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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 200 OF 2000
CUTTACK THIS THE 23rd DAY OF July 2001

Narayan Mallick

....

Applicant

-V e r s u s -

Union of India and
Others.

....

Respondents.

For Instructions

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23.7.01

23.7.01
(G.NARASIMHAM)
MEMBER (J)

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ORIGINAL APPLICATION NO.200 OF 2000
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CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

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1. Narayan Mallick, aged about 32 years,
Son of late Ananda Chandra Mallick,
Vill.Bhagabanpur, P.O.Dakhinapur,
Dist.Ganjam.

By the Advocates

Applicant
M/s. A.K.Choudhury
J.Das
K.K.Dash

- V e r s u s -

1. Union of India, represented by
the Secretary, Ministry of Communication,
Department of Telecommunication, Sanchar
Bhaban, New Delhi.
2. Chief General Manager,
Tele-Communication, Orissa.
At/P.O.Bhubaneswar, Dist.Khurda.
3. Senior Superintendent,
Telegraph Traffic Division,
Government of India, Department of
Tele-Communication, At-Rupali Chhak.
P.O.Bhubaneswar, Dist-Khurda.
4. Telecom District Manager,
Telegraph Traffic Division,
Department of Telecommunication,
Berhampur Division, At/P.O.Berhampur.
Dist.Ganjam.
5. Accounts Officer, Telecom Accounts,
Office of the Chief General Manager,
Tele-Communication, At/P.O.Berhampur.
Dist.Ganjam.

By the Advocates

Respondents.
Mr. A.K.Bose
S.C.

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O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): Claiming to be the adopted son of Late Ananda Chandra Mallick, who while serving under the Departmental Respondents died on 23.10.81, the applicant prays for issue of direction to the Respondents to pay the entire statutory service benefits alongwith the interest to him and also absorb him in any suitable post under Rehabilitation Assistant Scheme. During hearing prayer for appointment under Rehabilitation Assistant Scheme was not pressed, apparently in view of the non-maintainability of plural prayers under Rule 10 of C.A.T. (Procedure) Rules 1987.

2. Soon after the death of Ananda Chandra Mallick his widow also died on 2.12.1981. The case of the applicant is that by the time of the death of the Ananda Chandra Mallick and widow he was still a minor. After attaining majority and after collecting necessary documents, information and papers he has submitted an application to the Respondents praying for gratuity, provident Fund, Family Pension and Insurance etc. Accounts Officer (T.A) of the Office of Chief General Manager, Telecom, Orissa Circle, Bhubaneswar in letter dated 29.3.1994 (Annexure-3) replied to the Advocate of the applicant, suggesting production for succession certificate from the competent Court of law in order to take further action of the matter. In that letter he was further intimated SSST, Bhubaneswar is the Pension sanctioning authority. Thereafter, the applicant represented(Annexure-8) by intimating that in judgment dated 13.2.95 of the learned Civil Judge, Berhampur in Title Suit No.91 of 1994 (Annexure-5), declared the applicant to be adopted the son of late Ananda Chandra Mallick and that legal heir certificate dated 17.9.93

was issued by the Tahasildar, Berhampur in Misc. case 2224 of 1993 (Annexure-4). This was followed by reminders under Annexure 9 and 10 but without any response. Hence this application.

3. In their counter the Department while opposing the prayer of the applicant stated that one Bira Mallick, brother of deceased Ananda Chandra Mallick filed an affidavit claiming that Sudam Mallick being the adopted son of the deceased is entitled for pensionary benefits. The applicant admitted this claim and applied on 6.6.84(Annexure-R/1) to share the service benefits with Bira Mallick. Further the deceased employee had not intimated the Department that the applicant as his adopted son [✓] Annexure R/2 dated 21.8.77 furnished by the deceased employee in form No.3 reveals that he had only one member dependant on him and that was his wife Sukumari Dei who was by then 30 years of age. Hence the version of the applicant is that he was adopted in the year 1975 is not correct. Besides the learned Civil Court did not direct that the pensionary dues pertaining to the deceased are to be paid to the applicant. On the other hand, the learned Court observed that in the absence of document and nomination submitted by Ananda Chandra Mallick to the authorities it would not be proper to declare that the applicant is entitled to service benefits. In fact, there is no nomination in favour of the applicant. This application is also barred by limitation since the cause of action arose on 2.12.81 when the widow died.

4. The applicant filed rejoinder. While reiterating the stand he pleaded that Annexure R/1 was a manufactured document by Bira Mallick who obtained the signature of the applicant on a blank paper with a promise to help him in the matter.

5. Heard counsel on records.

6. Admittedly, Ananda Chandra Mallick died in the year 1981 and soon thereafter his widow died on 2.12.81. The legal heir certificate dtd.17.9.93 reveals that applicant was 26 years when that certificate was issued. In otherwords, the applicant attained majority sometime in the year 1985. Yet he filed this application. 15 years thereafter, ^{he is the} even if, ^{he is the} his adopted son of the deceased employee ^{he} would be entitled to family pension only till he attained the age of majority. In otherwords, the cause of action for entitlement of family pension and other dues arose on 2.12.81, when the widow of the deceased employee died. Though the applicant averred that after attaining majority he ^{stated} corresponding with the Department, he had ^{neither} enclosed copies of such correspondence nor mentioned the particulars of dates or months of years of such correspondence. The Department in their turn denied to have received any representations. It is only on 31.12.93 under Annexure-2 the applicant sent a legal notice. By then the period of limitation under Section 21 of the Administrative Tribunal Act 1985 was long over from the date of his attaining majority in the year 1985. Even after, obtaining judgment of the Civil Court on 13.2.95, he did not approach the Tribunal in time, but filed this Original Application in April, 2000 that is more than 5 years after obtaining the decree of the Civil Court. It may be true that he made representations under Annexure-8,9 & 10. But the Law is well settled by the Constitution Bench of the Apex Court in S.S.Rathor's Case reported in A.I.R. 1990 SC 10 that repeated representations will not save limitation. Thus, this application is hopelessly barred by limitation. There is no prayer for condonation of delay under Section 21(3) of the Act. Hence question of condonation of delay would not arise.

VJ

Even a prayer for condonation of delay has to be made under Rule 8(4) of C.A.T.(Procedure) Rules 1987 supported by an affidavit.

7. Even on merits we are of the view that this application needs to be dismissed. The applicant claims that the retiral benefits of the deceased employee on the ground that he is his adopted son. The adoption according to him took place some time in the year 1975. Yet the fact remains in the year 1984 describing himself to be the son of Bali Mallick, late brother of Ananda Chandra Mallick addressed a letter to the Department under Annexure A/1 intimating that the deceased employee Ananda Chandra Mallik had no issues and that after the death of the deceased employee and his widow his uncle Bira Mallik has clandestinely applied to the Department claiming dues of the deceased employee excluding other heirs and another daughter of Bhagi Mallik and therefore requested the Department not to entertain the application of Bira Mallik. When confronted with this document through the counter, in the rejoinder the applicant put forth a story that this document was manufactured one by Bira Mallik after obtaining his signature on a blank paper. This story of the applicant is highly improbable because Bira Mallik would not go against his own interest in making the applicant address a letter of this nature to the Department. Further in the year 1977 under Annexure R/2 the deceased employee in statutory form no.3 did not mention the name of the applicant as one of the members of his family. Hence the claim of the applicant is that he was adopted in the year 1975 is not believable. It is true that the applicant obtained an ex parte decree from the Civil Court that he is the adopted son of Ananda

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Chandra Mallik but this decree is a decree in personam. Respondent No. 2 the Chief General Manager, Telecom, Orissa Circle, Bhubaneswar who in reply to the legal notice directed for production of succession certificate has not been impleaded as a party in the suit. More over, even in the judgment the learned Civil Judge observed that in the absence of document and nomination submitted by Ananda Mallik, he did not feel it proper to declare that the applicant would be entitled to the benefits of Ananda. In otherwords, even though the Civil Court declared that the applicant is the adopted son of Ananda disallowed the other prayers as to recovery of retiral benefit. As earlier discussed there is no nomination in favour of the applicant.

8. In the result, the application besides being barred by limitation is devoid of any merit. The application is accordingly dismissed without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-~~CHAIRMAN~~
(2000)

23.7.81
(G.NARASIMHAM)
MEMBER (J)