

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 578 of 2003

_____, this the 15th day of Sept, 2009

Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

Mohd. Daud Khan S/o Late Shri Mohd. Yaqoob Khan, resident of 187, Buxi Bazar (Purani Gudia Talab), District-Allahabad-211003.

Applicant

By Advocate: Sri Z.A. Faruqui

Vs.

1. The Union of India through General Manager, Railway Electrification, Allahabad.
2. The Chairman, Railway Board, Ministry of Railways, New Delhi-110001.
3. General Manager, Railway Electrification, Allahabad.
4. Sr. Divisional Accounts Officer, North-Central Railway, Allahabad.

Respondents

By Advocate: Smt. Anita Srivastava

ORDER

By Hon'ble Mr. Ashok S. Karamadi, J.M.

The applicant has filed this O.A. seeking the following relief

(s): -

8.1 *That the pay of the employee on the date of his retirement (31.10.95) be taken at Rs.3500/- and arrears there of be paid to him.*

8.2 *That the pensionary benefits of the applicant be revised accordingly and arrears paid with 18% interest P.A. to the applicant.*

8.2(a) *That the pay of the applicant as reduced illegally in the capacity of CVI grade Rs.2375-3500/- be restored and his pay as AVO grade Rs.2375-3500/- 2375-3750, and as V.O.*

Manjulika

15-9

grade Rs.3,000.00-4500,00 be fixed as Rs.3200/- and Rs.3500/- on 9-2-1994 and 3-5-1995 respectively.

8.2(b) *That Rs.34,585/- withheld from applicants gratuity be released alongwith interest @ 18% per annum with effect from 1-11-1995 till the actual payment is made to the applicant.*

8.3 *That any other relief or reliefs that this Hon'ble Tribunal consider fit under the circumstances of the case.*

8.4 *That the respondents be directed to pay the cost of the suit to the applicant.*

2. The brief facts of the case, as pleaded by the applicant, are as under: -

The applicant had been working as Section Officer (A/cs) under the F.A. and C.A.O., Northern Railway where he held his lien. While holding lien under the aforesaid authority, the applicant was selected as Section Officer (Vigilance) under General Manager, Northern Railway. In the year 1989, the applicant was selected and posted on ad hoc basis as Chief Vigilance Inspector under GM/RE in one grade higher viz. 2375-3500. While working as S.O. (Vigilance) under G.M./Northern Railway w.e.f. 29.01.1982 the applicant had been given the grade of Rs.2000-3200 (RPS) as Senior Section Officer in open line (parent cadre) unit w.e.f. 01.01.1986. Thereby when he was selected and posted in R.E. vide Headquarters' office (P. Branch) Northern Railway, New Delhi's letter No. 42E/87/E-iii-a dated 30.03.1989 (Annexure-6 b) revising orders of posting of applicant to SPE CBI/Lucknow at the behest of G.M./CORE/Allahabad vide his D.O. letter No. E/RE/CON/ii/Vigilance (BPL) dated 21.02.1989 (Annexure-6 a), the applicant had already been holding grade of Rs.2000-3200 (RPS) substantively and his promotion as Chief Vigilance Inspector grade Rs.2375-3500 (RPS) was first ex-cadre promotion. It is stated that before the applicant joined as

M. J. Kumar

[Signature]

CVI/RE/Allahabad, he had already been fixed in grade of Rs.2000-3200/- at Rs.2600/- on 26.04.1989 on the post of Section Officer (Vigilance) at the minimum of the grade Rs.700.00 as on 29.01.1983 the minimum of Rs.700/- corresponded with Rs.2000/- in grade Rs.2000-3200. The applicant further stated that he was selected and appointed in Central Organisation of Railway Electrification (CORE) to set up the Vigilance Cell afresh. The establishment of new organization/branch being an onerous work and requiring ample experience, Senior Deputy General Manager/Chief Vigilance Officer (CORE) Allahabad agreed to give him one grade higher to his substantive grade of Rs.2000-3200 i.e. Rs.2375-3500 (Chief Vigilance Inspector [CVI]) in accordance with G.M./CORE/Allahabad letter No. E/O/29 dated 30.09.1988. Accordingly his pay was fixed in the above grade @ Rs.2750/- per month with reference to his pay at Northern Railway Vigilance Cell/New Delhi @ Rs.2600/- per month on 26.04.1989 in his substantive grade Rs.2000-3200 (RPS) [the grade which he was holding in open line], which is in accordance with para-2018 B of Railway Establishment Code Volume II (1971 edition) revised as para-1313 (FR 22) (I) (a) (I) of the Indian Railway Establishment Code (1987 edition) as amended vide Railway Board's letter No. F (E) II/89/FR-I/1 dated 12.12.1991. The computation of pay is brought out as under: -

- | | | |
|-------|---|-------------------|
| (i) | Pay as on 26.04.1989 in scale of Rs.2000-3200 (cadre scale) | Rs.2600.00 |
| (ii) | Add one increment of lower grade i.e. 2000-3200 (RPS) + | Rs.0075.00 |
| (iii) | Notional pay | Rs.2675.00 |
| (iv) | Pay fixed at next stage of grade of Rs.2375-3500 (CVI CORE-Allahabad). | Rs.2750.00 |

M. J. M. Khan

[Signature]

Consequently, an office order No. 64/89 dated 01.09.1989 containing his pay as Rs.2750/- per month was issued by the Senior Personnel Officer (CORE) Allahabad endorsing among others a copy to F.A. & C.A.O. (CORE) Allahabad which was impliedly concurred by him. The applicant continued to draw as such the above noted pay raised by yearly increments up to 18.05.1995 in accordance with rules. But suddenly at this belated stage, it was illegally, arbitrarily withdrawn alleging being in contravention to rule on subject. The applicant retired on 31.10.1985 as Vigilance Officer (CORE) Allahabad. The applicant has averred that having being selected and empanelled as Assistant Accounts Officer in Group 'B' Service in grade Rs.2375-3500/- later revised to Rs.2375-3750, conducted by Northern Railway Headquarters Office, Baroda House, New Delhi, the applicant was retained as Assistant Vigilance Officer in R.E. with the approval of GM/RE at the behest of SDGM/CVO CORE Allahabad vide his D.O. letter No. E/RE/CON II. A dated 10.02.1994 since he was earlier posted in open line. Applicant was posted in RE vide O/O No. GAZ/54/94 dated 09.02.94. Consequently the applicant had been holding the grade of AAO/AVO as aforesaid substantively. The promotion as AVO in RE was not ex-cadre as is evident from statement of service of the applicant dated 16.10.1995. Therefore, his pay as AVO ought to have been fixed as Rs.3200/- per month in grade Rs.2375-3500/- 2375-3750 with reference to his pay @ Rs.3050/- on 01.04.1993 as CVI grade Rs.2375-3500 in accordance with Railway Board's letter No. PC-IV/87/FOP/5 dated 02.06.1987 and Railway Board's letter No. F(E) II/89/PR-1-/1 dated 12.12.1991 certifying in

M. G. Prasad

[Signature]

paragraph 2 (II) under caption "Railway Board's orders" that the appointment to Assistant Officer grade or lower Gazetted Services from non-gazetted post involves assumption of duties and responsibilities of greater importance for the purpose of fixation of pay under Rule 1313 (FR 22) of Indian Railway Establishment Code Vol. II (1987 edition). The computation of pay is set out as under: -

(1)	Pay in scale of Rs.2375-3500 on 9.2.94	Rs.3050.00
(ii)	Add one increment of lower grade	Rs. 75.00
(iii)	Notional pay	Rs.3125.00
(iv)	Next stage (as AVO on 9-2-94	Rs.3200.00

It is further stated by the applicant that there was double ex-cadre (ad hoc) promotion given to the applicant and application of Railway Board's letter No. E (P6A) II/85/PP-24 dated 31.12.1985 for fixation of applicant's pay as Chief Vigilance Inspector and Assistant Vigilance Officer is patently arbitrary and illegal being in contravention to rules on the subject. This fact finds support by the remark of SDGM/CVO CORE-Allahabad on applicant's representation of 13.07.1995 and demonstrated as under: -

Date	Cadre Grade	NR HO Vigilance	RE Vigilance
01.01.1983	500-900 (SO A/c)	700-900 (29/1/83)	--
01.01.1986	700-900/200-3200	700-900/2000-3200	--
26.04.1989	2000-3200	----	2375-3500-Ist ex-cadre (Chief Vig. Inspector)
01.02.1995	2375-3500/2375-3750 (AAO) (Passed requisite-selection)	09.02.1995 (AVO)	2375-3500/2375-3750 (substantive grade)

Alpantam

[Signature]

03.05.1995	2375-3500/ 2375-3750	3000-4500 (V.O.)	Dual charge
------------	----------------------	------------------	-------------

It is further averred by the applicant that the rule regarding the fixation of pay in case of promotion from ex-cadre post originally circulated vide Railway Board's letter dated 23.09.1971 which was emphasized vide letter dated 31.12.1985 and GM/RE/Allahabad desired vide his letter dated 30.10.1991 to complete re fixation of pay in accordance with Railway Board's letter dated 31.12.1985 and work out over payment involved to be put up to him for waiver up to 30.11.1991. In case the respondents felt that there was double ad hoc promotion involved in case of applicant (though it is squarely wrong approach) they should have corrected it by 30.11.1991, but the respondents allowed it to continue up to 18.05.1995, merely about 5 months before his retirement i.e. 31.10.1995. Thus, they allowed to continue the pay @ Rs.2750/- fixed in grade Rs.2375-3500 on 26.04.1989 raised by increments up to six years without lowest contribution of the applicant. But thereafter on fallacious ground the respondents illegally and arbitrarily reduced his pay from Rs.3050/- to Rs.2675/- per month with retrospective effect from 01.04.1993 thereby adversely affecting the retiral benefits of the applicant which they are stopped under law. Consequently withholding Rs.34,585/- (Rs.21,479 for non-gazetted service + 12,836/- for gazetted service) which is still withheld. This is patently arbitrary and illegal and against the judicious norms of law laid down by the Hon'ble Apex Court in case of Bhagwan Shukla vs. Union of India (1994 SCC [L&S] 1320), Shyam Babu Verma vs. U.O.I. and others (1994/27 ATC-121), S.C. Sahib Ram

M. G. Prasad

[Signature]

vs. State of Haryana (1994/28 ATC-747) followed in cases of HLR Rao vs. Union of India decided by Hon'ble Central Administrative Tribunal, Madras in O.A. No. 869 of 1999 and Harbans Singh Ahuja decided by Hon'ble CAT/Chandigarh in O.A. No. 960-CH-98, refunding the amount withheld of applicants with interest. The applicant states that as he had shortly to retire on 31.10.1995, there was no alternative left with the applicant but to go representing against the illegal action of the respondents. Since the applicant was appointed/inducted in Railway Electrification to carry out a special onerous task of establishing Vigilance Cell in CORE afresh, his case also deserves to be considered under FR-40, which has been certified by SDGM/CVO, the recruiting authority on applicant's representation dated 13.06.1995 (annexure A-16) and by F.A. and C.A.Os. vide his noting dated 26.05.1995. The applicant represented the matter to the authorities concerned through host of representations made at regular intervals but nothing tangible came out. The GM/RE on the basis of representations preferred by the applicant, ultimately referred the matter to the Railway Board through his letters dated 06.03.1996 and 10.06.1996. The Railway Board decided the matter and intimated the position vide letter dated 07.02.1997 and 24.06.1998. It may be mentioned here that GM/RE did not faithfully brief ~~ed~~ the Railway Board and the Railway Board thus failed to appreciate the matter in its correct perspective. It may however be mentioned that the fixation of pay of the applicant consisted of the period when he worked against non-gazetted and gazetted posts and the waiver of gazetted posts vested only with the Railway Board and that of non-gazetted period was to be

M. J. Prasad

[Signature]

decided by the GM/RE. Thus, the Railway Board's decision covering the non-gazetted period is not justified as it was not the competent authority for the non-gazetted period. Since after the induction of the applicant on the post AVO (A/cs) in RE, the applicant was allowed officiating against the next higher post of senior scale w.e.f. 03.05.1995 and on that post the applicant continued up to his retirement on 31.10.1995. But the correct fixation in that event was also not given to the applicant. His pay was fixed on Rs.3000/- as VO w.e.f. from 03.05.1995 as per Railway Board's letter dated 01.10.1983 but the illustration given in case of G.S. Rastogi, PA to GM (RE) by Railway Board vide their letter No. F (R) Spl. 93/FR-1 dated 29.02.1996, in respect of para 647 of Indian Railway Establishment Manual Vol. I, equally apply in applicant's case. Thereby, his pay in senior scale for holding dual charge as Vigilance Officer (CORE) Allahabad ought to have been fixed as under: -

(i)	Pay as AVO as on 3-595 (2375-3750)	Rs.3,300.00
(ii)	Increment in lower grade (AVO)	Rs. 100/-
(iii)	Notional Pay	Rs.3,400.00
(iv)	Pay ought to be fixed as V.O. at The next stage in grade Rs.300-4500	Rs.3,500.00

It is stated that since the applicant had been getting less amount of pension because of the illegal and neglectful actions of the respondents, he is perpetually aggrieved even after his retirement period. It is pertinent to state here that there is flagrant violation of mandatory provisions of rule 2018 (B) FR-22 C renumbered as rule 1313 of the Indian Railway Establishment Code Vol. II 1987 edition in fixation of pay of the applicant on

M. J. Prasad

[Signature]


promotion as Assistant Vigilance Officer (AVO) grade Rs.2375-3500/- 2375-3750, his pay has been fixed wrongly @ Rs.2675/- per month instead of Rs.3200/- w.e.f. 09.04.1994. Similarly, his pay on assumption of dual charge as Vigilance Officer in grade Rs.3000-4000 on 03.05.1995 was fixed as Rs.3000/- (2825+175) instead of Rs.3500/- per month, which continued till his retirement on 31.10.1995 arbitrarily and illegally. It is pertinent to mention that had the applicant continued in General Manager (Vigilance), New Delhi as S.O. (Vigilance) or joined under SPE/CBI/Lucknow in grade Rs.2000-3200/-, after giving him three promotion he has been retired on Rs.3000/- and his pension fixed on as Rs.1454/- per month. Since there have been frequent references with regard to the fixation of pay in the shape of issuance of several circulars by Railway Board, the position of the case of the applicant also went on changing, giving an opportunity to demand the facilities, privileges and enshrined in those circulars of the Railway Board. Hence the course of the representations also changed from time to time. That being so, the last representation made by the applicant is dated 18.03.2002. This representation gives in details, the position of the applicant's case and it requires to be dealt with according to the instructions contained, in various circulars issued by the respondents from time to time and also mentioned in the said representations. The applicant submitted that his representation dated 18.03.2002 make loud and clear points which would have been taken into consideration by the competent authority, but it has not been done. The GM/RE vide his letter 20.05.2002 by a non speaking order does not give any remarks to indicate as to

M. J. Prasad

Ala

how the applicant's representation dated 22.02.2002 and 18.03.2002 were not convincing and as such lacked consideration. This makes as per law this letter of GM/RE/ALD infructuous and without force, GM/RE/ALD should have given concrete comments on the issues raised in the said representation but it was not done. It is further submitted that since the applicant is a retired person and his grievances have been collectively indicated lastly in his representation dated 18.03.2002 and the paras thereof are the averments of this O.A. also, it is pertinent for the sake of justice that this Hon'ble Tribunal may decide the matter expeditiously. As a matter of fact the GM/RE's letter dated 20.05.2002 is a non-speaking order, it deserves to be quashed in its present form. The applicant has been paid less pensionary benefits because of erratic and illegal fixation of pay on the date of his retirement and he is liable to get arrears thereof with 18% interest thereon. With the aforesaid averments, applicant has sought for aforesaid relief (s).

3. On notice the respondents have filed the Counter Reply. The sum and substance of the Counter Reply is that the applicant while holding cadre post of Section Officer (A/cs) on pay Rs.520/- on scale Rs.500-900 (RS) was inducted to an ex-cadre post of S.O. (Vigilance) in scale Rs.700-900 (RS) on ad hoc basis w.e.f. 29.01.1983 in Northern Railway. On completion of his tenure in Northern Railway vigilance (ex-cadre), Shri Khan expressed his willingness to join Railway Electrification Vigilance ex-cadre organization and he was inducted as Chief Vigilance Inspector on ad hoc basis in scale Rs.2375-3500 - PC - IV, w.e.f. 26.04.1989.



On being selected to Group 'B' (Accounts Officer in Northern Railway, he was further appointed to officiate as Assistant Enquiry/Vigilance Officer (known as Aeo/AVO) w.e.f. 9.2.1994 in scale Rs.2375-3500, subsequently revised to 2375-75-3050-100-3750 by an order dated 6.11.1995. The applicant retired from service on 31.10.1995 (A.N.). Thus, applicant had been working against ex-cadre posts from 29.01.1993 to 31.10.1995. He was allowed dual charge allowance to hold the post of Vigilance Officer in addition to his own post of AEO from 03.05.1995 to 31.10.1995. Applicant was allowed proforma promotions under "Next Below Rule" in his cadre as under: -

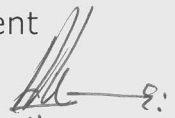
- | | | |
|------|---|------------------------------|
| (i) | Senior Section Officer (A/cs)
w.e.f. 01.04.1987 | Rs.2000-3200 |
| (ii) | Accounts Officer Group 'B'
W.e.f. 9-2-1994
(Scale revised vide order
Of 6-11-1995) | Rs.2375-3500
Rs.2375-3750 |

The respondents further submitted that Rules for fixation of Pay is that on appointment to officiate to another ex-cadre post, pay has to be fixed with reference to cadre post only in terms of Govt. of India's order (3) to Fundamental Rule-22 C and Railway Board's letter No. E (P&A) II/85/PF/24 dated 31.12.1985 (Annexure R/2 and R/6). Cadre Pay and Ex-cadre Pay had been fixed is shown in para-5 (page-3 and 4) of the Counter Reply. It is submitted by the respondents that due to non-receipt of service record, on his transfer to RE on 26.04.1989 and false information given by the applicant regarding his cadre pay, his pay was wrongly fixed @ Rs.2750/- in ex cadre post of CVI (Rs.2375-3500) instead of Rs.2375/- + 225 PP, in reference to cadre pay of the applicant as per rules. This incorrect pay continued up to

M. J. Prasad

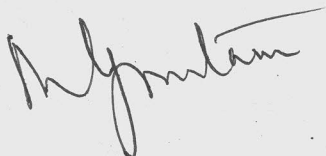
[Signature]

30.04.1995 till final revision of pay after being deducted at the time/pay fixation in Group 'B' service in December 1994, and the applicant has filed the preset O.A. before this Tribunal with a view to get undue gain in violation of the Fundamental Rules. It is further submitted by the respondents that a show cause notice was given to the applicant on 20.01.1995 before withdrawal of incorrect pay fixation since 26.04.1989 and fixation of pay in ex-cadre Group 'B' post from 09.02.1994 which being less than pay admissible to him in identical scale Rs.2375-3500 of C.V.I. He was however replied on 24.03.1995 and allowed pay in Group 'B' equal to the pay admissible to him as C.V.I. in identical grade as per rules. Thus, it is incorrect to say that he was replied only on 20.05.2002 (annexure-1 to O.A.) in which reference of previous reply dated 29.09.1998 and 22.12.1998 are cited clearly. The applicant had been replied various times based on relevant rules and several personal hearings at all the levels allowed due considerations had been given in the light of statutory provisions in Code and Rules. The jurisdiction is undisputed but the O.A. is time barred in view of position explained above. Applicant was replied in reference to his representations since 1995 to 1998 after due considerations of the points raised therein. It is further submitted that the applicant was not allowed promotion to next higher post for which he was ineligible because he had just over one year service in Group 'B' scale Rs.2375-3750 from 09.02.1994 to 02.05.1995. In fact he was allowed dual charge of an additional post of Vigilance Officer from 03.05.1995 to 31.05.1995 for which officiating pay in the shape of charge allowance in terms of para-647 of Indian Railway Establishment



Manual had been allowed. In such cases, allowance is restricted equal to officiating pay of additional post which would have been fixed on promotion. In his case pay in basic post Rs.2825 + 175 i.e. Rs.2000 Rs.2825/- total Rs.3000/- have been correctly paid to the applicant in terms of Board's Circular dated 01.10.1993 (annexure R-1). It is averred by the respondents that the applicant retired on 31.10.1995 and the circulars issued had been concerned with pay fixation as a result of PC-V effective from 1.1.1996, which were not applicable to applicant. Thus, his contention is incorrect. The applicant's representation dated 18.03.2002 was considered again by General Manager and his pay fixation had been found correct. The claim of any higher pay is not permissible under the Fundamental Rules, and applicant was communicated the speaking order on 24.03.1995 in reference to his representation dated 03.02.1995 against the show cause notice dated 20.01.1995. It is lastly submitted by the respondents have already given reply regarding applicant's pay fixation by speaking order dated 24.03.1995, and the applicant's attempts had been only to save his time barred case. He has not exhausted departmental remedies available to him by way of appeal. With the above submission, the respondents sought for the dismissal of the O.A.

4. The applicant has filed the Rejoinder Affidavit, reiterating the same contentions as averred in the O.A., the respondents have filed the Supplementary Counter Reply reiterating their same contentions, and further the applicant has filed the



Supplementary Rejoinder Affidavit affirming the statements made in the O.A. and prayed for the relief (s).

5. We have heard the learned counsel for the parties and perused the pleadings and materials available on record.

6. The grievance of the applicant in this O.A. is with regard to his pay fixation, as contended by the applicant's counsel, it is incorrect and not in accordance with the rules, and the respondents acted illegally and arbitrarily, and further stated that this O.A. was filed in time, and there is no delay in filing the O.A. The learned counsel for the respondents stated that the O.A. is barred by limitation, the respondents' authorities have fixed the pay of the applicant in accordance with the rules after affording opportunity to the applicant and as such the O.A. deserves to be dismissed being time barred as well as being devoid of merits.

7. In view of rival contentions of the parties, we will consider first the issue with regard to limitation. The applicant has stated that the O.A. is within limitation, without filing any Misc. Application for condonation of delay. The respondents have taken up the plea in para-7 of the Counter Affidavit that the O.A. is time barred, for this the applicant in his Rejoinder Affidavit at para-5 stated that every time the applicant receives his reduced pension as a result of wrong revision of his pay at the fag end of his service every month, cause of action arises as observed by the Hon'ble Supreme Court in the decision reported in **1995 (2) SC SLJ page 337 M.R. Gupta vs. Union of India** and, therefore,



stated that the O.A. is not time barred, as the applicant has made several representations to the concerned authorities in the respondents' department, and the last one is dated 18.03.2002. The present O.A. was filed on 19.05.2003. It is clear from annexure A-1 produced by the applicant dated 20.05.2002, it is a communication informing the applicant that his request for re fixation of pay, as requested by him in the representation dated 20.02.2002 and 18.03.2002, has already been considered and replied. The respondents have produced and stated in para-14 of the Counter Reply with regard to revised pay fixation as per R-3, and the show cause notice dated 20.05.1995 to the applicant, for the same the applicant has replied on 03.02.1995, and thereafter the speaking order was passed on 24.03.1995, which is produced as annexure R-5. It is clear from annexure R-5 that the case of the applicant was considered and the incorrect fixation of pay was withdrawn and pay in Group-B has been fixed based on the Rules. The applicant is not denying the same, but he is clarifying with regard to the same that he made a representation bringing in details regarding his grievances to the respondents' authorities, and further the applicant is contending that repeatedly the applicant has made representations to the authorities concerned for redressal of his grievances, having regard to the same, in our considered view we cannot accept the contention of the applicant that the O.A. is within limitation, and requires consideration on the merits of the case. The relevant portion of the decision (M.R. Gupta/supra) relied upon by the learned counsel for the applicant in support of his contentions is as follows: -



"Where the employee's grievance was that his fixation of initial pay was not in accordance with the Rules, the assertion being of continuing wrong the question of limitation would not arise. So long as the employee 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 the Rules. It is no doubt true that if the employee'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. 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."

On perusal of the above decision it is clear that so long as the employee 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 the rules, this makes it clear as the applicant is not in service, and retired on 31.10.1995, much prior to his retirement the speaking order dated 24.03.1995 was passed by the respondents, having regard to the same the aforesaid decision is not applicable to the present case of the applicant. The other contention taken by the applicant is that he has made several representations to the respondents before filing the O.A., the last one being 18.03.2002, this contention of the applicant that there is no delay in filing the O.A., cannot be accepted, having regard to the proportion of law laid down by the Constitution Bench of the Hon'ble Supreme Court reported in **AIR 1990 SC page 10 S.S. Rathore vs. State of M.P.**, in which the Hon'ble Apex Court held as under: -

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We however, make it clear that this principle may not be applicable when the remedy

M. J. Ramani

M. J. Ramani

availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

Section 21 of the Administrative Tribunals Act, 1985, which pertains to the limitation, is as follows: -

"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 application satisfies the Tribunal that he had sufficient cause for not making the application within such period."

In view of the proportion of law laid down by the Hon'ble Supreme Court with regard to delay and laches, and the provision of Section 21, cited above, and having regard to the facts and circumstances of the case, the contentions taken by the respondents are accepted, and we reject the contention of the applicant that the O.A. is within limitation.

8. In view of the foregoing reasons, the O.A. is dismissed as not maintainable being time barred. No cost.



[Manjulika Gautam]
Member 'A'



{Ashok S. Karamadi}
Member 'J'