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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Allahabad This The: 31st day of January 1996

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Original Application No. 150 of 1998

Hon'ble Mr S. Das Gupta, AM
Hon'ble Mr T. L. Verma, JM

Mritunjay Tiwari s/o Ram Dhan Tiwari,
R/O C.No.184, BNE, Railway Colony,
Lahartara Fatak, Varanasi - Applicant.

C/A Sri G. C. Gehrana

Versus

Union of India through General
Manager, N.E. Railway, Gorakhpur
& others -

Respondents

C/R Sri A.K. Gaur

ORDER

Hon'ble Mr T. L. Verma, JM

This application has been filed for issuing a direction to the Respondent to re-fix the pay of the applicant at Rs.302/- with effect from 1976 instead of Rs.260-400 with increment and other benefits, that they have accrued to him thereafter, and fix his pay in the corresponding replacement scale recommended by the Pay Revision Commission, ~~cuash~~ order dated 16.3.77 appointing him on the post of substitute driver in a lower scale and issue of further direction to re-fix the seniority of the applicant as Jeep Driver from the date of regular absorption on the post.

2. The applicant was appointed as Casual Jeep Driver on 6.6.1969, and was given temporary status with effect from 6.12.1969. He was thereafter granted yearly increments. He was fitted in the revised scale of pay of Rs.284/- with effect from 1973. He was allowed subsequent increment upto the year 1976 raising his pay to Rs.302/-

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3. Further the case of the applicant is that his wife fell ill and he remained on leave with effect from 16.1.76 to 15.3.77 for that reason. He reported for duty on 16.3.77 and submitted sickness certificate of his wife along with his joining report, whereupon the respondents served an order asking him to join as Ambulance Driver on a lower scale of pay at the lowest stage. He submitted representations before the appropriate authority to rectify the irregularity committed in asking him to join at a lower scale of pay. The respondents, it is stated, slept over the matter and ultimately by the impugned order dated 11.11.87 rejected his representation. He was informed ~~that he was appointed on a post of lower scale of pay because he had absented himself un-authorisedly as a result his service came to an end automatically.~~ that he was appointed on a post of lower scale of pay because he had absented himself un-authorisedly as a result his service came to an end automatically.

4. According to the applicant, he, having been appointed as a Jeep Driver in accordance with the Rules could not have been arbitrarily either terminated from the service or reduced in the rank. The order asking the applicant to work as Ambulance Driver in a lower scale of pay, it is alleged, is arbitrary, illegal and without jurisdiction; hence, can not be sustained.

5. The Respondents have contested the claim of the applicant. In the written statement filed on behalf of the Respondents, it has been stated that the applicant was merely a casual driver / casual fitter. His service, automatically, came to an end on his un-authorised absence from 16.8.76 to 15.3.77 and that he was given re-employment on his own request on the post of Ambulance Driver. It has been contended that after accepting the post he cannot now be permitted to challenge the same on any ground.

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6. We have heard the Learned Counsel for the parties and perused the records. Admittedly the applicant had proceeded on two day's casual leave i.e. from 16.8.76 to 17.8.76. He reported for duty on 16.3.77 instead of 18.8.76. Although he claims to have submitted applications for extension of his leave for the period of his absence, there is nothing on the record to show that such an application had been submitted and received in the office of the Respondents. Be that as it may, absence of the applicant from 18.8.76 to 15.3.77 has not been regularised by sanctioning of ~~the~~ leave. Therefore, the absence of the applicant during the aforesaid period was un-authorised and amounts to mis-conduct. The proper course for the Respondents, in a case like this, it was submitted, was to initiate a departmental proceeding against him and after holding confronted or ex-parte enquiry, as the case may be, pass proper order. Admittedly, it has not been done ~~so~~.

7. In that view of the matter, it was argued, that action of the Respondents in asking the applicant to join as a Ambulance Driver in a lower scale of pay was arbitrary, illegal and without jurisdiction.,

8. The Respondents, in reply to the above contention of the applicant, have averred that the claim of the applicant is barred by limitation. It was pointed out that the applicant was appointed in a lower scale of pay on 15.3.77 whereas this application has been filed on 1.2.88, about 11 years after the cause of action had arisen. The Learned Counsel of the applicant, in reply to argument on the question of limitation has referred to ANNEXURE -3 letter dated 11.11.87 and urged that since the letter regarding refixing of pay and seniority was finally decided in 1987 and, that the same was communicated to the applicant by the impugned letter dated 11.11.87, limitation shall not start

to run from 15.3.77 but from 11.11.87. This application therefore, was within time. We are unable to accept this contention. ANNEXURE -3 letter dated 11.11.87 is a reply to the representation submitted by the applicant on 29.10.87. The applicant, it appears did not agitate the matter of his appointment on a lower scale of pay and fixing pay at the lowest stage prior to 1986 either before concerned officers or before a Competent Judicial Forum. The representation, which was replied to by the Respondents by the impugned letter, was itself submitted 10 years after the appointment of the applicant on the post of Ambulance Jeep Driver on a lowest scale of pay. The remedy of the applicant, if any by ~~by~~ then had become barred by limitation because of latches on the part of the applicant. Therefore, in our opinion, the reply to the representation submitted by the applicant after his claim had been barred by limitation will neither extend nor revive the period of limitation. We are fortified in our view by a decision of the Principal Bench in M.K. Bala Chandran Pillai Versus Central Administrative Tribunal reported in 1995 (29)Administrativ ^e Tribunal Case 450/2. The applicant in this case was serving in Ernakulam Bench of the Central Administrative Tribunal as U.D.G. The applicant was, at the time of his appointment, serving as L.D.C. in High Court of Judicature at Allahabad. He came on deputation to the Tribunal as L.D.C. on 7.8.86. He was finally absorbed in the service of the Tribunal from 1.11.89. In the meantime, on the basis of 4th Pay Commission, the pay

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of the applicant was fixed by order dated 7.1.78 in the replacement scale recommended by the Pay Commission in the scale of Rs.1200/- - Rs. 2040/- with effect from 18.7.87, the date on which he was formerly appointed as U.D.C. The grievance of the applicant was that he had worked on a equivalent post of U.D.C. in the Allahabad High Court, his deputation should have been on an equivalent post i.e. U.D.C. in the Central Administrative Tribunal also. He submitted a representation for re-fixing his pay accordingly but the same was rejected. He, therefore, file O.A. No. 900 of 1993 before the Principal Bench of the Tribunal for quashing the order dated 13.4.93 rejecting his representation dated 23.4.92. The O.A. was dismissed on the ground of limitation, as the applicant had challenged order passed in August, 1987 ~~only~~ ^{as} and in the year 1993 by filing the aforesaid O.A. The Tribunal has held that the reply to a delayed representation did not give rise to fresh cause of action. It has been held that " like other case the party has to approach the Judicial ^{forum in service} in service matters well in time. The rightful claim is lost by an ordinary delay. The delay defeats a right even if the right is available, it remains un-assailable by virtue of legal remedy being barred."

9. Similar view has been expressed by the Madras Bench of the Tribunal in case Satya Naraina Versus Directors of C.S.I.R. (1995) 31 Administrative Tribunal Case 349. The relevant portion of the decision is extracted below:-

" The applicant made a representation nearly 19 months after the initial order of promotion. The representation was rejected vide order dated 20.5.92. The applicant has failed to show the rules / instructions to establish that further....6

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representations made by him are statutory remedies. The application should have been filed before 19.5.93. The application filed in September, 1993, is clearly barred by limitation".

10. The other aspects of the case to which our attention has been invited is that service of the applicant came to an end automatically on his absenting from duty un-authorisely. The Learned Counsel for the Respondents submitted that the applicant was habitual absconder and that warning had been administered to him by issuing letter dated 12.8.75, (ANNEXURE-4). We have perused the aforesaid ANNEXURE and we find that the applicant was cautioned to avoid un-authorised absence in future, failing which his service may be treated as left. It was urged that the applicant absented from his duty despite the aforesaid warning without intimation to the concerned authority and that his services came to an end in terms of the warning administered by the aforesaid letter. We are unable to persuade ourselves to accept this contention. The Learned Counsel of the Respondents. The proper course for the Respondents was to have initiated a disciplinary proceeding against the applicant and taken action on the basis of the conclusion of the enquiry. The action taken by the Respondents could not have been sustained had this application been filed within the period of limitation.

11. It was next argued that the applicant was working on emergent labour requisition sanctioned post as casual motor driver / casual fitter. Therefore, the applicant himself submitted an application dated 11.6.76 and dated NIL of 1976 to appoint him as Ambulance Driver.

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The copies of the applications submitted by the applicant may be seen at ANNEXURE-5 and ANNEXURE-6 of the Counter Affidavit. Both these applications have been forwarded by the competent authority with the recommendation for the appointment. The applicant has not denied having filed the aforesaid applications. It has, however, been contended that the aforesaid applications were submitted believing that the post of Ambulance Driver carried higher scale of pay and that the post on which the applicant had been appointed ^{was} on a lower scale of pay came to the knowledge of the applicant only in May 1977 when he received the salary. This contention of the Learned Counsel of the applicant cannot be accepted. The order by which he was appointed (ANNEXURE-2) clearly states the scale of pay on which the applicant was appointed so the question of the applicant having learnt that he was appointed on a lower scale of pay in May 1977 cannot be accepted. Even assuming for the sake of argument he learnt of the aforesaid fact in May 1977 then also the delay in filing this application remains un-explained. As has already been seen above, the applicant did not submit representation against his appointment on a lower scale of pay until 1986. From the averments made in Para 13 of the Counter Affidavit, it is absolutely clear that no representation was received in July, 1977. The first representation according to the Respondent was forwarded under General Manager, Vigilance, Gorakhpur, letter dated 4.7.1986 and the other applications are dated 10.11.87. All the representations were submitted much after the claim of the applicant, if any, had become barred by limitation.

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12. From the material on records as discussed above, it is clear that the applicant accepted appointment as substitute Ambulance Driver without any objection. The complacent attitude adopted by him in not challenging the same either by filing representation before the appropriate authority or filing a case before a competent judicial forum indicates that the applicant ~~had~~ ^{now} reconciled ~~to~~ with his deemed termination on account of alleged un-authorised absence and accepted appointment as a substitute Ambulance Driver on a lower scale of pay. In this view of the matter, challenging the appointment after a long lapse of 11 years cannot be held to be maintainable.

13. For the reasons stated above, we find no merit in this application and dismiss the same leaving the parties to bear their own cost.

J. Bhattacharya
(MEMBER-J)

W.C.
(MEMBER-A)

R.S.