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CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, LUCKNOW

...

June 1, 1990

Registration NO. O.A. 344 of 1989(L)

Nanhey Lal ... Applicant

vs

Union of India and ors... Respondents

Hon' Mr P.C. Jain, A.M.

Hon' Mr J.P. Sharma, J.M.

(By Hon' Mr P.C. Jain, A.M.)

The facts of this case fall within a very small compass. The applicant was first appointed in 1971 as a Gaugekhalasi and later on appointed as 'Work Sarkar' (Work Charged Establishment) vide order dated 1-6-1972 (Annexure-A-1). He has contended in this application that w.e.f. 1-1-1973, he was placed in the scale of Rs. 260-400, but he was being paid only in the scale of Rs. 210-270. Further, w.e.f. 1-1-86 he was entitled to the scale of Rs. 950 - 1500, but he was being paid in the scale of Rs. 800 - 1150. It is stated that in the year 1987 he learned that he was not being paid correct salary applicable to his post and represented on 26.3.88. As per this representation, he prayed for scale of Rs. 110 - 180 instead the scale of Rs. 85 - 95 w.e.f. 1-4-1972; scale of Rs. 260 - 400 in place of scale Rs. 210 - 270 w.e.f. 1-1-1973; and scale of Rs. 950 - 1500 in place of scale of Rs. 800 - 1150 w.e.f. 1-1-1986. He sent a notice through his Advocate on 1-6-89 for disposal of his representation dated 26.3.88. He prayed that the respondents be directed to pay him the correct and

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full salary in the scale of Rs.950 - 1500 including arrears and further promotion to the post of 'Work Sarkar Grade I' with all consequential benefits.

2. In their counter reply the respondents have stated that the application is barred by limitation under section 21 of the Administrative Tribunals' Act, 1985. On facts, it is stated that the applicant was appointed as Work Sarkar in 1972 in the scale of Rs.85 - 95 and that this scale of pay was subsequently revised on the recommendation of 3rd Pay Commission, to Rs.210 - 215. This scale was further revised on the recommendation of the 4th Central Pay Commission to Rs.800 - 1150 w.e.f. 1-1-1986. As Khalasi, he is said to have been working in the pay scale of Rs.70 -85. It is further stated that the applicant was appointed in 1972 to the post of 'Work Sarkar Grade III' in group 'B' category, and that he was not promoted to higher grade of 'Work Sarkar' which is a group 'C' post and ^{for} the appointment of which a person is required to pass the written test and qualify in the interview. 50% of these posts are filled by departmental candidates and 50% by direct recruits. The applicant did not appear in any written test or appear before the interview board. Under the jurisdiction of respondent no.3 where the applicant ^{is} stated to be working, only 'Work Sarkar Grade III' posts are stated to be available and the applicant is performing the duties of the same. The allegations of discrimination and violation of provisions of Articles 14, 16 and 39(d) of the Constitution are refuted. The feeder grade for Work Sarkar Grade I is stated to be Work Sarkar Grade II. As the applicant is only Work Sarkar Grade III, he is not even eligible

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for consideration for appointment to the post of
Work Sarkar Grade I.

3. When the case came up for hearing on admission before us today, the applicant moved a petition for permission to amend the application by which he proposed to delete the relief prayed for in para 8 (a) and instead to request for a direction to the respondents to decide the representations dated 26.3.88 and 1-6-89 (Annexures-A-2 and A-5 respectively).

4. We have perused the material on record and have also heard the learned counsel for the parties, on admission, as well as, on the petition for amendment to the original application.

5. In the O.A. the applicant prayed for salary in the scale of Rs. 950 - 1500 with arrears. The afore-said scale of pay came into effect with effect from 1-1-1986 vide Central ^{Civil} Services (Revised) Pay Rules, 1986 notified in September, 1986. This application was filed on 15.12.89 and is, therefore, prima facie barred by limitation. In his representation dated 26.3.88 he prayed for higher scale of pay and pay therein commencing from 1-6-1972 and ending with 1-1-1986. These ~~his~~ prayers are also barred by limitation. In his legal notice dated 1-6-89, he prayed for disposal of his representation dated 26.3.88 and no independent prayer was made therein. It is not in dispute that the applicant has been drawing pay since 1-6-1972 in the grades mentioned by the respondents in their reply and a reference about which has already been made in ~~the~~ paragraph 2 above. Thus the contention of the applicant

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that he came to know of payment of incorrect salary in 1987 cannot be taken at its face value. If the representation of the applicant made on 26.3.88 was not disposed of within 6 months, he should have approached this Tribunal within the limitation prescribed in section 21 read with section 20 of the Administrative Tribunals Act, 1985. The application is, therefore, not maintainable and is barred by limitation.

6. The M.P. for amendment to the original application can also not be allowed. The proposed amendment is a clever move to overcome the bar of limitation. By this amendment, the applicant seeks direction to the respondents to dispose of his representation which, as has already been stated above, seeks relief from 1-1-72. In such a case, the cause of action had accrued 3 years prior to the constitution of the Tribunal and the Tribunal has no jurisdiction to entertain an application in which the cause of action and a right to sue accrued prior to 1-11-82, nor can the Tribunal condone the delay in such a case (V.K. Mehra vs. the Secretary, Ministry of Information and Broadcasting, A.T.R. 1986, C.A.T. 206). In this case before us, there is no application or prayer for condonation of delay.

7. In view of the above discussions, the M.P. for amendment to the O.A. is rejected, and the O.A. is disposed of as not maintainable under section 21 of the Administrative Tribunals' Act, 1985. Parties to bear their costs.

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MEMBER (J) 11/6/90

G. C. S. S.
MEMBER (A) 11/6/90

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June 1, 1990
Lucknow.