for this period is thus barred and the plaintiff can get a decree for a sum of Rs.1507.45P only.

7. Regarding interest, we do not find any contract between the parties. Before filing the suit, the plaintiff had given notice 8-C to the defendant claiming a sum of Rs.1650 only as arrears of pay and did not claim any interest over this amount. The interest was claimed only from the date the suit was to be filed. The plaintiff is, therefore, not entitled to get any interest up to the date of the suit.

8. There is no other point for consideration in this case and as such, the claim of the plaintiff succeeds only in part.

9. The suit of the plaintiff for the recovery of Rs.1507.45P is decreed with interest @12 per cent per annum from the date of the suit till the date of the ^{2 payment} recovery. The plaintiff will further get Rs.350/- as costs of this suit from the defendant.

[Signature]
5.1.1987
Member (A)

[Signature]
5.1.1987
Member (J)

Dated 5.1.1987
kkb