

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, J O D H P U R

Date of order : 31.07.2000.

1. O.A.NO.67/1996
2. M.A.No.154/1996 (IN OA 67/1996)

K.S.Patcha, aged about 50 years, S/o Late Shri Kadar Mohideen, at present employed on the post of Junior Engineer, in the office of Border Fencing Circle - I, Jaisalmer, Rajasthan R/o C/o Superintending Engineer, Border Fencing Circle I, Jaisalmer, Rajasthan.

.....Applicant.

vs.

1. Union of India through its Secretary, Ministry of Urban Affairs and Employment, New Delhi.
2. The Director General of Works, Nirman Bhavan, New Delhi.
3. The Superintending Engineer, Border Fencing Circle I, Jaisalmer, Rajasthan.

.....Respondents.

CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

.....

Mr.J.K.Kaushik, Counsel for the applicant.

Mr.Vinit Mathur, Counsel for the respondents.

ORDER

(PER HON'BLE MR.A.K.MISRA)

The applicant had filed the present O.A. with the prayer that

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the respondents be directed to consider the case of the applicant for release of EB from 1.8.79 at the stage of Rs. 515/- and release the same if found fit and if not found fit, consider the same from subsequent dates and re-fix his pay accordingly. The respondents be directed to pay the arrears of pay with interest to the applicant.

2. Notice of the O.A. was given to the respondents who have filed their reply to which a rejoinder was filed by the applicant and a reply to rejoinder was also filed by the respondents.

3. The case of the applicant is that he joined the Central Public Works Department as Junior Engineer (Civil) in the year 1973 in the then existing pay scale of Rs. 425-15-500-EB-15-560-20-700. The applicant was drawing 500/- rupees as basic pay on 1.8.79 and was to cross the EB and the next stage of pay after the ~~crossing~~ of EB was 515/-. However, the applicant was not allowed to cross EB ~~as this was~~ due on 1.8.79. It is alleged by the applicant that as ~~against~~ the communication of adverse ACR for the year 1977-78 he made a representation and the ACR of the year 1978-79 was not at all communicated to him. However, these two ACRs seems to have been considered while examining the case of the applicant for crossing of the EB. But as per law, both these ACRs were of no consequence as the decision in respect of representation of the applicant relating to ACR of 1977-78 was not ~~taken~~ and the ACR for the subsequent year i.e. 1978-79 was not at all communicated to the applicant. Hence, the applicant is entitled to the relief claimed and his pay is required to be fixed at Rs. 515/- on 1.8.79 considering ~~it~~ that the applicant had nothing adverse and was permitted to cross the EB. It is also stated by the applicant that subsequent punishment in departmental action was of no consequence so far as the pay fixation is concerned.

4. In reply the respondents have stated that the claim of the

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applicant is hit by limitation. For the grievance which arose to the applicant in the year 1979, he filed the <sup>present</sup> O.A. in 1996. Thus, the present claim of the applicant is almost 17 years old. Even, the representation against the action of the respondents was made by the applicant in the year 1987 which too was quite belated and, therefore, the present claim deserves to be dismissed on this count alone. It is also stated by the respondents that the applicant did not make representation against the poor ACR communicated to him within 45 days of communication of the adverse ACR relating to the year 1977-78. The adverse ACR for the year 1978-79 communicated to the applicant in the year 1983 after the applicant was subjected to undergo a departmental punishment. The applicant in both these years had poor ACRs. However, the pay of the applicant was fixed after crossing the EB at the stage <sup>again</sup> of 515/- w.e.f. 1.4.83. Therefore, if any grievance arose to the applicant it arose in the year 1983. Even against this grievance, the applicant had made a representation only in the year 1987 and then again kept quite for pretty long time and filed this O.A. in 1996. Hence, the applicant is not entitled to any relief.

5. Both the parties by their rejoinder and reply to rejoinder, asserted communication and non-communication of ACR of the year 1978-79 disputing the stand of the other.

6. During the pendency of the O.A. the applicant moved a M.A. seeking direction for production of DPC Proceedings held for consideration in respect of applicant for crossing the EB in the year 1979 to which the respondents replied that DPC proceedings are not retained for more than one year after the final decision taken in review in this regard. The ~~matter~~ <sup>was</sup> in respect of the EB had come to an end by grant of the same, therefore, the record cannot be made available in this regard.

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7. We have considered the relevancy of production of DPC proceedings for crossing the EB of the applicant as per his claim. Un-disputedly, the applicant was granted the benefit of crossing the EB by the respondents' order of the year 1983, therefore, the matter relating to efficiency bar in respect of the applicant came to an end in the year 1983 whereas, the documents are being demanded by the applicant to be produced by the respondents in the year 1996 i.e. almost 10-12 years after they have been destroyed. Therefore, the demanded documents are impossible to be produced for our perusal. Moreover, in our view after such a delay they cannot also be considered as relevant in the matter. The M.A., therefore, deserves to be rejected.

8. We have heard the learned counsel for the parties who have advanced their arguments on the lines of their pleadings.

9. It was first of all argued by the learned counsel for the respondents that the claim of the applicant is hopelessly time barred as the same relates to the year 1979 and in any case cause of action relating to the applicant's grievance arose in the year 1983 when the pay of the applicant was fixed after he had been allowed to cross the EB, therefore, the case of the applicant deserves to be rejected. On the other hand, it was argued by the learned counsel for the applicant that due to wrong fixation of pay on account of not considering the case of the applicant for crossing of efficiency bar when it was due, the applicant is continuously drawing less pay than he is entitled to and, therefore, for fixation of his pay the applicant is having recurring cause of action and the claim of the applicant which is otherwise meritorious cannot be rejected on the technical ground of limitation, therefore, the O.A. is maintainable.

10. We have considered the rival arguments. In our opinion, ~~please~~

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the cause of action arose to the applicant firstly in the year 1979 when he was allegedly denied the benefit relating to crossing of EB but the applicant did not challenge the action of the respondents soon thereafter. Subsequently, the applicant was permitted to cross the EB in the year 1983 and his pay was fixed accordingly. For that fixation the applicant says that the pay was wrongly fixed. For such wrong fixation as alleged by the applicant, cause of action arose to him for challenging the action of the respondents in the year 1983 but the applicant did not challenge the action of the respondents and made a representation more than four and a half years after the pay fixation order. It is alleged by the applicant that he made several reminders thereafter but, in our opinion, subsequent reminders would not grant the life to the claim of the applicant because if the first representation was not decided within the ~~stipulated~~ period then the applicant should have knocked the doors of the Court instead of uselessly pursuing the matter making subsequent representations and reminders to the authorities concerned. If the representation of the applicant was not decided even by the mid of the year 1988 he could have come to the Court for redressal of his grievance but applicant came to seek redressal of his grievance almost more than seven years thereafter. Thus, the application of the applicant is highly belated and hit by the provisions of limitation.

11. There is no dispute that the <sup>denial of</sup> pay which is rightly due to the applicant gives a recurring cause of action to the applicant but in the instant case, the conduct of the applicant of sleeping-over his rights for more than 12 years would dis-entitle him to claim even the benefit of re-consideration for fixation of pay after such a long lapse of <sup>period</sup> time. In the intervening reports of two pay commissions were made applicable and consequently, pay fixation has been done twice, therefore, the claim of the applicant in the given circumstances, cannot be ordered to be considered for re-fixation. The claim of the

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applicant in our opinion suffers from laches. Thus, the claim of the applicant deserves to be rejected on the ground of limitation.

12. Considering the case even on merits, we are of the opinion that on the date of consideration of the case of the applicant to cross the EB, he had one adverse ACR to his account and this was sufficient to stop him from crossing the EB. <sup>after</sup> Therefore, the applicant was awarded and consequently suffered a penalty in departmental inquiry. During the currency of penalty occasion to consider his case again for crossing the EB did not arise. However, on completion of penalty period, the applicant was allowed to cross the EB in April 1983, therefore, the grievance of the applicant came to an end at that stage. Thus, in our opinion, the applicant has not been able to establish his claim as described in the O.A. The claim of the applicant deserves to ~~be~~ be dismissed.

13. The O.A. and the M.A. No. 154/96 are, therefore, dismissed with no orders as to cost.

*(GOPAL SINGH)*  
(GOPAL SINGH)  
Adm. Member

*JRM*  
31/7/2000  
(A.K.MISRA)  
Judl. Member

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jrm

Confined  
K. S. Gill  
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for nature

P/COPY  
on 4/8/21  
SAC

Part II and III destroyed  
in my presence on 5-1-2007  
under the supervision of  
Section Officer (J) as per  
order dated 1-1-2006

169 M  
Section Officer (Records)