

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 244 of 1996

Present : Hon'ble Dr. B.C. Sarma, Administrative Officer.

Hon'ble Mr. D. Purkayastha, Judicial Member.

Smt. Khemankari Mukherjee, wife
of late Akoy Kr. Mukherjee, Ex.
U.D.C. under the Development
Commissioner Iron & Steel "Haridham
P.O. & Vill. Baidyapur
Dist. Burdwan.

...Applicant.

-versus-

1. Union of India, through the Secretary
Ministry of Steel & Mines, Govt.
of India, Dept. of Steel
'Udyog Bhawan', New Delhi.
2. Iron & Steel Controller
Ministry of Steel & Mines,
Dept. of Steel,
234/4, Acharya Jagadish Ch.
Bose Road, Calcutta-700020.

..Respondents.

For the applicant : Mr. A.K. Bairagi, counsel.

For the respondents : Mr. M.S. Banerjee, counsel.

Heard on 19.9.97

Order on 19.9.97

O R D E R

B.C. Sarma, AM

In this application the applicant who is the wife of the deceased Central Government retired employee has prayed for the issue of the direction on the respondents to give arrears benefits of pay & allowances as were due to her deceased husband as per judgment of this Tribunal in O.A. No. 414/1987 and also the revision of pension and other benefits.

2. The applicant's husband was a U.D.C. under the Development Commissioner in the Office of the Iron and Steel Controller, Calcutta who retired from service on attaining the age of superannuation on 30.4.94 after completion of his total period of service. In the said judgment passed by the Tribunal of this Bench on 4.7.88, the Tribunal had directed the Govt. respondents for revision of the pay scale and thereafter on



17.11.86 he had filed a representation before the Development Commissioner for granting arrears of dues as revision of pay & allowances as well as pension with retrospective effect like other co-workers as well as the applicant. This representation was filed claiming the benefit of pay scale of Rs.80-220 with effect from 1.1.1947 or 16.8.1947 according to the dates on which he had obtained as per Central Civil Services (Revision of Pay) Rules, 1947. No action was taken by the respondents. The applicant had filed another representation in February 1989; he had died on 27.11.90. Thereafter this application has been filed on 20.2.96 claiming the benefit of the judgment given by the respondents to the applicant therein. It is also the contention of the applicant that the benefit of the judgment was given to the applicant therein and also to their legal representation in 1995.

3. The case has been opposed by the respondents by filing a reply. It is the stand of the respondents that this application is not maintainable since the instant applicant has not inherited the service conditions by her deceased husband. They have also taken the plea that the erstwhile Development Commissioner in the Office of the Iron and Steel Controller, Calcutta is not a subordinate office i.e. an attached office. And, therefore, the benefit of the Bombay High Court judgment cannot be given to the applicant. It is also their contention that pursuant to the order passed by the Hon'ble Apex Court in Civil Appeal No. 627/94 against the order of the Tribunal in O.A. No. 414/87, some of the employees of the erstwhile Office of the Iron and Steel Controller, Calcutta had filed an O.A. bearing No. 172/94 raising the dispute about the status of the Office of the Iron and Steel Controller, and that application is still pending for adjudication. It is the stand of the instant respondents who are also already in the subsequent O.A. filed in 1994 unless subsequent application is adjudicated the instant applicant cannot claim the benefit of the judgment passed by the Tribunal in O.A. No. 414/87 since that judgment was passed on the basis of a wrong finding about the status of the office of the Iron and Steel Controller, Calcutta. They have, therefore, prayed for dismissal of the application on the ground that it has no merit.



4. This matter was heard in part on 18.9.97 when Mr. Bairagi, Id. counsel for the applicant submits his arguments. And it was adjourned on the prayer of Mr. Banerjee, Id. counsel for the respondents who had submitted his arguments today. This matter was part heard and passed over. But we find that when the matter was taken up today Mr. Bairagi was absent. Since the matter was kept as part heard with the consent of Mr. Bairagi, this matter was listed today as a 'passed over' matter but he remained absent. We decided to adjudicate the case after hearing the submission of Mr. Banerjee without adjourning it.

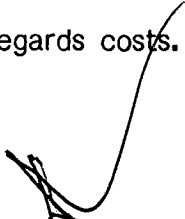
5. We have carefully considered the submission of the Id. counsel for both the parties, perused records and considered the facts and circumstances of the case. Mr. Bairagi relies on Inder Pal Yadav & Ors. Vs. Union of India & Ors. case reported in (1985) 2 SCC 648 and on that basis, he argued that the benefit of the judgment passed by the Tribunal in O.A. No. 414/87 should have been given automatically by the respondents which was not done. However, Mr. Bairagi submits that the judgment was appealed against by filing an S.L.P. although that S.L.P. was dismissed. The appellants therein who are the instant respondents were given liberty to raise the dispute about the status of the office of the Iron and Steel Controller by filing a separate petition which has not been done. We find in this case that the judgment in O.A. bearing No. 414/87 was passed on 4.7.88; the applicant's deceased husband had filed a representation on 11.2.89 and thereafter he expired on 27.11.90. Having filed the representation he did not pursue the matter and during his life time no such petition was filed. It, therefore, appears that the applicant's deceased husband was not aggrieved by the inaction on the part of the respondents. And the instant petition has been filed by the present petitioner only on 22.2.96, after a lapse of so many years, even after the passing of the judgment which was on 4.7.88 and immediately after passing away of her deceased husband of the present application, she did not file any petition. She had waited for so many years and now she has come to claim the benefit of the judgment which was passed in 1988.

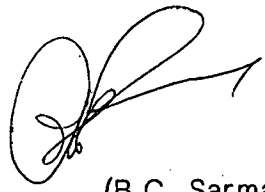


6. Hon'ble Apex Court in the case of State of Karnataka & Ors. Vs. S.M. Kotrayya and Ors. reported in (1996) 6 SCC 267 has held that the mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal, held, not a proper explanation to justify condonation of delay - The explanation must relate to failure to avail the remedy within the limitation period - Limitation. In this case, not even condonation petition was filed by the applicant. When the query was raised by us Mr. Bairagi, Id. counsel for the applicant replied that the applicant is an aged lady who lives in a remote village and that is why delay has occurred. But the fact remains that the law operates in respect of everybody in the same way. The explanation regarding delay given by Mr. Bairagi is not a valid explanation to condone the delay, specially when he has not made any separate prayer for the condonation of delay. Moreover, her deceased husband does not appear to have been aggrieved before he passed away in November '90 and by the delay and laches he had himself deprived of his own right as has been observed by the Hon'ble Apex Court in the case of Ratan Chandra Sammanta & Ors. Vs. Union of India & Ors.(1993 IJR 251). We are, therefore, of the view that the application is hopelessly barred by limitation.

7. We would like to observe that the applicant was a legal heir of her deceased husband it can inherit the status of her deceased husband. But she cannot inherit the service conditions of her deceased husband and, therefore, even on merit we do not find any ground for allowing this application.

8. In view of the above reasons, we do not find any merit in the application. We hold that the application is hopelessly barred by limitation and the applicant is also guilty of delay and laches in filing this application /so much so that she has been deprived from the legitimate claim available in law. For all these, the application is dismissed. No order is passed as regards costs.


(D. Purkayastha)
M e m b e r (J)


(B.C. Sarma)
M e m b e r (A)