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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No. 93 of 1986

Date of decision : December 15, 1988.

Haribandhu Mohanty,
Village & P.O. Pañcha Palli,
Via. Borikina, Dist- Cuttack ... Applicant.

Versus

1. Union of India, represented by Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-chief (Branch) Army Head Quarter, New Delhi.
3. Chief Engineer, Head Quarter, Eastern Command, Fort William, Calcutta- 700 021.
4. Chief Engineer, Calcutta Zone, Ballygunj Maidan Camp, Calcutta- 19.
5. Commander Work Engineer, Calcutta 1 Strendate Road, Calcutta-27.
6. Garrison Engineer, Ishapur, P.O. Nawab Gaunge, 24 Praganas (West Bengal).
7. Garrison Engineer, Tezpur, P.O. Degargawa, Dist-Sonitput, Assam- 784 501.
8. Controller, Defence, Accounts (Pension), Allahabad, Draupadigah, Uttar Pradesh.

... Respondents.

Mr. Prasanna Kumar Rath, Advocate .. For Applicant.

Mr. Ganeswar Rath, Addl. Standing Counsel (Central) .. For Respondents.

C O R A M :

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *yes*
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P. ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to command the respondents to count his services for the purpose of pensionary benefits with effect from 1951 to 1963 and so also to command the respondents to give arrear salary to the petitioner to which he is entitled to with effect from 16.2.1951 to 16.7.1963.

2. Shortly stated, the case of the petitioner is that he was initially appointed on 10.9.1945 as a Packer in the Military Engineering Service, Eastern Command, Ministry of Defence, Government of India, Kidderpore. In course of time, in the year 1946, the petitioner was promoted to the post of a Store Keeper, Grade II. In 1948 a criminal case was started against the petitioner which formed subject matter of G.R. Case No. 123 of 1949. This was disposed of by a Court (West Bengal) and the trial Court acquitted the petitioner of the charges levelled against him. After such acquittal, a departmental proceeding was initiated against the petitioner which resulted in his dismissal on 27.7.1951. The petitioner filed a suit in a court exercising civil jurisdiction in the State of West Bengal and the suit was decreed in favour of the petitioner quashing the order of punishment. The matter was carried in appeal by the departmental authorities which formed subject- matter of Title Appeal No. 257 of 1956 and the said appeal was dismissed on 29.9.1956. The

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Department again carried the matter to the Hon'ble High Court of Calcutta in Second Appeal which formed subject-matter of Second Appeal No. 943 of 1957 and the Hon'ble High Court of Calcutta dismissed the second appeal on 29.6.1962 and thereafter on 16.7.1963 the petitioner was reinstated to the post of Grade II Store Keeper. Later the petitioner retired on superannuation on 31.7.1985. Before retirement on superannuation, the petitioner had made representations for payment of his arrear salary and also made representations after retirement to count his services with effect from 1946 to 16.7.1963- the date of his reinstatement. Grievance of the petitioner is that his arrear pay after reinstatement from the date of dismissal has not been paid and so also services of the petitioner from the date of dismissal till reinstatement is not being computed in his favour and therefore this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the case is grossly barred by limitation under the Limitation Act and therefore the application should not be allowed and being devoid of merit should be dismissed.

4. I have heard Mr. P.K. Rath, learned counsel for the petitioner and Mr. Ganeswar Rath, learned Additional Standing Counsel for the Central Government at some length. Before I proceed to express my opinion on the contentions raised on behalf of both sides, it would be worth-while to mention that the above mentioned facts pleaded on behalf

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of the petitioner are admitted. In their counter the Opposite Parties dohot dispute the fact that the petitioner was promoted to thepost of Store Keeper Grade II and that Title Suit No. 253 of 1952 had ended in favour of the petitioner and thereafter confirmed both in Title Appeal and in the Second Appeal. Such being the situation, the departmental authorities had rightly reinstated the petitioner on 16.7.1963. The moot question that now arises for determination is as to whether the petitioner is entitled to his arrear salary with effect from 27.7.1951 i.e., the date of dismissal from service and 16.7.1963 i.e., the date on which the petitioner was reinstated and so also this Bench is required to give a finding as to whether the services of the petitioner should be counted from 1951 to 1963 for the purpose of pensionary benefits.

5. Mr. Ganeswar Rath, learned Additional Standing Counsel (Central) vehemently contended that even though the Central Government admits all the facts stated by the petitioner yet, the case being barred by limitation under the General Law of Limitation Act, the petitioner is not entitled to the relief claimed by him so far as the arrear salary is concerned. Accordingto thelearned Additional Standing Counsel it was incumbent upon the petitioner to take protection of a court exercising civil jurisdiction within three years from 16.7.1963. The petitioner not having availed the protection of a court exercising civil jurisdiction,

it is no longer open to him to claim any relief from this Bench. Secondly it was urged by Mr. Rath that this court cannot exercise territorial jurisdiction in regard to the cause of action said to have arisen in favour of the petitioner because the petitioner was last serving at Tezpur within the State of West Bengal and the criminal case and the cases decided by courts exercising civil jurisdiction were of the State of West Bengal and therefore it is the Central Administrative Tribunal, Calcutta Bench who could legitimately exercise territorial jurisdiction over this matter.

6. So far as the first point urged by Mr. Rath is concerned, I am unable to accept his contention because of the following reasons :

Law is well settled that unless the amount due to the petitioner is settled or determined, Article 7 of the Limitation Act would have no application. Mr. Rath, learned Additional Standing Counsel relied up-on a judgment of the Hon'ble Supreme Court reported in A.I.R. 1962 Supreme Court 8 (Madhab Laxman Vaikuntha vrs. State of Mysore) and contended that the claim was barred by limitation. In my view principles laid down by Their Lordships in the case of Madhab Laxman Vaikuntha (supra) have no application to the facts of the present case. Their Lordships of the Hon'ble Supreme Court held the claim to be barred by limitation because the appellant before Their Lordships had claimed recovery of arrear salary which had accrued in his favour due

to the order of reversion passed against him having been declared to be void and inoperative. In the said case decided by Their Lordships, the salary had been fixed and definite amount for a particular period was claimed by the appellant before Their Lordships and the appellant not having come to court for redressing his grievance within the statutory period of limitation, Their Lordships held that the arrear claim for a particular period was barred by limitation. In this case the claim has not been determined as yet. In such circumstances, I am of opinion that Article 7 of the Limitation Act has no application to the facts of the present case. My view gains support from a judgment of the Hon'ble High Court of Guahati reported in A. I. R. 1974 Guahati 10 (State of Assam vrs. Gopal Krishna Mehera). Hon'ble High Court of Guahati has also taken into account the judgment of Hon'ble Supreme Court reported in A. I. R. 1962 Supreme Court 8 and the Hon'ble High Court of Guahati has distinguished the judgment of the Hon'ble Supreme Court on the very same grounds stated above. The appellant before Their Lordships of Guahati High Court had retired as Director of Veterinary and Animal Husbandry on 31.3.1963. During the incumbency of the appellant before Their Lordships, as such he had been put under departmental proceeding, suspended and ultimately he was relieved of the proceeding and suspension and the Government had ordered payment of 3/4th of his pay during the period of suspension. During the time when the appellant before Their Lordships was under suspension the pay scale of Director of Veterinary was revised and he

had claimed 3/4th of the pay according to the revised scale which was denied to him. Hence the appellant before Their Lordships filed a suit for declaring that he was entitled to the whole of the amount of the increment as due under the revised scales of pay which came into force with effect from 1.10.1956 till 31.3.1963 i.e., the date of retirement and he also prayed for a decree declaring the order of the Government denying him the revised pay scale to be illegal and inoperative. In view of the relief claimed by the appellant before Their Lordships it was held by Their Lordships that the revised scales of pay claimed by the appellant not having been fixed by the Government, the case cannot come within the scope and ambit of Article 7 of the Limitation Act and it was further held by Their Lordships that the judgment of the Hon'ble Supreme Court reported in A.I.R.1962 SC 8 had no application to the facts of the case decided by the Hon'ble Court of Gauhati. I am of the view that the facts constituting the present case being similar to the facts of the case decided by Hon'ble High Court of Guahati say I would that the principles enunciated by Their Lordships of the Supreme Court in the case reported in A.I.R.1962 S.C. 8 have no application to the facts of the present case. I am in respectful agreement with the view taken by Their Lordships of Guahati High Court and I would also add that the very same view has been taken by Hon'ble High Court of Punjab in a case reported in A.I.R.1968 Punjab 58 (State vrs. Bhagaban Singh). In view of the

fact that the amount has not been determined so far as the present case is concerned and the petitioner has been going on making representations which not having been disposed of by the competent authority, Article 7 would have no application to the peculiar facts and circumstances of the case and therefore I find no merit in the contention advanced by the learned Additional Standing Counsel (Central) that the case is barred by limitation.

7. So far as the second point urged by learned Additional Standing Counsel for the Central Government is concerned regarding territorial jurisdiction at the outset it may be stated that the rules framed under the Administrative Tribunals Act, 1985 have since been amended and it specifically lays down that place of residence of the petitioner would vest territorial jurisdiction over a particular Bench within whose jurisdiction the petitioner resides. Admittedly the petitioner is now residing within the jurisdiction of this Bench and therefore he has a right to ventilate his grievance before this Bench. Apart from the above rules, I would like to mention that in a case of similar nature, the Division Bench of this Tribunal have discussed the question of territorial jurisdiction in extenso in the case of Md. Zahoor Ahmed Rahim vrs. Union of India and others in Transferred Application No. 184 of 1986, disposed of on December 24, 1986. In the said case, petitioner Md. Zahoor Ahmed Rahim was offered an

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appointment as a Catering Manager and he was asked to report to duty at Gorakhpur. The petitioner went to join at Gorakhpur but subsequently no order of appointment having been issued, the petitioner filed an application under Article 226 of the Constitution before the Hon'ble High Court of Orissa to command the respondents in the said case to absorb him in the post which he was offered to him for appointment. In course of time by operation of section 29 of the Administrative Tribunals Act, 1985, the case was transferred to this Bench for disposal and was renumbered as Transferred Application No. 184 of 1986. Objection in the said case was taken on behalf of the Central Government that this Bench had no territorial jurisdiction to give any direction in regard to a matter relating to Gorakhpur. In the said judgment the Division Bench had dealt with the case of Md. Khalil Khan and others versus Mohabul Ali Mian and others reported in A.I.R. 1949 P.C. 78 and so also a judgment of the Hon'ble High Court of Madras reported in A.I.R. 1971 Madras 155 (L.V. Veeri Chettiar and another versus Sales Tax Officer, Bombay). The Division Bench had also relied upon a judgment of the Hon'ble High Court of Orissa reported in 1977 (2) CWR 874 (S.P. Gantayat versus Principal, Regional Engineering College, Warangal (A.P.)). In the case of S.P. Gantayat, it is found that his son Sudhansu Gantayat aged 17 years after passing I.Sc. Examination from the Utkal University had made an application for a seat in B. Tech. First Year Class in Regional Engineering College, Warangal which was duly

forwarded through the Director, Technical Education, Orissa. Four seats in the First Year Class of B. Tech. in the college were reserved for the students of Orissa. The principal of the College sent a letter to Cuttack requesting the petitioner's son to be present in the college with his original certificates etc. and in pursuance thereto the petitioner and his son appeared before the Principal on the date fixed. The son of the petitioner was admitted into the College and he was allotted Roll No. 6309. Thereafter the petitioner received a registered letter from the Principal of the College intimating that the provisional admission of Sudhansu was cancelled as the same was due to a clerical error. For adjudication of this matter by the Hon'ble High Court of Orissa a preliminary objection was taken as to the exercise of territorial jurisdiction and Their Lordships after considering the above mentioned judgments in the case of S.P. Gantayat (supra) have held that if a part of the cause of action has arisen within the territorial jurisdiction of a particular High Court especially when and where the plaintiff/petitioner suffers the consequences then such High Court can exercise its territorial jurisdiction to adjudge the matters forming subject matter of the litigation in question. It has now been settled by the Hon'ble Supreme Court in the case of S.P. Sampat Kumar vrs. Union of India, reported in A.I.R. 1987 Supreme Court 386 that the Administrative Tribunal is a substitute for the High Court and not supplemental and therefore in ~~not~~ ⁱⁿ my opinion if the High Court

could exercise territorial jurisdiction over a matter in which the Respondent- Opposite Party was residing in Andhra Pradesh and his office was situated in the same State and following the same view, if the High Court of Orissa could exercise territorial jurisdiction over Warangal, then undoubtedly Central Administrative Tribunal, Cuttack Bench can safely exercise territorial jurisdiction over a matter which relates to another State if the petitioner has suffered the consequences or a part of cause of action has arisen within the jurisdiction of this Bench. Averting to the facts of the case, I find from several annexures that after supersession the petitioner has been repeating his representations from his place of residence within the State of Orissa that his arrear salary and his pensionary benefits should be given to him calculating from 1951 to 1963. As yet the matter not having been allowed or denied, the cause of action of the petitioner continues within the territorial jurisdiction of this Bench and the amount not having been determined as yet, question of limitation running against the petitioner does not arise and further more I am of opinion that this Bench could legitimately exercise territorial jurisdiction over this matter due to the above mentioned facts and circumstances .

8. Coming to the questions of fact, I am of opinion that the Second Appeal having been dismissed by the Hon'ble High Court of Calcutta and the

and the decree of the trial court having been confirmed the petitioner has a right to be reinstated and he has been rightly reinstated by the departmental authorities on 16.7.1963 which is not disputed before me. The petitioner having been reinstated on 16.7.1963 it is deemed that the petitioner is reinstated with effect from 27.7.1951 i.e., the date on which the petitioner was dismissed as a result of the departmental proceeding. Such being the situation, the petitioner is definitely entitled to his arrear salary from 27.7.1951 till 16.7.1963 and therefore he should be paid his arrear salary for the aforesaid period. The petitioner is also entitled to his arrear salary from 1948 to 1951 less already drawn in regard to the subsistence allowance.

9. In conclusion, I would direct that the petitioner be paid his arrear salary from 1948 to 1951 less already drawn towards subsistence allowance and his full emoluments to which the petitioner is entitled according to rules from 27.7.1951 to 16.7.1963 be paid to the petitioner. Necessarily the services of the petitioner from 10.9.1945 to 16.7.1963 shall be taken into consideration for calculating the pensionary benefits. I would further direct that the arrear salary for the period mentioned above be paid to the petitioner within six months from the date of receipt of a copy of this judgment and the pensionary benefits be accordingly calculated and revised and refixed and the same be paid to him within six months from the date of receipt of a copy of this judgment.

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10. Thus, the application stands allowed
leaving the parties to bear their own costs.



K. G. Roy
15.12.88
Member ("Judicial")

Central Administrative Tribunal,
Cuttack Bench.
December 15, 1988/Roy, Sr.P.A.