

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH : JODHPUR.

Date of order : 13.11.95.

OA No. 465/1995

Chand Mohammed ... Applicant.

Vs.

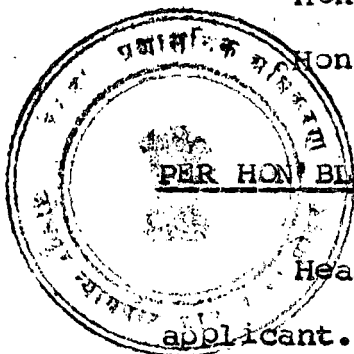
Union of India & Ors. ... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

CORAM :

Hon'ble Ms Usha Sen, Administrative Member.

Hon'ble Mr. Rattan Prakash, Judicial Member.



PER HON'BLE MS USHA SEN :

Heard Shri S.K. Malik, learned Counsel for the applicant.

2. The brief facts of the case are as under:-

The applicant is working as Lascar under the respondent No.3, The Commanding Officer, No.33 Signal Unit, Air Force, C/o 56 A.P.O. He states that during the period 1.1.80 to 1.2.91 he had been detailed for duty from his Headquarters namely, 33 Signal Unit, Air Force to another point which is called 'Site 1A' which is more than 8 K.M. from his Headquarters. He used to perform duty at this Site every day continuously during this period except on Sundays and holidays. In accordance with the rules in force he is entitled to get 50% ^{of the} daily allowance for each day of performing such duty. There was a case in which a person similarly situated, namely, Shri Madan Lal, had filed a Court case

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in which this Bench had delivered a judgement on 29.7.88 directing the respondents to pay the admissible daily allowance. After this judgement was delivered, the applicant also made a representation dated 21.11.88 before the respondent No.3 for payment ^{of} 50% of the daily allowance. Getting no reply, he moved some more representations. In reply to one representation, the respondent No. 3 for the first time informed the applicant vide his letter dated 13.3.89 that his case had been taken up with the Air Headquarters, New Delhi, and until he received a reply from them, no action could be taken. Thereafter, the applicant kept on making representations and he was informed that the matter was still under consideration with the Ministry of Defence/Air Headquarters. The last letter on record is dated 24.5.1995 (Annexure A/9) which is from the Air Headquarters addressed to the HQ South Western Air Command, IAF, Jodhpur. This directs the HQ SWAC to take necessary action and inform the individual suitably. The applicant has stated that after issue of this letter, the respondent No. 3 prepared a statement of case for grant of the daily allowance as admissible. But in spite of preparation of the statement of case, no further action has been taken in the matter. The applicant has, therefore, filed this OA claiming the relief of payment of the said daily allowance with effect from 1.1.1980 to 1.2.91 as per the rules alongwith interest @ 24% per annum.

3. It would be seen from the facts narrated above that the applicant made his first representation on 21.11.88. Till date no final order has been passed by

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the competent authority on the representations of the applicant and the matter appears to be still under either consideration or has been kept in abeyance. Section 21 (1) (b) of the Administrative Tribunals Act, 1985, states that limitation expires in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months has expired thereafter without a final order having been made, within one year from the date of expiry of the said period of six months. The applicant had made his first representation on 21.11.88 and no final order has been passed on that. The OA was filed on 30.10.95. The OA is thus clearly barred by limitation in terms of Section 21(1)(b) of the Administrative Tribunals Act, 1985. Shri S.K. Malik referred to B.L. Agarwal vs. Union of India & Others reported at (1991) 15 ATC 77 which was a case wherein the applicant had taken up the matter with the respondents well in time and the respondents had been informing the applicant that the sanction of the competent authority was awaited. It was held therein that the applicant had preferred the OA within the prescribed limitation reckoned from the receipt of the last communication stating that the matter was under consideration of the respondents. We may, however, refer to the case of S.S. Rathore vs. State of Madhya Pradesh reported at AIR 1990 SC 10. In this case, Section 21 of the Administrative Tribunals Act, 1985, has been discussed and it has been observed :-


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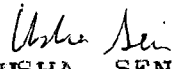
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"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen."

In terms of these observations of the Hon'ble Supreme Court, we consider that the period of limitation in the present case would expire one year after the expiry of six months from the date the applicant made his first representation which in any case is a longer period than one year from the date his representation was first entertained viz. 13.3.89 supra. The first representation in this case was preferred on 21.11.88. Hence the period of limitation would expire on 20.5.90 i.e. 1½ years from the date of preferring of the representation. Since the OA has been preferred on 30th October, 1995, it is clearly barred by limitation.

4. OA is accordingly dismissed as barred by limitation at the admission stage itself.


(RATTAN PRAKASH)
MEMBER (J)


(USHA SEN)
MEMBER (A)

cvr.