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(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 653 of 1995

Cuttack this the 24th day of July, 1996

Prahallad Chandra Nayak ... Applicant (s)

Versus

Union of India & Others ... Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Y*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Y*

Naveen Kumar
(N. SAHU)
MEMBER (ADMINISTRATIVE)

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(7)

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 653 of 1995

Cuttack this the 24th day of July, 1996

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

...

Prahallad Chandra Nayak ...
Son of Late Dibyasingha Nayak
of Village : Orada
Post: Kolhahat,
Dist: Bhadrak

Applicant

...

At present residing at:
Plot No.107, Satya Nagar
Bhubaneswar

M/s. L. Mohapatra
M.R. Mohanty-2
R.N. Pal
S.C. Mohanty
A.R. Mishra
B.K. Nayak

By the Advocate:

Versus

1. State of Orissa
represented through Principal
Secretary to Government and
Special Secretary to Government
General Administration Deptt.,
Secretariat Building
Sachivalaya Marg
Bhubaneswar
2. Secretary
Mining and Geology Department
Government of Orissa,
Secretariat Building
Sachivalaya Marg
Bhubaneswar
3. Deputy Secretary to Government,
General Administration Department
Secretariat Building
Sachivalaya Marg
Bhubaneswar
4. Union of India represented
through Accountant General of
Orissa, Sachivalaya Marg
Bhubaneswar

Respondents

By the Advocate:

Shri K.C. Mohanty
Government Advocate
(State of Orissa)
for
Respondents 1 - 3

Shri Akhaya Mishra,
Additional Standing
Counsel (Central)
for
Respondent - 4

...

O R D E R

MR. N. SAHU, MEMER (ADMINISTRATIVE): The applicant challenges the refusal to award interest on delayed payment of D.C.R.G. due to him after his retirement. The applicant, a member of Indian Administrative Service, retired on 30.11.1986 as Additional Secretary, Government of Orissa, Mining and Geology Department. He submitted his pension papers on 5.11.1985, one year before his retirement. He sent service particulars and pay particulars as desired by the employer, General Administration Department, on 12.12.1985 vide Annexure-2. On 26.7.1986, the G.A. Department wrote to the Accountant General for information relating to government outstanding dues in respect of House Building Advance (H.B.A) and motor-car advance. On 11.11.1986, the applicant intimated that interest on motor-car advance could be deducted from his gratuity. On 13.12.1986, two weeks after his retirement the applicant wrote a letter again conveying his consent for recovery of interest on car loan and H.B.A. from D.C.R.G. By Annexure-6, a letter dated 20.1.1987, the A.G. was informed by the G.A.

Department for finalisation of pension matters and D.C.R.G. of the applicant although "No Due Certificate" was not received from the concerned Department. In February, 1988, i.e. one year later, the D.C.R.G. amounting to Rs.78,000 was paid to the applicant withholding a sum of Rs.1000 which was paid later on. On 20.9.1988 there was a representation by the applicant to pay interest on delayed payment of D.C.R.G. dues. This was not responded to by the Government. Seven years later on 10.6.1995, the applicant addressed a letter to the Principal Secretary to Government for payment of interest for the period upto February, 1988. By a letter dated 31.5.1995, the Government informed that the State Government was not responsible for the delay and therefore, the question of interest for the delayed payment of D.C.R.G. by the State Government did not arise. They have advised the applicant to write to the A.G. office directly for payment of interest due to delayed payment of D.C.R.G. A similar letter was addressed on 21.6.1995 in response to another representation and this Original Application is filed challenging this order of the Government of Orissa.

2. Learned counsel for the Government of Orissa Shri K.C. Mohanty makes a two fold submission. He states that February, 1988 was the time when the applicant received the gratuity without interest. The claim for such interest fell due on that date. Although the applicant made a representation on 28.9.1988 claiming

interest and it was not attended to by the authority, the applicant should have moved the Tribunal for relief within one year after waiting for six months for the representations' disposal. It was not necessary for the applicant to endlessly wait until the disposal of his representation. He, therefore, argued that the application was hit by limitation and deserved to be dismissed in limine. He had drawn my attention to Sec 21(b) of C.A.T. Act in this regard. According to Shri Mohanty, the delay stands unexplained. In the alternative Shri Mohanty submits that According to Annexure-R/3(2) the applicant admits that the G.A. Department instructed the A.G. to release the gratuity even though No Due Certificate had not been issued. Even according to the applicant, the A.G. is squarely held responsible for the delay. Hence according to Mr. Mohanty there is no liability on the part of the State Government for payment of interest.

3. On behalf of Respondent 4, (Accountant General) Shri Akhaya Mishra, learned Additional Standing Counsel submitted that the application is barred by limitation. According to Respondent-4, the pension papers were received on 29.7.1986, i.e. four months prior to the date of retirement of the applicant, from the Deputy Secretary, G.A. Department (Respondent 3), in an incomplete shape, i.e., the necessary documents, such as Service Book, Last Pay Certificate, No Due Certificate and History of Services, were not sent with the papers to process the pension case. The documents were received

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on 28.1.1987. It is admitted by Respondent 4 that Respondent 3 had requested him to clear up the D.C.R.G. even without N.D.C. It is stated in the counter that had the Department supplied the pension papers with full details of drawals of H.B.A. and motor car advance, it would have been easier for Respondent No. 4 to finalise his pension case.

4. The brief question at issue is whether the application can be admitted in spite of delay in filing the same. In S.S.Rathor vs. State of Madhya Pradesh, a Full Bench constituting Seven Judges of the Supreme Court 1990 SCC (L&S) 50 had held that for the purpose of Section 21 of the Administrative Tribunals Act, non-statutory representations would not save limitation. In that case the applicant, who retired on 31.12.1975, had approached the Tribunal only on 3.11.1989, i.e. after a lapse of 14 years. The case of the applicant was rejected on 25.6.1986 and he did not choose to challenge it. Hon'ble Supreme Court had held that the period of limitation starts from the accrual of the cause of action. Here in Rathor's case the cause of action arose to the applicant on 25.6.1986 when his representation was rejected. Thereafter the applicant had submitted repeated representations reiterating his stand. The Supreme Court held that such non-statutory representations would neither save limitation nor condone lapse on the part of the applicant. In the application filed before the Tribunal, the applicant in Rathor's case did not explain the reasons for delay. The facts in the case of Satyanand vs. Union of India 1989(4) SLJ CAT 272 Patna

decisions are extracted hereunder :

"Limitation starts from the date of final disposal of representation

While it is true that a series of representations will not save limitation, it is also well established that after the rejection of the representation if the Department concerned chooses to entertain a further representation and rejects the same on merits, the period of limitation will start afresh from the date of rejection of the last representation. In B.Kumar v. Union of India (ATR 1988 (1) CAT 1) the Principal Bench of this Tribunal held that while it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. It was further held that since it is open to the Department concerned to consider a matter at any stage and ~~redress~~ the grievance or grant the relief though the earlier representation has been rejected, it would be inequitable to dismiss an application on the ground of limitation with respect to the rejection of the earlier representation where the concerned Department has itself chosen, may be, at a higher level to entertain and examine the matter afresh on merits and reject it. In Har Binder Lal vs. CAG of India (1988 (7)ATC 567) the Hyderabad Bench of this Tribunal held that fresh limitation period starts from the date of the applicant's latest representation is considered and rejected on merits. In A.N.Gambhir vs. Secretary, Ministry of Water Resources (1988 (8) ATC 249) the applicant's ~~first~~ representation was rejected in 1969. He again represented that there were similarly situated persons to whom benefit had been granted but his second representation was rejected on 30.7.1986. It was held by the Principal Bench of the Tribunal in this case that since his ~~second~~ representation was rejected on merits, the order rejecting this representation gave a fresh starting point of limitation.

In the present case it is quite clear that Annexure-VII, dated 1.11.1988, is the final rejection of the applicant's various claims by the Department on merits. Hence on the lines of the three judgments mentioned above, it is to be held in this case that the

period of limitation has to be counted from 1.11.1988. After the final rejection on 1.11.1988 the applicant was required to file the application before the Tribunal within one year from 1.11.1988, in terms of Section 21(1)(a) of the Administrative Tribunals Act, 1985. Since he has filed the application on 25.1.1989, i.e., well within the prescribed period, the challenge of respondents that the application is barred by limitation fails."

5. In this case the Department slept over the first representation filed in 1988. It must not be forgotten that Section 68 of the Pension Rules confers a statutory duty on the Secretary of the Administrative Ministry. If he is satisfied that the delay in payment of gratuity was caused on account of an administrative lapse, he shall sanction payment of interest. This is a statutory duty which has to be fulfilled by the Secretary under Section 68. There is no time limit for such a sanction. By filing the first representation in 1988, the applicant had only invoked this statutory responsibility of the Secretary of the administrative ministry to award him interest. There is no question of delay in invoking the jurisdiction of this Tribunal by the applicant. There is no fault on the part of the applicant to await the order of the Secretary under Section 68. It is not a case that the first representation was rejected. It is a case where his first representation was under consideration. It is a case where there was a legitimate expectation on the part of the applicant that Secretary under Section 68(2) will pass the order. It is a case where the applicant

had only by his letter in 1995 reminded the Secretary of his statutory duties. Section 68(4) directs him to fix responsibility and take disciplinary action against the Government servant(s) who are found responsible in delaying payment of gratuity. I hold that the judgment of the Supreme Court decided in Rathor's case is not applicable to this case. I hold that the communication rejecting the representation dated 10.6.1995 is the starting point of the cause of action as Section 68 of the CCS Pension Rules casts a statutory duty on the Secretary of the Department to voluntarily dispose of cases of delayed payment of gratuity.

6. Where a statutory duty has to be performed, and where there is ^{no} limitation for discharging this duty, is the applicant at fault? This shifting of the burden from State Government to Accountant General, each trying to explain or exonerate itself is of no concern to the applicant. He stood deprived of his D.C.R.G. for no fault of his. That he is blameless and that the delay has not been caused by his tardiness has not been disputed.

7. After carefully considering the submissions I am of the view that from 20.1.1987 when clearance was received by the A.G. to finalise the D.C.R.G. pending submission of No Due Certificate, no reasonable cause was advanced by the respondents' counsel. From 21.1.1987 to February, 1988, interest at the rate of 10 per cent

as claimed by the applicant is allowed. This shall be computed and paid by passing statutory orders under Section 68(2) and 68(3) of the C.L.S. Pension Rules.

The payment shall be made by the State Government within a period of six weeks from the date of receipt of a copy of this order.

There is no provision or justification on the part of the applicant to claim interest on interest. This claim is rejected.

The application is disposed of as above.

NO COSTS.

Narasingha Rao
(N. SAHU) 24/7/96
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//