CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH

353 Thu 4/12/18

O.A.No.253 of 2010

Orders pronounced on: 25-10-2018
(Orders reserved on: 20.09.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MR. DEVENDRA CHAUDHRY, MEMBER (A)

Bhuvneshwar Sahai,

aged about 66 years,

son of Late Durga Sahai,

resident of 342/11/1

(at presently 342/64),

Naubasta, Post Office Naubasta,

Lucknow.

Applicant

By: **MR. ANAND KUMAR SRIVASTAVA, ADVOCATE.**

Versus

1. Union of India through General Manager,

   Northern Railway,

   Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway,D.R.M. Office, Ambala Cantt, Ambala.

3. Senior Divisional Personnel Officer, Northern Railway, Ambala Cantt, Ambala.

4. Divisional Finance Manager, Northern Railway, Ambala Cantt, Ambala.

Respondents

By : **MR. ~~YOGESH CHANDRA BHATT~~, ADVOCATE.**

B. B. Tripathi
for M. K. Singh

4/12/18

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, against the action of the respondents in not including the state service rendered by him in Railway Service for payment of retiral dues etc.

2. The facts of the case are largely not in dispute. The applicant initially joined as Pharmacist on 11.9.1969 in Avanti Bai Hospital, on temporary basis and worked as such till 30.4.1971. He was appointed as Pharmacist in Railway Hospital, Ambala vide letter dated 2.5.1971. He has retired on 31.7.2002, after completion of 31 years of service, after reaching to the post of Chief Pharmacist. He has made number of requests for counting state service towards railway service for retiral dues including in 1996 and in 1999. His claim was stated to have been accepted vide letter dated 24.7.2002 stating that service is being counted in Railway service. However, when Pension Payment Order was issued, the State service was not counted by respondents. In reply to an application under RTI Act, 2006, he was informed vide letter dated 21.1.2009, that his claim was rejected and stood closed. Legal notice, Annexure A-5, failed to evoke any response. Hence the O.A.

3. The respondents plead that applicant had not submitted his application to respondents, within one year of service, as per rule formulation i.e. P.S. No. 11831, contained in Railway Board's letter dated 25.5.1999 (Annexure R-2), for counting the state service in Railway Service. Thus, it could not be counted in Railway Service. Thus, even if an order was passed in 2002, accepting the request of applicant that could not be acted upon by the respondents, in view of P.S. No. 11831.

4. We have heard the learned counsel for the parties at length and examined the pleadings on file.

5. It is not in dispute that as per rule formulation contained in Office Memorandum of 19.4.1999 (Annexure R-2), which is further based on O.M. dated 7.2.1986 etc. that if one wishes to count his past service in railway service, such request has to be forwarded within one year of appointment which has admittedly not been done by the applicant. He had submitted the application for counting of service only in 1996 and then in 1999. In that view of the matter, the claim raised by him before the respondents, as well as this Court, was too late in the day, and has rightly been rejected by the respondents.

6. Not only that, it is not in dispute, the applicant had applied for and was granted information vide letter dated 27.1.2009, which contains reasons for not accepting his request. However, this order denying his rights, has not even been challenged by the applicant in the Original Application. Once he accepts legality of an order rejecting his claim, he cannot be allowed to turn around and claim that he is entitled to a benefit which in fact stands declined by indicated order.

7. Be that as it may, the order granting benefit in favour of the applicant was passed in 2002. He kept mum and chose to file an O.A. only in 2014. He has not filed any application seeking condonation of delay in filing the Original Application. The reliance placed by learned counsel for the applicant upon decision in **M.R. GUPTA VS. UOI ETC**. (1995) 5 SCC 628, relating to concept of recurring cause of action, cannot help him at all. That can be used as a ground to seek condonation of delay. But without filing an application in that behalf, the delay cannot be condoned automatically.

8. An identical question came to be decided by a three Judges Bench of Hon'ble Apex Court in the case of **BHOOP SINGH V. UNION OF INDIA ETC.**, (1992) 3 SCC 136, wherein it was ruled as under:-

> "Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence."

9. Likewise, in the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. It was held as under:-

> "14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 "The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of

representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15. When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the `dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing `consideration' of a claim or representation should examine whether the claim or representation is with reference to a `live' issue or whether it is with reference to a `dead' or `stale' issue. If it is with reference to a `dead' or `state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

10. Again in the case of **D.C.S. NEGI VS. U.O.I. & OTHERs**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.3.2011, it has been held as under:

"A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the

prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

11. In the wake of aforesaid discussion and the legal position under the law, this O.A. turns out to be devoid of any merit and is dismissed accordingly.

12. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(DEVENDRA CHAUDHRY)
MEMBER (A)

Place: Lucknow.
Dated:

HC*