

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /53/93
T.AXNO.

DATE OF DECISION 29th March 2000

Smt. Taraben P. Bhatt Petitioner

Mr. P.H. Pathak Advocate for the Petitioner [s]
Versus

Union of India and another Respondent

Mr. N.S. Shevde Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lerdships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Smt. Taraben P. Bhatt
Widow of P.B.Bhatt
15/A, Hirabaug Co.op. Hsg.
Nr. Sardar Patel School
Vallabhwadi, Maninagar
Ahmedabad- 380008.

Applicant

Advocate:- Mr. P.H.Pathak

Versus

1. Union of India
Notice to be served through
General Manager
Western Railway
Churchgate, Bombay.

2. Divisional Railway Manager
Western Railway
PratapNagar, Baroda.

Respondents

Advocate:- Mr. N.S. Shevde-

JUDGEMENT

IN

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Dated 29 March 2000

O.A./53/93

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The original applicant retired from Railway Service on 1.6.1981 and had approached the Tribunal seeking the following reliefs:-

(A) The Hon'ble Tribunal be pleased to direct the respondents to grant the benefits of promotion in the scale of Rs.455-700 to the applicant from 9/13.4.76 as the consequences of setting aside the penalty imposed on the applicant by the appellate authority, with 18% interest.

(B) Be pleased to declare the action on the part of the respondents not granting the benefits of promotion in scale of Rs.455-700 to the applicant in 1976, not considering his case on the ground of pending major DRA, as illegal, invalid and inoperative in law and be pleased to direct the respondents to consider the applicant in the scale of Rs.455-700 from 13.4.76 and grant all consequential benefits with 18% interest.

(C) Be pleased to declare the action on the part of the respondents ~~not granting~~ the time scale of pay of Rs.550-750 from the date when his juniors are granted the benefits and grant him the arrears of wages, amount of gratuity and retirement dues with 18% interest and further direct to fix the pension of the applicant accordingly.

(D) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

2. He had also filed an M.A. for condonation of delay. The Tribunal initially allowed the M.A. by its orders dated 27.4.93. The Railway filed Review Application 21/93 and it was disposed of by the Tribunal by its orders dated 15.9.93 where the Tribunal observed that the delay was condoned in filing the O.A. because the O.A. is directed against the judgement of the Labour Court dated 14.5.92 and the O.A. was filed on 28.12.92. The Tribunal also stated that even though delay in filing the O.A. against the Labour Court Judgement was condoned it would be open to the Respondents to urge in the O.A. that the same is barred by delay and laches.

3. Subsequently the original applicant expired and the widow was permitted to prosecute the O.A.

4. The Original applicant was serving in the Railway service in the scale of Rs.425-640. He was served with a chargesheet and a penalty of stoppage of increment for one year without cumulative effect was issued by the Disciplinary Authority by its order dated 10.9.75. He filed an appeal dated

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26.12.76 and the appeal was disposed of by an order dated 18.5.77 which allowed the appeal and cancelled the penalty. The original applicant was subsequently promoted to the next higher level in the scale of Rs.455-700 by order dated 31.12.77 as at Annexure A-4. He joined the post in that scale w.e.f. 4.1.78. He submitted a representation in September 1978 praying for advancing his promotion ~~to~~ from 9.4.76 instead of from 4.1.78 on the ground that his junior has been promoted to that level and that on account of cancellation of the penalty, he was entitled to be promoted from the date his junior was promoted. We find that he was further promoted to the next higher grade of Rs.550-750 by order dated 27.3.1980 and his pay was fixed at Rs.675/- w.e.f. 31.12.79. He approached the Labour Court, by Recovery Application No.340 of 1982 under section 33-C (2) of the Industrial Disputes Act. In that application he had sought for difference of pay from 1976 onwards besides difference of pension and gratuity etc. The Labour Court noted that the grievance essentially related to his non-promotion from an earlier date and that the O.A. was not maintainable under section 33-C (2) of the I.D. Act. It also observed that the

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claimant cannot sleep over his rights. The applicant then approached this Tribunal with the present O.A. alongwith the M.A. for condonation of delay which was dealt with in the manner indicated earlier.

5. Mr. Pathak for the applicant says that on the cancellation of the penalty it should be taken that the applicant is exonerated fully and he should have been given promotion to the higher grade of 455-700 from 1976 when his junior was promoted to that level. He also contends that the Railways have not disputed the merits of the claim but have taken the plea that the O.A. is barred by limitation. Mr. Pathak submits that the Original applicant submitted a representation in Septr.1978 and he was informed of his pay fixation by order dated 27.3.80 as at Annexure A-6. He approached the Labour Court in 1982, but the Labour Court had not given the relief on the ground that it is not under its jurisdiction. Mr. Pathak says that if -the applicant had approached the Civil Court, the matter would have been dealt with by that Court or would have been transferred to this Tribunal after 1985 and there will be no question of any delay. Mr. Pathak also says that the Supreme Court has held that substantive justice should not be defeated by technical considerations. When

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the Railways have not disputed his claim on merits they cannot deny the same on the ground that it is barred by limitation. Mr. Pathak also submits that the applicant has since retired and the widow is drawing Family Pension which is a recurring right. In any case there is an entitlement for pension for three years prior to filing of the O.A. even if financial arrears are denied. Mr. Pathak says that the applicant should not be deprived of the legitimate dues because of approaching the Labour Court.

6. Mr. Shevde for the respondents resists the O.A. He says that the application is clearly barred by delay and laches. He contends that the original applicant's grievance arose when his junior was promoted in 1976 and after the appeal was filed on 18.5.77 he should have agitated his non-promotion immediately. He waited for many years and approached the Labour Court only in 1982 which is more than three years from the date on which the cause of action arose. He was promoted to the grade of 455-700 by order dated 31.12.77 as at Annexure A-4 and he took charge of the post from 4.1.78. Even then the original applicant had not approached the Labour Court in time. Mr. Shevde also argues that it is not as if the Labour Court had no jurisdiction at all, but

the ~~Review~~ ^{original} applicant filed the case under wrong section of the I.D. Act instead of raising an industrial dispute. Mr. Shevde also does not agree that what is sought for is a recurring claim. The original applicant is aggrieved by his non-promotion to the grade of 455-700 w.e.f. 1976 As regards his pay fixation in 1980, the fact is that his pay was fixed by order dated 27.3.80 in the next higher scale of Rs.550-750 at a certain stage on the basis of the actual promotion and there is no recurring cause of action.

Mr. Shevde reiterates that the Tribunal has no jurisdiction to entertain such a case ~~one~~ which is entirely barred by delay and laches as what the applicant is aggrieved about is his non-promotion in 1976. He cannot challenge the orders of the Labour Court before this Tribunal as this Tribunal has no jurisdiction to entertain such application. The grievance arose in 1976 and in any case not later than May 1977 when the penalty was quashed and the junior has already been promoted.

7. We have carefully considered the rival contentions. Mr. Pathak had urged that the claim of the Original applicant relates to pension and the legal heir to the family pension and it is a recurring right and while arrears may be delayed the benefits should be given prospectively for three

years prior to the filing of the O.A. The question of a recurring right would arise if the pay had not been fixed as per the rules. In the present case, the applicant's pay was fixed on the basis of his promotion to the grade of Rs.455-700 w.e.f. January 1978 and his subsequent promotion to the grade of 550-750 w.e.f. December 1979. So long as the dates of promotion stand, the pay has been fixed properly and it cannot be held that the pay has not been fixed in accordance with the rules. What is challenged in the present O.A. is essentially his late promotion to the grade of 455-700 w.e.f. January 1978 instead of from April 1976. The grievance relates to his promotion and not to pay fixation and promotion is not a recurring cause of action. The ratio of the Supreme Court decision in the case of M.R. Gupta vs. Union of India 1995 (5) SCALE 29 does not apply to the present case. We therefore, reject the contention that the grievance in this O.A. is a recurring cause of action.

8. It is also well settled that this Tribunal cannot entertain an appeal against the orders of the Industrial/Tribunal and it is not also the relief sought for in this O.A.

9. Mr. Pathak has argued that if the Original applicant had approached the Civil Court in time

he would have been within the limitation. Mr. Shevde has countered this argument saying that he first approached the Labour Court only in 1982 more than three years after the cause of action arose and never approached the Civil Court. It is not necessary to go into the hypothetical question as to what would have happened if he approached the Civil Court. The fact is that he approached the Labour Court in 1982 by a Recovery Application without challenging delay in his promotion. The original applicant cannot seek to take advantage of the lapse. Mr. Pathak had argued that there is no ~~fix~~ limitation in so far as the Industrial Tribunal is concerned and has referred to Supreme Court decision in the case of Ajaib Singh 1999(2) M Scale 508 vs. The Sirhind Co-operative Marketing Co-operative Processing Service Society Limited 1999(2) SCALE 508 and another. This is in context of a making a ~~reference~~ reference to Industrial ~~Court~~ Tribunal and is not applicable to this Tribunal.

10. The issue ~~is~~ ^{is to be} ~~is~~ ^{is} whether it is open to this Tribunal to entertain a grievance arising prior to 1.11.82 has been gone into by the Tribunal in the case of V.K.Mehra vs. The Secretary, Ministry of Information and Broadcasting ATR 1986 CAT 203. We may refer to the Head Note which is ~~given~~ given below:-

"Held:

The Act does not vest any power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1.11.1982. In such a case there is no question of condoning the delay in filing the petition but it is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 1.11.1982. The limited power that is vested to condone the delay in filing the application within the period prescribed is under section 21 provided the grievance is in respect of an order made within 3 years of the constitution of the Tribunal. The Tribunal has jurisdiction under sub-section (2) of section 21 to entertain an application in respect of 'any order' made between 1.11.1982 and 1.11.1985.

Where, therefore, the application relates to a grievance arising out of an order dated 22.5.1981, a date more than 3 years immediately preceding the constitution of the Tribunal, the Tribunal shall have no jurisdiction, power or authority to entertain the same, though it is filed within six months of its constitution as contemplated by sub-section (3) of section 21 of the Act."

The same position was followed by this Tribunal in the case of V.S. Raghavan vs. Secretary to the Ministry of Defence (1987) 3 ATC 602.

We may refer to the Head Note in this case which reads as follows:-

"Administrative Tribunals Act, 1985- Section 21- Limitation- Cause of action arising long before three years prior to the date of enforcement of the Act- Application leased on- Held, time barred.

(Para 2)

Administrative Tribunals Act, 1985- Limitation- Representation made seven years after accrual of cause of action- Time consumed in disposal of such a representation, held, not to be excluded from the period of limitation.

(Para 2) ".

This has been reiterated in the case of R.Sangeetha Rao vs. Union of India (1989) 11 ATC 516, The Head Note in this case reads as follows:-

" Administrative Tribunal Act, 1985- Sections 14(1), 21(2) and 21 (3)- Limitation- Jurisdiction of the Tribunal to entertain matters where cause of action arose before 1.11.1982- Held, the Act was prospective- Hence, there was no jurisdiction in such matters- Nor could power to condone delay be exercised- Applicant superseded in 1975 but promoted in 1977- Objections on seniority list however invited on 1.8.1986- Thereafter, applicant filing application before the Tribunal- Held on facts, cause of action arose in 1975- Hence, application was beyond jurisdiction of the Tribunal.

(Paras 10,12 and 15)".

11. So far as the present applicant is concerned, we note that it is not a transfer application from the Civil Court. The original Applicant had approached the Labour Court by a recovery application and had not chosen to challenge his delayed promotion before any competent forum. The grievance related to his delayed promotion to the scale 455-700 w.e.f. 4.1.78 instead of from April 1976. Once his appeal was allowed by order dated 18.5.77, and the penalty was cancelled, he should have taken immediate steps seeking such promotion as his junior was promoted from April 1976. He did not do so. The original applicant was promoted by order dated 31.12.77 to the grade of Rs.455-700 and he took over with effect from 4.1.78 and submitted w a representation in September 1978. The cause of action arose immediately after his appeal was allowed

in May 1977 as his junior was already in position in the higher grade from April 1976. As the cause of action had arisen in 1977 well before 1.11.1982, this Tribunal has no jurisdiction to entertain such matters and which is barred by limitation and this Tribunal does not also have the powers to condone the delay.

12. In the light of this position, we hold that the application is barred by limitation and has to be dismissed. We direct accordingly without any orders as to costs.

P. Kannan
(P.C. Kannan)
Member (J)

V. Ramakrishnan
28/11/1982
(V. Ramakrishnan)
Vice Chairman

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FORM NO. 21

(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BENCH

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Smt. T. P. Bhatty APPLICANT (s)

VERSUS

VERSUS U.O.I. & ORS. RESPONDENT(s)

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Certified that the file is complete in all respects.

Signature of S.O. (J)

Signature of Dealer. Hand.

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