

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 189/89 189
XXXXXX

DATE OF DECISION 6.8.1990

PC Joseph Applicant (s)

M/s MR Rajendran Nair & PV Asha Advocate for the Applicant (s)

Versus

Accountant General, Kerala, Trivandrum & 3 others Respondent (s)

Mr. AA Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

The applicant, P.C. Joseph joined the office of the Accountant General, Hyderabad on 5.12.1955 as an Upper Division Clerk. On reorganisation of the States when the officials in the office of the Accountant General, Hyderabad were given option to go on transfer either to Maharashtra or Mysore, the applicant expressed his desire to go on transfer to the office of the Accountant General, Kerala. But inspite of his representation for a posting in Kerala, he was transferred to the office of the Accountant General, Karnataka on 1.11.1956. When the applicant and one Shri C.S.V. Warriyer, an employee similarly situated like him were sent

on deputation to Andaman and Nicobar Islands ~~and~~ both of them represented for transfer to the office of the Accountant General, Kerala in the year 1963. Though C.S.V. Warriyer got a transfer to the office of the Accountant General, Kerala the applicant was not given a transfer. Since the applicant's wife was employed in Kerala, he went on making representations. In 1978 when the applicant had become a substantive selection grade auditor, he was told that he could be transferred ~~substantially~~ ^{very} as an ordinary grade auditor to Kerala. Since the applicant expressed his willingness, by order dated 1.9.1978 of the Accountant General, Karnataka, the applicant was transferred ~~substantially~~ ^{very} to the post of ordinary grade auditor w.e.f. 31.8.1978. Annexure-III is a copy of this order. At the time when the applicant was transferred, he was drawing a basic pay of Rs.640/- per month as a selection grade auditor at Bangalore. But on joining in the office of the Accountant General, Kerala, his basic pay was fixed w.e.f. 1.9.1978 at Rs.560/- per month, i.e. the maximum in the scale of pay applicable to the pay of auditor under FR 22(a)(iii). Annexure-IV is a copy of this order. Though the applicant made representations ~~evoked~~ it ~~evoked~~ ⁶ no response. Therefore, in August, 1985 he made a representation to the Controller and Auditor General of India. Annexure-V is a copy of this representation. But for this reversion, the applicant would have as on

1.3.1986 received a salary of Rs.2450/- instead of Rs.1800/-

which was actually receiving. As there was no response to the representation made to the Controller and Auditor

General, the applicant made a representation on 31.3.1987

(Annexure-VI) to the Accountant General, Trivandrum. In reply to this, the applicant received the Annexure-VII letter

of the Accountant General dated 30.10.1987, informing him

that the entire matter had been carefully reconsidered

his application could not be accepted and as there was no provision for protection of his substantive pay drawn by him immediately before his reversion to the lower post at his own request, or for granting him which notional pay he would have been drawn as selection grade auditor from time to time. The applicant submitted a

further representation on 15.4.1988(Annexure-VIII) for

which he received a reply from the Accountant General

stating that, since he was reverted to a lower post at

his own request w.e.f. 31.8.1978 in his former office

prior to his unilateral transfer to the office of the

Accountant General, Kerala, there was no scope of acceptance

of his request. Annexure-IX is a copy of this memo.

While the applicant was to retire on 31.3.1989, he has

filed this application on 27.3.1989 challenging the

Annexure-III order dated 1.9.1978 of the Accountant General, Kar

nataka, transferring him substantive to the post of ordinary

auditor w.e.f. the Afternoon of 31.8.1978, Annexure-IV

order of Accountant General, Karnataka, Bangalore dated

August, 1978, fixing his pay at Rs.560/- under FR 22(a)(iii) w.e.f. 1.9.1978, Annexure-VII memo issued from the office of the Accountant General, Kerala, Tvm. dated 30.10.1987 informing him that the request made in his representation dated 31.3.1987 for protection of his pay in the post of selection grade auditor could not be ~~acceded~~, and the Annexure-IX memo dated 12.9.1988 of the Accountant General, Kerala informing him that the Headquarters office has stated that since he was reverted to a post of ordinary grade auditor from ~~the~~ selection grade auditor at his own request w.e.f. 31.7.1978, there was no scope of acceptance of his plea for protection of pay, and praying that these orders may be quashed, and that it may be declared that proviso (2) to Rule 15 to Fundamental Rules may be declared as ~~unconsti-~~ ^u~~u~~ tutional, null and void, and that the respondents may be directed to deem that the applicant had continued as selection grade auditor notwithstanding his transfer to Kerala in the lower post and to pay him all consequential monetary interest benefits including ~~at the rate of 12% interest~~ per annum on the difference in pay and also to fix his pensionary benefits accordingly. It is averred in the application that Rule 15 of the Fundamental Rules is violative ~~to~~ ^{of} (2) Article 311 of the Constitution of India which provides that no member of a civil service ~~except~~ after an enquiry in which he was informed about the charges against him and given him a reasonable opportunity of being heard. It has been further averred that ~~the~~ transfer to a lower post was applicants'

illegal as the consent given by him was not free being influenced by pressure of circumstances. As the fixation of pay in the lower grade has caused substantial reduction in his total emoluments by way of pay and pension, the applicant has prayed that the respondents may be directed to set right the injustice done to him.

2. In the reply statement the respondents have contended that the claim in the application is barred by limitation in view of the Section 21 of the Administrative Tribunals Act, since cause of action has arisen in 1978, more than three years prior to the coming into being of the Central Administrative Tribunal. It has also been contended that, since before this Tribunal has no jurisdiction to entertain the application the down-gradation was made only at his request for the purpose of getting a transfer to Kerala, his own state, there is no violation of Article 311(2) of the Constitution of India.

3. We have heard the arguments of the counsel on either side and have also carefully perused the documents produced.

4. The cause of action on which the application is founded is based on Annexure-III order of the Accountant General, Karnataka dated 1.9.1978 whereby the applicant was transferred as ordinary grade auditor. His pay was fixed at Rs.560/- as per order of the Accountant General Karnataka in October, 1978 under FR 22(a)(iii) w.e.f. 1.9.1978,

Annexure-IV. The applicant's grievance is against a reduction in his pay consequent on his transfer to the lower grade/occurred in 1978. Section 21 of the Administrative Tribunals Act reads as follows:

"21. Limitation-(1) A Tribunal shall not admit an application,-
(a) in a case where a final order such as is mentioned in clause(a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
(b) 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 had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

2. Notwithstanding anything contained 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; and
(n) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,
the application shall be entertained by the Tribunal if it is made within the period referred to in clause(a), or, as the case may be, clause(b), of sub-section(1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section(2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

The grievance of the applicant in this case arose in the year 1978, much more than three years prior to 1.11.1982 on which date the jurisdiction, powers and authority of the Tribunal became exercisable under the Administrative Tribunals Act. The fact that the applicant has made representation in 1985 and 1987 will not revive the cause of action because successive representations will not alter the legal position. This position has been settled by the ruling ^{of} ~~of~~ the Central Administrative Tribunal in VK Mehra V. Secretary, ATR 1986 CAR 2093 and Dr. (Mrs.) Kshama Kapur V. Union of India 1987(4) ATC 329, The Bangalore Bench of the Central Administrative Tribunal has in Application No.1768/88 in the case of K. Ramachandra Rao Vs. Accountant General, Karnataka, a copy of which is produced as Annexure-R1(a) by the respondents accepted this position. It has been observed in the above order:

"Whatever be merits of the claims of the applicant on which we express no opinion that claim was rejected by every one of the authorities including Government in 1981 or well before 1.11.1982. If that is so

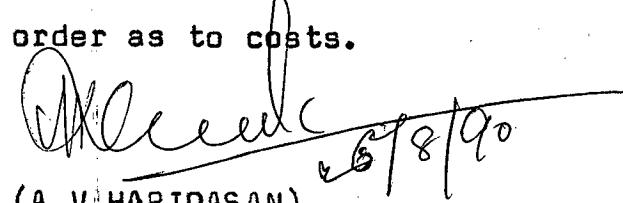
then as pointed out by this Tribunal in Mehra's case we have no jurisdiction to entertain this application and adjudicate the same. The fact that the applicant has continued to make representations and the earlier rejections had been reiterated on 8.12.1987 as pointed out in Kshama Kapur's case will not alter that legal position at all. On this it follows that this matter which arose prior to 1.11.1982 is outside the jurisdiction of this Tribunal and cannot be adjudicated by us. If that is so, then we cannot examine the merits even if the same is well-founded. We therefore, decline to examine the merits."

Since the impugned orders Annexure-III and IV, transferring the applicant as ordinary grade auditor substantively from the post of substantive selection grade auditor and the order fixing his pay at Rs.560/- w.e.f. 1.9.1978 were passed on 1.9.1978 and October, 1978, the grievance of the applicant has arisen in the year 1978. Therefore, though he made representations later which were turned down by Annexure-VII order dated 30.10.1987 and Annexure-IX order dated 12.9.1988, these representations would not revive the cause of action which had already become time-barred. In view of the legal position explained in the case of VK Mehra and Dr.Kshama Kapoor, we are of the view that the application is barred in view of the Section 21 of the Administrative Tribunals Act, and that we have no jurisdiction to entertain the application.

5. The learned counsel for the applicant argued that,

since down-gradation from the post of selection grade of auditor to that of ordinary grade auditor amounts to reduction in rank, since that was not done in the case of the applicant after an enquiry as provided for in Article 311(2) of the Constitution of India, the action is void ab initio, and that, therefore, the law of limitation will not be applicable to such cases. This argument has no force because the applicant was reverted to the post of ordinary auditor only at his own request. The learned counsel argued that, even at request it is not open for the Government to reduce a person from higher post to a lower post. This argument is fallacious because if that principle is accepted the Government will not be in a position to accept the resignation submitted by a Government employee and terminate his services accepting the resignation.

6. For the reasons mentioned above, we find no merit in the application and we dismiss the same without any order as to costs.


A.V. Haridasan
6.8.90

(A.V.HARIDASAN)
JUDICIAL MEMBER


S.P. Mukerji
6.8.90

(S.P.MUKERJI)
VICE CHAIRMAN

6.8.1990