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CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

O.A. No.581/1992

THIS THE 24th DAY OF AUGUST, 1999.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.D.C.VERMA, MEMBER(J)
HON'BLE MR.A.K.MISRA, MEMBER(A)

R.M.Bajpai, retired Head Clerk, Commercial Section, Northern Railway, Hazartganj, Lucknow, deceased represented by:-

1. Sri R.K.Bajpai S/o Late R.M.Bajpai aged about 45 years, R/o II/28D, Munawas Bagh, Alambagh, Lucknow.
2. Lalit Mohan, aged about 49 years S/o Late R.M.Bajpai, Artisan Grade-I, Department of Family Planning, Meerut.
3. S.K.Bajpai, aged about 48 years S/o Late R.M.Bajpai, R/o and working as E.S.M., Faisabad.
4. A.K.Bajpai, aged about 42 years S/o Late R.M.Bajpai working as ESM Grade-I, Northern Railway, Lucknow.
5. P.K.Bajpai, aged about 40 years S/o Late R.M.Bajpai, working as Accountant, Instrumental Ltd. Andhra Pradesh.
6. N.K.Bajpai, aged about 38 years S/o Late R.M.Bajpai R/o II/28 D Munawas Bagh, Alambagh, Lucknow.

....Applicants

(By Advocate Shri A.Moin)

vs.

1. Union of India through, General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

....Respondents

(By Advocate Shri A.K.Chaturvedi)

ORDER

JUSTICE K.M.AGARWAL:

The order of reference does not state the questions of law to be considered by the Full Bench. We, therefore, formulate the

questions as follows:

- (i). Whether the claim is barred by time ?
- (ii). Whether the applicant being a member of ministerial staff and having entered into service after 1938 was entitled to continue in service upto 60 years of age in view of rule 2046 (FR 56) of the Indian Railway Establishment Code ?

2. Briefly stated, the applicant retired from service of the Northern Railway on superannuation at the age of 58 years with effect from 31.10.1976. In 1992 he filed the present O.A. for directing the respondents to treat him to have continued in service till he attained the age of 60 years and to pay him "the emoluments and wages due for the two years with all consequential benefits." The claim was based on a decision of the Allahabad Bench of the Tribunal in Victor Singh v. Union of India, O.A. No.255/1992, decided on 25.6.1992. Without expressing any opinion on the merits of the case, the S.L.P. against it was dismissed by the Supreme Court. The claim was resisted by the respondents firstly on the ground of limitation and secondly on the ground that a contrary view was taken by the Lucknow Bench of the Tribunal in Mubarak Ali Siddiqui v. Union of India, O.A. No.52/1991 (Date of order not clear) and in Karimuzzaman Khan v. Union of India, O.A.No.427/1992, decided on 3.12.1993. The D.B. referred the case to the Full Bench considering that there was conflict of views between Allahabad and Lucknow Benches of the Tribunal. This is how the aforesaid questions are before us for consideration by the Full Bench.

3. The learned counsel for the applicants cited K.C.Sharma v. Union of India, (1997) 6 SCC 721 to submit that the claim in the present O.A. based on a decision of Allahabad Bench of the Tribunal in Victor Singh's case(supra) is within time. The decision was also claimed to be a judgement in rem and, therefore, applicable to all persons similarly situate.

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4. We are of the view that the argument is misconceived.

In K.C.Sharma's case (supra), the facts were as follows:-

"3....The appellants were employed as guards in Northern Railway and they retired as guards during the period between 1980-1988. They felt aggrieved by the notifications dated 5.12.1988 whereby Rule 2544 of the Indian Railways Establishment Code was amended and for the purpose of calculation of average emoluments the maximum limit in respect of Running Allowances was reduced from 75% to 45% in respect of the period from 1.1.1973 to 31.3.1979 and to 55% for the period from 1.4.1979 onwards.

"4. The validity of the retrospective amendments introduced by the impugned notifications dated 5.12.1988 had been considered by the Full Bench of the Tribunal in its judgement in C.R.Rangadharmaiah v.Chairman, Rly.Board, (1994) 27 ATC 129 and connected matters and the said notifications insofar as they gave retrospective effect to the amendments were held to be invalid as being violative of Articles 14 and 16 of the Constitution. Since the appellants were adversely affected by the impugned amendments, they sought the benefit of the said decision of the Full Bench of the Tribunal by filing representations before the Railway Administration. Since they failed to obtain redress, they filed the application (OA No.774 of 1994) seeking relief before the Tribunal in April 1994. The said application of the appellants was dismissed by the Tribunal by the impugned judgement on the view that the application was barred by limitation. The Tribunal refused to condone the delay in the filing of the said applications."

The Supreme Court allowed the appeal, condoned the delay in filing the application and declared that the appellants were entitled to the same relief in the matter of pension as was granted by the Full Bench of the Tribunal in its judgement dated 16.12.1993 in O.A.Nos.395-403 of 1993 and connected matters. Thus,

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in essence the claim of the appellants before the Supreme Court in K.C.Sharma's case (supra) was for refixation of their pensionary benefits after ignoring the notification dated 5.12.1988, giving adverse amendment of Rule 2544 of the Indian Railways Establishment Code retrospective effect for the purpose of calculation of average emoluments. According to us, for claims based on such grievances, there is recurring cause of action as held by the Supreme Court in M.P.Gupta v. Union of India, (1995) 31 ATC 186 (SC) and, therefore, on the basis of the aforesaid decision of the Tribunal in Victor Singh's case (supra), the applicants cannot claim fresh cause of action for the purpose of limitation. This view is supported by a decision of the Supreme Court in Bhoop Singh v. Union of India, JT 1992 (3) S.C.322. Accordingly we are of the view that this O.A. having been filed in the year 1992 after his retirement in the year 1976 is hopelessly barred by time and is, therefore, liable to be dismissed on the ground of limitation.

5. In view of the fact that this O.A. is liable to be dismissed on the ground of limitation, it does not appear necessary to decide the second question of law in the present case and may be left open to be considered in some other case in future.

6. Accordingly our answers to the questions aforesaid are as follows:

- (i). Yes. The claim in the present O.A. is barred by time.
- (ii). In the facts and circumstances of the case, it is not necessary to decide the 2nd question in the present case.

7. After our conclusion aforesaid, nothing survives in this O.A. and, therefore, instead of sending it back to the D.B. for further hearing and disposal in accordance with law, we finally dispose it of by holding that this O.A. is barred by time and is liable to be dismissed.

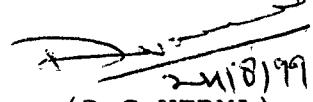
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8. In the result, this O.A. is hereby dismissed as barred by time. No costs.

9. It may be mentioned that the original applicant R.M.Bajpai died during the pendency of this O.A. and, therefore, his legal representatives were brought on record. Accordingly wheresoever the word "applicant" has been used in this order, it may be read as "deceased applicant".



(K.M. AGARWAL)
CHAIRMAN



20/08/99

(D.C. VERMA)
MEMBER (J)



AK Misra

(A.K. MISRA)
MEMBER (A)