

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 4th DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. D.C.Lakha, Member (A)

Original Application No.56 of 2007

(U/s 19, Administrative Tribunal Act, 1985)

P. Balan, S/o K. Pappu,
Resident of 41-B, Basera,
Surya Enclave-B, Dayal Bagh,
Agra.

..... **Applicant**

Present for Applicant : Shri Mr. B. N. Tiwari, Advocate.

Versus

1. Union of India, through General Manager, N.E.R., Gorakhpur.
2. Divisional Personal Officer, N.E.Railway, Izzatnagar, Bareilly.
3. Divisional Rail Manager (Personal), N.E.R., Izzatnagar, Bareilly.

..... **Respondents**

Present for Respondents : Shri K.P.Singh, Advocate

ORDER

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

The applicant was initially appointed on 11.12.1970 in the respondents' Organization. For certain alleged gross mis-conduct he

was proceeded against under the Disciplinary and Appeal Rules and was dismissed from service. The dismissal order was upheld by the Appellate Authority. This made the applicant to move the Tribunal in OA No. 249/89 which was allowed on 5.5.1995. SLP No. 5336/95 filed by the respondents against the order dated 05.5.1995 was dismissed on 02.1.1996. The applicant was thereafter, taken back on duty vide order dated 15.4.1996 and arrears of pay and allowances paid. The applicant, sought voluntary retirement on 21.1.2002. After four years of his retirement the applicant has filed Original Application No. 708/2006 before the Tribunal contending that he was not paid full amounts of arrears of pay and allowance. This O.A. was disposed of with a direction to the respondents to decide the representation dated 21.8.2006 pending before the respondents. On receipt of the order of the Tribunal, when the respondents examined the claim, they found that the claim pertains to 27 years old and the records of salary paid vouchers were weeded out after the expiry of the records keeping schedule period. The applicant was informed that his case could not be considered after 27 years of the initial cause of action in the absence of relevant records Order dated 7.11.2006 refers. It is against this order that the applicant has preferred this O.A.

2. Respondents have contested the OA. They have taken the preliminary objection that the case is hopelessly time-barred. They have indicated that 10 years period is the retention schedule of records and as such it is impossible to examine the entitlement of the applicant.

3. The applicant has filed his rejoinder wherein he has stated that it is not correct to contend the records were weeded out. As regards limitation, the rejoinder states that the contention is misconceived.

4. Counsel for the applicant submitted that the applicant had been representing time and again on various dates right from 1997 till his retirement claiming his actual pay and allowances but there has been absolutely no response. Vide letter dated 09.4.2003 the applicant has furnished detailed chart of the amount of pay and allowances due to him and as such it should not be difficult for the respondent to consider the same and work out the amount due. It is not their contention that the applicant is not at all entitled to the arrears claimed by him. The difficulty they face is only about the non availability of records, that too bills etc., and not the particulars available in other documents whose retention schedule is for a longer period. As regards the limitation the applicant submitted that the Tribunal submitted that the Tribunal had directed for disposal of the representation and the impugned order on 07.1.2006, and the OA has been filed within limitation period. Counsel for the applicant submitted that it is only **repeated and unsuccessful** representations do not elongate the limitation. This would mean that if there be any rejection of any representation then the applicant has to approach the Tribunal on the basis of the same and should not resort to raising the level of representation and come to the Tribunal after a long period. When there has been no rejection at all, one has every right to wait for the decision, as there could be the possibility of respondents informing the applicants orally that the case is under consideration

and it is only in the event of non reply for a substantial time that the individual has to move the matter. Sec. 20(2) of the Act provides for approaching the Tribunal after six months and if the applicants do not get any positive response from the departments they could invoke this provision.

As regards the merits of the matter the respondents submitted that as no records have been retained it is absolutely impossible for ascertaining whether the applicant is due any amount for which he claims.

5. Arguments were heard and documents perused.

6. First, it is to be ascertained whether the matter is barred by limitation. The counsel for the applicant submits that there is no delay as the applicant had moved the Tribunal initially, and on the direction of the Tribunal to the respondents that the representations be disposed of, the respondents accordingly considered but rejected the claim. Here comes the issue whether the initial application filed by the applicant is to circumvent the delay involved.

7. The Apex court has considered this aspect in the case of *C. Jacob v. Director of Geology and Mining*, (2008) 10 SCC 115, at page 123 :

the modus of "representation"

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying to such representations relating to old matters. Taking advantage of this position,

the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee ¹²³ files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action.

8. In the instant case, the applicant had not woken up suddenly.

He had been claiming his dues right from the beginning and the pleadings indicate that periodically he had been representing and curiously, none of the representation has been responded to. Under these circumstances, he had filed the earlier O.A. If the applicant had made his very first representation just before filing the OA and tried to get an order for disposal of his representation, the mischief aimed at

by the judgment in C.Jacob would be held to subsist in this case. That is not the case here. Admittedly, the applicant was reinstated in service under the Court's order in 1996. He was paid the arrears of pay and allowances. It is found from the Annexures filed, the applicant had been expressing his grievance since May, 1999, when he has submitted as under:-

“विनम्र निवेदन है कि प्रार्थी को हाईकोर्ट के आदेशानुसार (आल बेनिफिट वीद प्रमोशन) के साथ ड्यूटी दी गयी थी । जिसमे दिनांक 20.12.78 से 06.05.96 तक वेतन एवं सभी भत्तों के साथ पेमेन्ट के आदेश थे ।

लेकिन प्रार्थी को आपके कार्यालय द्वारा टुकड़ों में दिनांक 01.04.85 से 05.05.96 तक का पेमेन्ट किया गया जिसमें वेतन + माइलेज के अलावा कुछ भी नहीं था । जबकि पेमेन्ट में माइलेज + आवास भत्ता और बोनस का भी भुगतान होना चाहिए था ।

दिनांक 20.12.1978 से 30.3.1985 तक का कोई भी भुगतान आज तक आपके कार्यालय द्वारा नहीं किया गया ।

जबकि हाईकोर्ट के आदेशानुसार दिनांक 20.12.78 से 06.05.96 तक का सभी पेमेन्ट (वेतन माइलेज आवास भत्ता बोनस) आदि का एक साथ करना था । लेकिन आपके कार्यालय द्वारा कोर्ट के आदेश का पालन न करते हुये मनमानी ढंग से टुकड़े (दिनांक 01.04.85 से 06.05.96 तक) से भी कम का भुगतान दिया गया ।

अतः आपसे अनुरोध है कि प्रार्थी को दिनांक 20.12.78 से 30.3.85 तक का वेतन व दिनांक 20.12.78 से 06.05.96 तक सभी भत्तों व बोनस का भुगतान अतिशीघ्र करवाने की व्यवस्था की जाये । एवं की गयी कार्यवाही से प्रार्थी को अवगत कराया जाये । अन्यथा प्रार्थी न्यायालय में पुनः जाने के लिए स्वतंत्र होगा ।”

9. This was repeated again a number of times. In 1999 also he had renewed his request for proper calculation and the letter dated 25.6.1999 reads as under :-

“सविनय निवेदन है कि प्रार्थी रेल सेवा में संविधान की धारा 311 (2) थी तथा रेलवे की धारा 14 (2) के अंतर्गत 19.12.78 को रिमूव कर दिया गया था ।

यह कि प्रार्थी ने इस 14 (2) के रिमूवल के खिलाफ अपना अपील माननीय उच्च अधिकारी महोदय के समक्ष अपना बचाव प्रस्तुत किया था जिसको माननीय उच्च अधिकारी महोदय ने प्रार्थी को बचाव अमान्य कर दिया तथा बाध्य होकर प्रार्थी ने न्यायालय की शरण ली जहाँ सी.ए.टी. इलाहाबाद न्यायालय ने प्रार्थी का अपील मंजूर कर उन्हें ड्यूटी में रिमूवल से रीइन्सटेट का आदेश जारी किया जिस पर माननीय मण्डल रेल प्रबन्धक कार्मिक महोदय ने न्यायालय के आदेश मान्य करते हुए कार्यालय आदेश संख्या 745 4भ संख्या का/पी.सी./लूज/पी. वालन/फा0मै 1/111 दिनांक 22.5.96 अन्तर्गत री-इन्सटेट किया और पूरे अवधि को ड्यूटी माना गया ।

यह कि प्रार्थी का वेतन का एरियर 50 प्रतिशत का भुगतान किया बाकि प्रतिशत का भुगतान अभी तक नहीं किया गया इस सम्बन्ध में प्रार्थी कई आवेदन पत्र आपके समक्ष प्रस्तुत किया है परन्तु अभी तक 50 प्रतिशत का भुगतान नहीं हुआ है ।

यह कि प्रार्थी का छुट्टी को लेखा-जोखा ठीक नहीं किया गया है । जिस कारण प्रार्थी का छुट्टी भी नहीं मिल पा रहा है इस सम्बन्ध में प्रार्थी ने कई आवेदन माननीय महोदय के समक्ष प्रस्तुत किया है परन्तु कोई भी कार्यवाही आज तक नहीं किया गया है ।

अतः श्रीमान्जी से अनुरोध है कि प्रार्थी के प्रार्थना पत्र का अवलोकन करते हुए छुट्टी का लेखा जोखा ठीक करवाने की व्यवस्था करने की असीम कृपा करेंगे । जिसके लिए प्रार्थी आपका आभारी रहेगा ।”

10. This was again followed by number of reminders. According to the applicant the amount due was Rs. 4,32,064 while the amount paid was Rs. 3,16,997. After his retirement, perhaps having more time at his disposal, the applicant prepared detailed chart and sent to the department vide letter dated 09.4.2003. It was after many more reminders that the applicant filed his earlier O.A. (O.A. No. 708/06). The Tribunal directed the respondents to consider the representation and dispose it of. And the respondents have replied as under:-

3- "O.A. No. 708/06 के अनेक्चर ए-7 एवं अनेक्चर ए-28 (दोनों छाया प्रतियों) पर संलग्न कमशः श्री पी० बालन ने आवेदन पत्र दिनांक 3.1.2005 एवं स्वनिर्मित वेतन/भत्ता चार्ट के अन्तर्गत यह दावा किया है कि दिनांक 20.12.1978 से 6.5.1996 की अवधि के वेतन एवं भत्तों के अन्तर के बकाया धनराशि जो कुल रूपया 432064 होती है, में से दिनांक 1.4.1985 से 6.5.1996 की अवधि के वेतन एवं भत्तों का आंशिक भुगतान रूपया 316997 वर्ष 1999 में उन्हें प्राप्त हो चुका है और शेष धनराशि का ब्याज सहित भुगतान उन्हें करने हेतु त्वरित गति से प्रक्रिया की जाये ।

4- उपर्युक्त सम्बन्ध में विचारोपरान्त निम्नलिखित आदेश किये जाते हैं -

I बकाया भुगतान का दावा 27 वर्ष अधिक पुराना है ।

II श्री पी० बालन को रूपया 316937 का भुगतान वर्ष 1999 में हो चुका था, जबकि उसके 6 वर्ष के विलम्ब के पश्चात् उन्होंने दिनांक 3.1.2005 को बकाया धनराशि के भुगतान हेतु प्रतिवेदन किया है जो कि टाईम-बाई दावा है ।

III दावे के समर्थन में श्री पी० बालन ने कोई प्राधिकृत प्रलेख नहीं प्रस्तुत किया है, जिससे उसकी जाँच की जा सके ।

IV पुराने अभिलेखों के नष्ट करने सम्बंधी प्रक्रिया जो महा प्रबन्धक (कार्मिक) गोरखपुर के परिपत्र सं E/576/2 (iv) दिनांक 17.10.1988 द्वारा प्रचारित है, के सूची के मद संख्या 177 एवं 293 के अनुसार कमशः "पेमेन्ट आफ सैलरी एण्ड एलाउन्स बिल्स" तथा "फोल्डर कन्टेनिंग आफिस कापीज आफ सैलरी बिल्स एण्ड एकम्पनिंग डाक्यूमेन्ट्स" के रखने जाने की अवधि 10 वर्ष है । तदनुसार, प्रश्नागत अवधि का वेतन बिल नष्ट किया जा चुका है, जिसके कारण दावे की जाँच सम्भव नहीं है ।

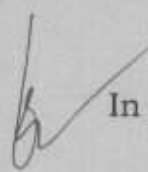
अतः उपर्युक्त कारणों से बकाया भुगतान का दावा विचारणीय नहीं है ।"

11. This is not a case where the applicant suddenly woke up to stake his claim. He had been continuously representing but unfortunately could not get response even to a single representation. True, he could have insisted for settlement of his accounts at the time of his voluntary retirement when all the records should have been

available. Though the respondents claimed that the records pertain 1975 onwards and record retention schedule is only 10 years, since the applicant was reinstated in 1996 only, and as the respondents had worked out the arrear of pay and allowances thereafter, the records must have been available with them in late 90s. In any event the service book would have indicated the extent of pay and allowances. the applicant was due in various years. Thus, it is not that the applicant alone who was responsible but the respondents also are equally recalcitrant in not answering even one of the scores of representation made by the applicant.


12. Assuming that there has been delay, then again, as long as the claim of the applicant does not encroach upon in the area of vested right of other individuals, the delay if any could be condoned. In this regard, support could be drawn to the case of *Union of India v. Tarsem Singh*, (2008) 8 SCC 648, wherein, the Apex Court has held as under:

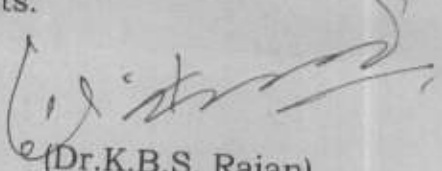
7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, **if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties.** But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition. (emphasis supplied)

 In the instant case, thus, limitation would not apply.

13. While the retention schedule in respect of bills and vouchers could be for a limited period, in all expectation the retention schedule for service book at least should be for a longer period than 10 years. The service book would reflect the pay scale on various stages. It may not be too difficult for the respondents to workout the amount payable to the applicant with the help of the service book as well as the chart furnished by the applicant. If it not possible to workout accurately, the general manager could consider payment of any sum that the applicant could be paid his arrears of pay and allowances. There may be the Gap between the claim of the applicant and calculation of the respondents made with the available records. This difference has to be waived by the applicant as he is also blamed for the delay.

14. In view of the above, O.A. is disposed of with a direction of the General Manager, N.E.R., Gorakhpur to consider the case of the applicant who may cause instruction issued to the Chief Personal Officer/Sr. Divisional Personal Officer to calculate, with the help of the available records, the dues payable to the applicant and make the same available to the applicant. Time scheduled for compliance of this order is 4 months from the date of communication of this order. If further time is warranted on justifiable grounds ^{if} necessary application in advance may be filed which ^{will be} ~~have to~~ be considered by the Tribunal at the proper time. No costs.


(D.C. Lakha)
Member (A)


(Dr. K.B.S. Rajan)
Member (J)

Shashi