

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 20TH DAY OF SEPTEMBER, 2005
Original Application No. 95 of 2002**

CORAM:

HON.MR.K.B.S.RAJAN, MEMBER (J)
HON.MR.A.K.SINGH, MEMBER (A)

Cyril Leo Thomas, Son of Terence Thomas
Ex.C.T.F.O.R (Chief traction Foreman)
Loco Running, Mughalsarai (Allahabad
Division), R/o 525, Muthiganj, Near Jamuna
Church, Allahabad.

... Applicant

(By Adv: Shri P.K.Singh)

Versus

1. Union of India through
General Manager, Northern
Railway, Baroda Bhavan,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Allahabad.
3. Divisional Accounts Officer,
Northern Railway, Allahabad
Division, Allahabad.

... Respondents.

ORDER

By Hon.Mr.K.B.S.Rajan, Member (J)

A claim for payment of higher pay scale (for having been functioning in a higher post) relating to the period 1974 to 1985 is sought to be made through this OA filed in 2002. The said claim is also not with the support of any specific order asking the applicant to perform the duties of higher post, much less any promotion order.

A strong preliminary objection relating to limitation has been raised by the respondents and it is only when the applicant successfully swims across the river of limitation, that his further case on merit is to be considered.

The applicant joined the Railways in the pre-independence period and retired in 1985. From 1974 he was functioning as Traffic Foreman Running (pay scale Rs. 455 – 575) and according to him he was from the same period asked to perform the duties of



Chief Traffic Foreman Running but on the pay scale of TFOR only. The applicant so functioning superannuated. According to him he had been representing both prior to as well posterior to his superannuation and in response to one of his representations, though the respondents have addressed him as Ex CTFOR, his request for higher pay scale has been denied to him. The applicant submits that non fixation of pay had resulted in a truncated amount of pension.

The respondents have raised the preliminary objection of limitation. Their contention is that provisions of section 21 of the Administrative Tribunals Act 1985 should be given its due sanctity and the same would be stultified if stale claims are considered by the judicial forum. They have relied upon the decision of the Apex Court in the case of *This extract is taken from Ramesh Chand Sharma v. Udham Singh Kamal, (1999) 8 SCC 304.*

Admittedly, there has been no application for condonation of delay filed by the applicant invoking the provisions of Sec 21(3) of the Application.

The preliminary objection has been considered. The claim pertains to the period from 1974 to 1985. But it does not rest with that only. In case the applicant is victorious in his case on merit, the same would result in revision of pension. Thus, it is to be seen whether the application is time barred in respect of the entire claim of the applicant or it is time barred in so far as the claim of the applicant to the payment of difference of pay from 1974 to 1985 and for the later period upto the date of filing of the OA in respect of pension and is within limitation in so far as his claim for payment of higher rate of pension from the date of filing of the O.A.

In Ramesh Chand Sharma v. Udham Singh Kamal, (supra) the Apex Court in detail dealt with the aspect of limitation u/s 21 of the A.T. Act. The Apex Court held as under:-

This OA was admittedly beyond the prescribed period of limitation of three years as provided under Section 21 of the Administrative Tribunals Act, 1985. As regards the limitation in para 5, the first respondent has stated as under:

"The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985."

This averment clearly indicates that the first respondent was all along asserting that he had filed OA within limitation but it was not so. The appellants in both these appeals have raised a contention that the OA was beyond three years and, therefore, the same was barred by limitation under Section 21 of the

Administrative Tribunals Act, 1985. Despite this objection raised by the appellants, the first respondent did not file any application for condonation of delay. Section 21(3) of the Act gives power to the Tribunal to condone the delay if sufficient cause is shown.

5. Section 21 reads as under:

"21. Limitation.—(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) * * *

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the OA filed by the first respondent Udham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of the OA on merits. It was, therefore, contended that the Tribunal had totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, the impugned order be set aside.

6. Learned counsel for the first respondent urged that after his representation was rejected by the Himachal Pradesh Government on 2-7-1991, he had made another representation pointing out the factual position and, therefore, the period of limitation needs to be counted not from 2-7-1991 but from the date of rejection of his second representation (no date mentioned). He also urged that the vacancy arose because one Shri Sita Ram Dholeta who was holding the post and working as Translator-cum-Legal Assistant went on deputation in March 1990 by keeping a lien on the said post. This respondent was under a bona fide belief that until the lien comes to an end, there may not be a clear vacancy and, therefore, as and when such vacancy arises, his claim would be considered. It is in these circumstances, he did not file OA at an early date. If there be any delay, the same may be condoned.

7. On a perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was

open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the OA filed before the Tribunal after the expiry of three years could not have been admitted and **disposed** of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled (see Secy. to Govt. of India v. Shivram Mahadu Gaikwad).

8. For the reasons stated above, the impugned order passed by the Administrative Tribunal on 6-8-1996 in OA No. 631 of 1994 is set aside and the said OA is dismissed on the ground of limitation.

The above law applies in its entirety to the facts of the case inasmuch as the applicant cannot agitate over the non fixation of pay or payment of arrears in respect of which the cause of action arose during 1974 to 1985 and thereafter. The OA is thus time barred.

However, the case can be viewed from another angle, by referring to the decision of the Apex Court in the case of *M.R. Gupta v. Union of India*, (1995) 5 SCC 628. In that case the Apex Court has held 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. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

Now the claim of the applicant is that he worked in the higher post but he was denied higher pay. Curiously, he has not furnished any document by which he had been

asked to perform the higher duties. No rule has been cited by the applicant to substantiate his claim. The law in M.R. Gupta is the pay fixation is not in accordance with the Rules. There are many occasions, where an individual is advised to perform higher functions in addition to his own but no additional emoluments are given. In any event, since there has been no document to substantiate even the averment of the applicant that he was functioning as CTOFR, even on merit the OA fails.

The O.A. is therefore, dismissed both on limitation and on merit.

There shall be no order as to cost.


MEMBER(A)
MEMBER(J)

Dated: 20th Sept.2005