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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 248 of 1990

Date of decision : September 27, 1991.

Noor Hussain ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. Pradeep Mohanty,
B.P. Ray,
M.M. Dhal, Advocates.

For the respondents ... Mr. D. N. Misra,
Standing Counsel (Railways)

C O R A M:

THE HONOURABLE MR. K. F. ACHARYA, VICE-CHAIRMAN

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? ~~No~~ Yes.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

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JUDGMENT

K. P. ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to direct the respondents to disburse the arrear salary of the applicant with effect from 1964 onwards and so also to direct payment of arrear salary from 23.4.1968 to 5.5.1970 during the period he was kept out of employment and so also to direct the respondents to fix the pay scale of the applicant as per 1973 and 1986 revised Scales of Pay Rules.

2. Before I state the facts of the case of the applicant it is worthwhile to mention that while the case was admitted for hearing on 29.8.1990 it was ordered that the case is admitted only in respect of the relief No. (ii) of the application subject to limitation.

Hence relief Nos. (i) and (iii) were not pressed.

Accordingly, learned counsel for the applicant confined his arguments to relief No. (ii).

3. Shortly stated, the case of the applicant is that he was appointed as a casual Khalasi in the year 1963 under Respondent No. 2, having been appointed against a substantive post, on 5.12.1964. While working as such ^{as} casual Khalasi he was allowed to drive ^a Jeep as by then the applicant had obtained a driving licence and in the post of Driver the applicant was regularised in the year 1966. On 23.4.1968 the services of the applicant as Driver were terminated and the applicant was reinstated into service as a Jeep Driver on 6.5.1970. Other facts relating to prayer Nos. (i) and (iii) need not be stated because this case is confined to prayer No. (ii) in which the applicant seeks for a direction for payment of salary from 23.4.1968 to 5.5.1970.

4. In their counter, the respondents maintained that the case is grossly barred by limitation and furthermore the applicant is not entitled to any salary because he has rendered no service to the Department, and therefore the claim put forth by the applicant on this account is misconceived and hence the case is liable to be dismissed.

5. I have heard Mr. H. M. Dhal, learned counsel for the applicant and Mr. D. N. Misra, learned Standing Counsel (Railways) at a considerable length. Mr. Misra, learned Standing Counsel (Railways) strenuously urged before me that apart from the fact that the question of fact, the case being grossly barred by limitation under section 21 of the Administrative Tribunals Act, 1985, the case should

be dismissed in limine. The Administrative Tribunals Act, 1985 came into force with effect from 1.11.1985. The mandatory provisions contained under section 21 of the said Act is that the Tribunal cannot take cognizance of any cause of action which is said to have been created in favour of a person aggrieved three years prior to the commencement of the Act i.e. the cause of action which is said to have occurred prior to 1.11.1982. On this point, there are a beadroll of judgments delivered by the Principal Bench and consistently followed by other Benches. This settled position of law was rightly and fairly not disputed at the Bar. Applying the principles laid down in those judgments to the facts of the present case, no one would find that the applicant wants a direction to be issued for payment of his salary between 23.4.1968 and 5.5.1970 which is practically 12 years prior to 1.11.1982. I find that there is substantial force in the contention of Mr. Misra, learned Standing Counsel (Railways) that the case is grossly barred by limitation and that the Bench has no option to consider condonation of delay because of mandatory and statutory provision contained in Section 21 of the Administrative Tribunals Act, 1985.

6. Apart from the above, on questions of fact, the applicant is not entitled to any salary during this period because admittedly the applicant had not rendered any service as his services stood terminated with effect from 23.4.1968 to 5.5.1970. Therefore, on the wholesome principle of 'No work no pay' the applicant is not entitled to any emoluments during this period.

Yours

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7. Hence, I find no merit in this application which stands dismissed leaving the parties to bear their own costs.



L. G. S. S. B.
27.9.91
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Vice-Chairman