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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 26.06.2001

1. O.A. No. 25/1999.
2. M.A. No. 17/1999.

IN

O.A. No. 25/1999.

Raj Kumar son of Shri Madho Prasad Sharma, Railway Diesel Driver Goods, Loco Shed Hanumangarh Jn. R/o Railway Quarter No. 65A Near Railway Club, Hanuman-garh Jn. District Hanumangarh Jn.

APPLICANT ..

VERSUS

1. Union of India, through General Manager, Northern Railway Headquarters Baroda House, New Delhi.
2. Additional Divisional Railway Manager, Northern Railway Divisional Office, Bikaner, Rajasthan.
3. Senior Divisional Mechanical Engineer, Northern Railway, Divisional Office, Bikaner, Rajasthan.
4. Senior Divisional Personnel Officer, Northern Railway Divisional Office, Bikaner.



RESPONDENTS ..

Mr. Bharat Singh, counsel for the applicant.
Mr. K. K. Dave, counsel for the respondents.

CORAM

Hon'ble Mr. A. K. Misra, Judicial Member.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

ORDER

(per Hon'ble Mr. A. K. Misra)

The applicant had filed this OA with the prayer that the respondents be directed to refix the basic pay of the applicant as detailed in para 4.15, ignoring the punishment order dated 04.05.1993

J. M.

Annexure A-2 and the respondents be directed to pay to the applicant all the monetary benefits admissible to the applicant as per Rules.

2. Alongwith the original application, the applicant had filed a M.A. for condonation of delay on the ground that punishment order dated 04.05.1993 (Annexure A-2) is bad in Law and consequently could not have been implemented against the applicant, therefore, the pay fixation of the applicant was wrong. The applicant as per the wrong fixation of pay is being paid lesser salary than his entitlement and, therefore, the applicant has a continuous cause of action for seeking the relief. There is no delay in filing the OA however, if the OA is found to have been filed with delay then the same may be condoned for the reasons stated above and the OA of the applicant be treated within limitation.

3. Notice of both the applications was given to the respondents who have filed the separate reply in the OA as well as in the Miscellaneous Application.

4. It is stated by the respondents that the application of the applicant is hopelessly time barred. The pay of the applicant was fixed as a consequence of punishment orders which was passed in the year 1993 and was upheld by the Appellate Authority in the year 1995. The applicant has not challenged these orders as and

when they were passed, therefore, in the garb of pleading wrong pay fixation and lesser pay being paid to the applicant, the applicant cannot be permitted to challenge the punishment orders. In other words, the applicant without challenging the punishment orders as were passed in the year 1993 and 1995 cannot challenge pay fixation and consequent lesser payment of salary. The OA deserves to be dismissed on the ground of limitation alone.

5. It was further stated in the reply by the respondents that the applicant was punished in the departmental enquiry with the penalty of reduction to a lower pay scale for a period of one year. The applicant filed an appeal in which, the punishment of the applicant was enhanced which was challenged by the applicant by filing an OA before this Tribunal. The OA of the applicant was accepted by the Tribunal and the applicant was directed to make representation to the Disciplinary Authority and the Disciplinary Authority was directed to consider the representation of the applicant and pass a fresh order within a period of one month. Thereafter, the Disciplinary Authority passed an order on 04.05.1993 (Annexure A-2) disposing of the representation of the applicant. The earlier punishment passed by the Disciplinary Authority was maintained and the appeal filed by the applicant was rejected. It is further contended by the respondents, that the and applicant had undergone the punishment/was continuously drawing/as per pay fixation, therefore,

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after a lapse of 4 years he cannot be permitted to raise the controversy afresh. The OA deserves to be dismissed.

6. We have heard the learned counsel for the parties and have gone through the case file.

7. There is no controversy so far as the facts of the case as mentioned above are concerned.

It was argued by the learned counsel for the applicant that the Tribunal had directed the Respondent Disciplinary Authority to pass a fresh order after considering the representation of the applicant. The Disciplinary Authority did not pass any afresh order considering the facts of the case, but disposed of the representation of the applicant with a creptic order maintaining the same punishment, therefore, the punishment given to the applicant is illegal and consequently pay fixation of the applicant is wrong. He has further argued that so long, the applicant is paid lesser salary than his entitlement, the claim of the applicant remains within limitation. On the other hand it was argued by the learned counsel for the applicant that the applicant cannot claim the relief of refixation of his pay on the basis of wrong punishment having been awarded and on the basis of wrong pay fixation after a lapse of number of years. We have considered the rival arguments. In our opinion, the case of the applicant is hopelessly time barred. The applicant had not challenged the order dated 04.05.1993



Annexure A-2 and the Appellate order dated 18.01.1995 Annexure A-1 as and when cause of action had arisen to the applicant for challenging the same. If in the opinion of the applicant, the punishment order Annexure A-2 passed by the Disciplinary Authority was not proper and legal then the same should have been challenged within limitation, after the departmental appeal of the applicant was disposed of by the Appellate Authority. But the applicant did not do so. Not only this, the punishment was implemented and for number of years, the applicant accepted the pay as per the pay fixed by the department, keeping in view the punishment order passed against the applicant. Therefore, after a lapse of 4 years from the date of Appellate order, in this case the pay of the applicant was fixed after implementing the punishment order, therefore, it cannot be said to be a wrong pay fixation due to some administrative error which may entitle the applicant to claim the benefit of limitation on account of wrong pay fixation. In this case, the pay fixation was done by the respondents due to implementation of the punishment order, therefore, in our opinion without challenging the punishment order, in consequence of which the pay of the applicant was fixed, the applicant cannot challenge the wrong fixation of pay and lesser payment of pay than his entitlement. The OA in our opinion, deserves to be dismissed on the ground of limitation as hopelessly barred by time. We do not see any good reason for condoning the delay as prayed in the Miscellaneous application.

Consequently the Misc. Application for condonation of delay deserves to be dismissed.

9. In view of the above discussions, we are of the opinion that the OA of the applicant is hopelessly time barred and deserves to be dismissed.

10. Therefore, the OA and the MA, are dismissed and parties are left to bear their own costs.

Ans

(A.P. Nagrath)
Admin. Member

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AM 26/6/200*

(A.K. Misra)
Judl. Member

Recd
Kept 5/2

Received copy

MALS/AT

Part II and III destroyed
in my presence on 24.07
under the supervision of
section officer () as per
order dated 19.12.07

Section officer (Record)