

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 162/2007
JODHPUR, THIS DAY THE 21st JULY, 2009**

**CORAM:
HON'BLE MR. JUSTICE S.M.M. ALAM, MEMBER (J)**

.....
Madho Lal Dhakad
S/o Sh. Nathu Lal Dhakad
R/o I/S Choudhary Complex,
Left Gali, 32 Mahavir Colony, Bedla Road,
Udaipur.
Ex. Ward Keeper, Western Railway,
Stores Department, Sabarmati (Ahmedabad).

.... Applicant.

(By Advocate: Mr. P.R. Singh for the applicant)

VERSUS

1. Union of India
Through the General Manager,
Western Railway, Headquarters,
Churchgate, Mumbai.
2. The Divisional Railway Manager,
Ajmer Division, Western Railway,
(now North Western Railway, Ajmer.
3. The Divisional Manager (Stores)
Western Railway now North Western Railway),
Ajmer (Raj).

.... Respondents

(By Advocate: Manoj Bhandari for respondents No. 1 & 3).
(By Advocate : Mr. Vinay Jain for respondent No. 2)

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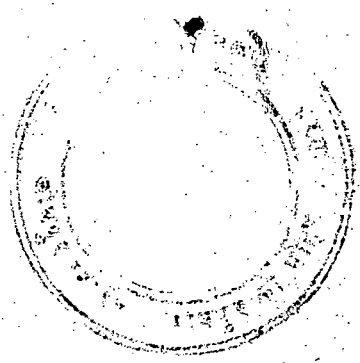
**ORDER
[BY THE COURT]**

The applicant, Madho Lal Dhakad, has filed this O.A. for quashing and setting aside the order dated 01.12.2005 (Annex.A/1) issued from the Office of respondent No. 1 bearing No. E/1054/Railway Board/2000/4 (Vadodara) informing the applicant that his claim for grant of pension has been rejected. Being aggrieved by the said order, the applicant has filed this O.A.

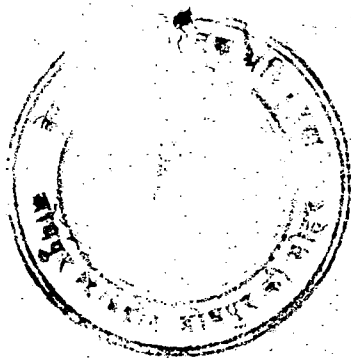


for

2- The brief facts of the case are as follows : The applicant Madho Lal Dhakad, was appointed as a Ward Keeper by the erstwhile Mewar State Railways, Udaipur on 10.07.1944. After coming into existence of Indian Railways, he was transferred to Stores Department in Ajmer District and was posted as Ward Keeper at Sabarmati [Ahmedabad] in the Office of Dy. Chief Material Manager. However, the family circumstances of the applicant did not permit him to work at Sabarmati, Ahmedabad and so, he resigned from service on 23.05.1963 by filing application dated 23.05.1963 (Annex.A/3). The said application was accepted w.e.f. 17.07.1963 and thereafter the authority concerned, issued a service certificate giving details of his service in the Department vide Annex. A/5 dated 13.08.1963. Further case of the applicant is that after resigning from the post of Ward Keeper the applicant joined Hindustan Zink Limited on 25.09.1963 wherefrom, he retired on 31.01.1982 on attaining the age of superannuation. It is further submitted that applicant has completed 19 years regular service with the Indian Railways without any adverse entry but, even then, he was not accorded benefit of pension by the Indian Railways without any reasonable cause and so, after his retirement from service of Hindustan Zink Limited, he preferred various representations before the respondent-Railways right from 1983 but on flimsy grounds and without assigning any just reason, he was not accorded benefit of pension. It is said that the first representation was filed by the applicant on 12.03.1983. (Annex.A/7) and thereafter, several representations were filed by him vide Annex. A/8 to Annex. A/24. The applicant also represented the respondents through Railway Pensioner's

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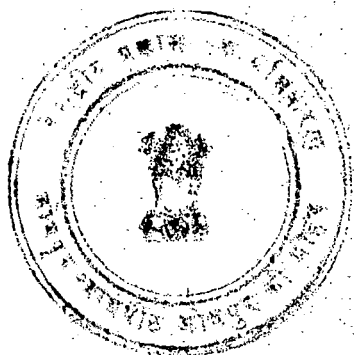
Association vide Annex. A/25 to Annex. A/32. In spite of so many representations, the concerned authorities (respondents) did not give any reply for a considerable period and for the first time on 19.02.2002 a communication was received by Railway Pensioner Association, Udaipur, stating therein that the applicant on his resignation was paid amount of Contributory Provident Fund, and the authorities have sought advice for necessary action on the representation. Similar communication was made on 05.04.2002 also vide Annexes. A/32 and A/33. Thereafter, vide letter dated 08.12.2003 and 23.02.2005, the respondents informed the applicant that he is not entitled for ex gratia pension. However, the applicant did not stop approaching the respondents for redressal of his grievance and even thereafter, he filed several representations. Ultimately, after a long lapse of time, the respondent No. 1 issued the impugned order dated 01.12.2005 (Annex.A/1) whereby, his representation dated 21.09.2005 was responded. Through the said order, applicant was informed that he had resigned from service for personal reasons and family problems and on that ground his resignation letter dated 23.05.1963 was accepted on 17.7.1963. It was also incorporated in this letter that as he was a member of Contributory Provident Fund scheme and after acceptance of resignation, he was paid the amount of Contributory Provident Fund and since after his resignation he has joined another service as such, as per Rule of the Railway Pension Rules, 1993 (41) he is not entitled for grant of any pension. It is stated that even after receiving the said order, the applicant filed several representations before the competent



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authority but his grievance was not redressed, therefore, he has filed this application.

3- Notices were issued to the respondents and in compliance of the notices they appeared and filed two separate replies. However, the learned Advocate Mr. Manoj Bhandari, appearing on behalf of respondents No. 1 and 3, raised a preliminary objection about maintainability of this O.A. on the point of jurisdiction. He has also raised the issue of limitation and requested the Court to first decide the OA on preliminary objections. According to his submission, this Tribunal has no jurisdiction to entertain the instant OA as the Central Administrative Tribunal's Act, 1985 [hereinafter referred to as "the Act"] was not in existence when the applicant's resignation from the Indian Railways was accepted on 17.07.1963. He submitted that the Act came into force w.e.f. 01.07.1985 and according to Clause (2) (a) of Section 21 of the Act which deals with the point of limitation, this Tribunal has no power to entertain an application with regard to any grievance/matter which had occurred more than three years period prior to coming into existence of the Act. He submitted that admittedly applicant had resigned from the Indian Railways on 23.05.1963 which was accepted w.e.f. 17.07.1963 meaning thereby that the cause of action with regard to the claim of the pension arose from the very next day of 17.07.1963. He submitted that admittedly the provision of the Act came in force w.e.f. 01.07.1985 and Clause (2) (a) of Section 21 clearly lays down that the Tribunal has got no jurisdiction to entertain any application claiming grant of relief for the cause of action which arose more than three years period prior



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to coming into force of the Act. On the basis of above arguments, the learned Advocate submitted that this Tribunal should hold that this Tribunal has no jurisdiction to entertain this OA.

4- On the other hand, Mr. P.R. Singh, learned Advocate for the applicant submitted that although the applicant has resigned from the service of Indian Railways on 23.05.1963 and his resignation was accepted w.e.f. 17.07.1963 but on that date, no cause of action had arisen for the applicant to claim pension as on that very date, he had not attained the age of superannuation. He attained the age of superannuation only on 31.01.1982 on which date he retired from Hindustan Zink Limited and thereafter on 08.03.1983, 12.03.1983 and on 27.05.1983 the applicant filed representations for grant of pension which was considered and rejected by the authority by order dated 22.06.1983 (Annex.R/2) and, therefore, for the purpose of jurisdiction, this date i.e. 22.06.1983 is relevant because of the fact that on that date for the first time the claim of the applicant with regard to payment of pension was negatived by the concerned authorities and the applicant became aggrieved by this order. In this regard, he referred to Clause (1) of Section 19 of the Act which runs as follows :-

"Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievances."

Admittedly, the first order whereby the grant of pension was refused to the applicant was 22.06.1983 vide Annex. R/2. There is no two opinions that this order gave rise to the cause of action for filing O.A. Therefore, I am of the view that for the purpose of



I-16

jurisdiction, this date i.e. 22.06.1983 will be relevant. Clause (2) (a) of Section 21 says that this Tribunal can exercise jurisdiction in respect of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act. Clause (2) (a) of Section 21 runs as follows :-

"Notwithstanding anything claimed in Sub-Section (1) where

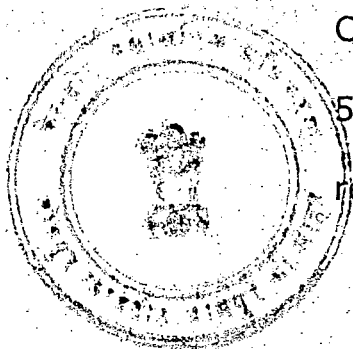
(a) The grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates.

(b) xxx xxx xxx

the application shall be entertained by the Tribunal."

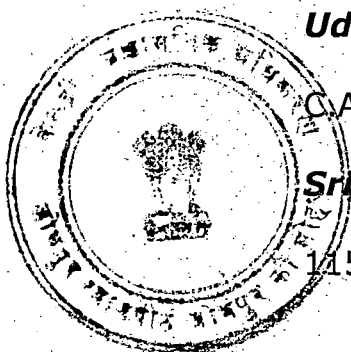
Admittedly, the provisions relating to Central Administrative Tribunal came into force w.e.f. 01.07.1985 so in order to come to the finding that this Tribunal can exercise jurisdiction over the matter, it is necessary to find-out that the grievance in respect of which this application was made, had arisen within the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal became exercisable. I have already hold above that for the first time, the cause of action for the applicant had arisen on 22.06.1983 which shows that the grievance in respect of which the application has been filed, had arisen within three years from the date on which this Act came into force. In such view of the matter, I hold that this Court has got jurisdiction to try this case.

5- The next preliminary objection taken by the respondents is regarding limitation. According to his submission, the O.A. is



hopelessly time barred. Mr. Bhandari, has invited my attention to Clause 1 (a) and 1 (b) of Section 21 which deals with limitation. The learned Counsel submitted that as per the provision contained in Clause 1 (a) where a final order in Clause (a) Sub Section 2 of Section 20 has been made in connection with any grievance, the OA must be filed within one year from the date on which such final order has been passed; whereas, Clause 1(b) of Section 21 lays down that where an appeal or representation has been made by the aggrieved and a period of six months' had expired thereafter, the O.A. can be filed within one year from the date of expiry of the said period of six months.

He vehemently contended that from a bare perusal of the pleadings of the applicant and the documents attached with the O.A. it would be crystal clear that applicant's claim for grant of pension had been negatived by the competent authority as long back as on 22.06.1983 vide Annex. R/2 which was duly communicated to the applicant. So, the limitation will start from the date of issuing the said order i.e. 22.06.1983 and not from any subsequent order/letter sent to the applicant in reply to his several representations. He submitted that the above facts establish that the O.A. is time barred and without any application for condonation of delay, it should not have been entertained. In support of his arguments, Mr. Bhandari has placed reliance on the decision of the Apex Court given in the case of **Ramesh Chand Sharma Vs. Udam Singh Kamal & Ors.** [1999 (SC) 3837] and the decision of C.A.T. [Principal Bench - New Delhi] in the case of **A.K. Srivastava & Ors. Vs. Union of India** (AISLJ 2009 (2) [CAT] 115 Para 27], where it has been held that when O.A. has been filed

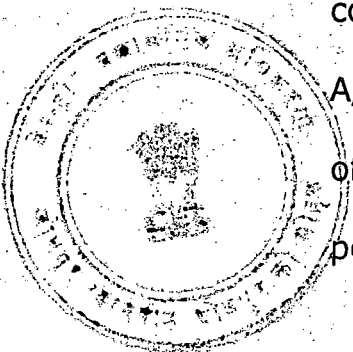


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after expiry of period of limitation and if no application for condonation of delay was made before the Tribunal then such application cannot be entertained.

6- On the other hand, the learned Counsel Mr. P.R. Singh, for the applicant submitted that since the applicant was filing regular representations before the authority concerned (respondents) as such, for the purpose of limitation, the last communication of the respondents on his representation will be relevant which is Annex. A/1 dated 01.12.2005 and the same is under challenge. However, during the course of arguments, it was conceded by the respondents that OA is barred by limitation even from the date of passing the impugned order dated 01.12.2005 (Annex.A/1) as the applicant has filed this OA on 10.07.2007 i.e. much after expiry of the period of one year. Thus, there appears no doubt that the present OA is barred by limitation for which no application for condonation has been filed on behalf of the applicant. According to the decision referred to above (supra), if an application is filed beyond the period of limitation and no application for condonation of delay has been filed, then the OA cannot be entertained.

7- At this stage, I would like to make it clear that the submission of the learned Advocate of the applicant that the limitation would be counted from the date on which last communication/order was made by the respondents i.e. Annex. A/1 dated 01.12.2005, is not correct as it has been held in catena of decisions that repeated representations would not extend the period of limitation. In this regard, the decision of the Apex Court



in the case of **S.S.Rathore Vs. State of Madhya Pradesh** [1990 (1) SLJ-98 Para 22] and the decision of C.A.T. (Principal Bench, New Delhi) in the case of **A.K. Srivastava & Ors. Vs. Union of India** {A.I.S.L.J. 2009 (2) (CAT) Page 115 at Para 27} are relevant. Relying upon the abovementioned decisions, I am of the opinion that in the instant case, the limitation will start from 22.06.1983 whereby for the first time, the representation of the applicant for grant of pensionary benefits was refused by the competent authority (respondents) vide Annex. R/2.

8- In the result, I find and hold that the instant OA is hopelessly barred by limitation and cannot be entertained by this Tribunal as per law, as such, the same is hereby dismissed without entering into the merit of the case.



9- No order as to cost.

S.M.M. Alam
[S.M.M. ALAM]
Member (J)

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EW 1362/24-8-09

Received copy of order
dated 21 July 2009.

Govind
Sulhas
Adh
27/7/09 For Manoj Bhandari
Adh

Part II and III destroyed
in my presence on 8/12/09
under the supervision of
section officer (J) as per
order dated 07/07/15.

Section officer (Record)

Recd. Copy of order
dt. 21/7/09.

(Vijay Jain)
28/7/09