

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

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Original Application No. 569 of 1992

this the 18th day of October, 1994

HON'BLE MR. D.C. VERMA, JUDICIAL MEMBER

Kanhya Lal Kalra, S/o Late Sri Bhoja Lal Kalra aged
about 69 years, R/o C-316-1 Rajaji Puram, Lucknow-17.

Applicant

By Advocate : Shri K.B. Srivastava

Versus

Union of India through Secretary Railway Board, Rail
Bhawan, New Delhi.

2. General Manager, Western Railway, Charchgate,
Bombay.

3. Controlar of Stores-Churchgate, Bombay.

Respondents

By Advocate : Shri A.V. Srivastava

O R D E R

D.C. VERMA, MEMBER (J)

(in short K.L.Kalra)

The applicant Kanhya Lal Kalra/working as
Ward Keeper at Mahalaxmi Railway station, Bombay
took voluntary retirement on 20.1.1965 and settled at
Lucknow . The applicant did not elect for pension
scheme started by the Railway department in the year
1957. After the decision given by the New Bombay Bench
of the Tribunal in T.A. No. 27/87 Ghansham Das and
others Vs. Union of India & others decided on 11.11.87
and on S.L.P. filed by the Railway administration
rejected by the Hon'ble Supreme Court on 5.9.1988.

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the applicant filed this O.A. on 3.11.1992 claiming relief on the ground that his case is like similarly placed person as in the case decided by New Bombay Bench and, hence, he is also entitled for pension.

2. The respondents have vehemently contested the case mainly on two points (i) that the case is excessively time barred and (ii) the case of the applicant is not covered by the judgment and order of New Bombay Bench relied by the applicant.

3. Admittedly the applicant took voluntary retirement from Railway Service on 20.1.1965. It is also admitted that he never opted for pension scheme. After Railway Board introduced the pension scheme for Railway servants in the year 1957, option were asked from the Railway employees. The date of option was extended, on 17th and 18th times prior to 1969 as mentioned in New Bombay Bench case, in order to give benefits of the pension scheme to as many employees as possible. However, during the period between 1.10.1964 to 30.12.1965 no option was available to the Railway staff. The applicant retired during this period on 20.1.1965 and hence opportunity to exercise option at the time of retirement was not available to the applicant. The applicant never gave any option electing for pension scheme. The learned counsel for the applicant has asserted that after the S.L.P. against the decision of the New Bombay Bench case

was dismissed by the Hon'ble Supreme Court, the applicant came to know about the same and hence the limitation has been claimed from the date " of knowledge of New Bombay Bench of C.A.T. judgment in Ghansham Das & A.D. Souza, case No. T.A. 27/87".

4. A copy of the judgment dated 11.11.1987 of New Bombay Bench given in T.A. No. 27/87 referred to above has been annexed as Annexure-4 to the O.A. The main portion of the order of the Tribunal on which the applicant has relied is quoted below :-

"11. In the result, we pass the following orders :-

- (i)-----
- (ii)-----
- (iii)-----
- (iv)-----
- (v)-----
- (vi) The respondents are directed to implement the directions given in clauses (i) to (iv) of this order in respect of all the railway employees who were similarly placed like the applicants i.e. those who retired during the period from 1.4.1969 to 14.7.1972 and who had indicated their option in favour of the pension scheme either at any time while in service or after their retirement and who now desire to opt for the pension scheme.
- (vii) Parties to bear their own costs".

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competent to pass such order under such rules rejecting any appeal preferred or representation made by such person in connection with the grievances; or

(b) where no final order has been made by the Govt. or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired".

"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 ~~of XXXXX~~ 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

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any ~~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, which ^{expires} ~~ever~~ period ^{later.}

(3) Notwithstanding anything contained in sub-section(1) or sub-section (2), an application ^{may be} ~~made~~ 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."

6. Looking to the scheme of the Act it is clear that an application under section 19 can be filed but in view of section 20 it shall not be ordinarily admitted unless the applicant has availed all the remedies available to him under the relevant service rules as to redressal of grievances and unless the application is made, within one year (section 21 (1) (a)) from the date on which such final order (Section 20 (2) (a)) has been made. However, in view of exception provided under section 21 (3) if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period as provided under section 21 (1) or (2) the application can be admitted even after such period of limitation. Thus, there is specific provisions under section 21 providing period of limitation for application under section 19 of the Act. The starting point of period of limitation is from the date on which final order as mentioned under section 20 sub-section(2) clause (a) has been passed or the date of the appeal or representation under section 20 (2)(b) in case final

order has not been passed.

7. Section 21 of the Act is a special provision providing period of limitation for applications under section 19 of the Act. Therefore, any application under section 19 can be entertained only if it fulfils the requirements of sec. 20 and 21 of the Act. The provisions of Section 21 of the Act cannot be so interpreted to cover a period of one year from the date of decision of court in some case to which applicant was not even a party .

8. In the present case the applicant joined the service in the year 1941, The pension scheme was introduced by the Railway department in the year 1957 and the applicant took voluntary retirement from service on 20.1.1965. During the period between 1957 to 1965 a number of opportunity was available to the applicant to exercise option in favour of the pension scheme but the applicant did not opt for the same. The applicant did not represent to the department or filed a case before competent court within the period of limitation available at that time. Admittedly the applicant accepted all the retiral benefits and enjoyed fruits thereof till the year 1992. The Administrative Tribunals Act came into force in the year 1985 when section 21 became operative. Even after the Act came into force the applicant did not file any O.A. before the Tribunal. After the S.L.P. No. 5793/88 against the New Bombay Bench case T.A. No. 27/87

was decided on 5.9.1988, the applicant did not move the Tribunal. Considering these facts I come to ^{the} conclusion that in the light of the provisions of the Act the facts of the case before this Bench are not remotely covered. I, therefore, hold that the applicant has forfeited his right to file this O.A. at this ^{extremely} belated stage. I also hold that this O.A. cannot be admitted in view of section 20 (1) of the Act as the applicant did not avail the departmental remedy for redressal of his ~~grievance~~ grievance.

9. In coming to the above conclusion I am supported with the law expressed by Hon'ble Supreme Court in Bhoop Singh Vs. Union of India & others reported in AIR 1992 SC page 1414. A large number of Delhi Armed Police Constables participated in a mass agitation in April 1967. The services of the agitating Police constables were terminated. However, some of them were re-appointed by the administration and some others given appointments by the order of court. Bhoop Singh claiming to be a similarly dismissed police constable filed O.A. before C.A.T. in the year 1989. The Tribunal however, rejected ^{ed} the applicant's application on the ground that it is highly belated and there is no cogent explanation for in-ordinate delay for 22 years in filing the application on 13.3.1989, after the termination of the applicant's services in 1969. While dismissing the S.L.P.

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the Hon'ble Supreme Court has observed as below :-

" No attempt has been made by the petitioner to explain why he chose to be silent for so long, if he too was interested in being reinstated and had not abandoned his claim, if any. If the petitioner's contention is upheld that lapse of any length of time is of no consequence in the case, it would mean that any such police constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground. That would be a startling proposition. In our opinion, this cannot be the true import of Art.14 or the requirement of the principle of non-discrimination embodied therein, which is the foundation of the petitioner's case".

The Hon'ble Supreme Court has further observed as below:

" There is another aspect of the matter. 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, ~~to xxxxxxxxxx~~, 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 behalf."

10. The principle laid-down by the Hon'ble Supreme Court in Bhoo Singh's case applies with full force to the facts and circumstances of the present case. Considering the facts of the case before me, I also come to the conclusion that inordinate and unexplained delay is by itself a ground to refuse relief ^{to} of the applicant.

11. The second contention of the learned counsel for the respondents that the facts of the case are similar to that of New Bombay Bench case is, in my view, not correct. Though, in view of my earlier findings it is not necessary to consider the second contention, I feel it judicious to ^{explain} ~~explain~~ this point also.

12. In the New Bombay Bench case, copy of which has been annexed, applicant A.D. Souza had made an application opting for pension about three weeks prior to his retirement and applicant Ghansham Das of the said case opted for pension after his retirement. In the case before this Bench applicant K.L. Kalra never made any representation nor gave any application electing to opt for pension scheme. Thus, the case of the applicant is not a similarly placed like the applicants of New Bombay Bench case. The New Bombay Bench was dealing with the matter and considering the case of persons who retired during the period from 1.4.1969 to 14.7.1972 whereas the applicant K.L. Kalra took voluntary retirement in Jan., 1965 the period of retirement is also not covered with the period which was under consideration before the New Bombay Bench.

13. The learned counsel for the applicant has relied on the following decisions:-

(i) Amrit Lal Berry Vs. Collector of Central Excise, Central Revenue and others reported in 1975, AIR SC page 538.

(ii) D.S. Makara & others Vs. Union of India & others reported in 1993, AIR SC page 1307

(iii) T.S. Thiruvengadam Vs. Secy. Govt. of India reported in 1973 SCC (L&S) Page 495.

(iv) Lucknow University Retired Teachers' Association Vs. State of U.P. and others decided by Lucknow Bench of Allahabad High Court on 29.5.92 in writ petition No. 10107/89

14. Placing reliance on the observations of Hon'ble Supreme Court in Berry's case that 'the equality of opportunity in a matter relating to employment implies equal

treatment to persons similarly situated or in the same category as the petitioner, the learned counsel for the applicant has claimed relief on the ground that the applicant K.L. Kalra is similarly situated as applicants of New Bombay Bench case, hence, non-granting of relief would amount to discrimination under Article 14 of the Constitution of India.

Amrit Lal Berry's case was based on alleged violation of fundamental right under Article 16 (1) of the Constitution of India . Applicant K.L. Kalra's case is not based on violation of fundamental rights . Besides this it has been already examined and held that K.L. Kalra is not similarly situated or in the same category as applicants of New Bombay Bench case.

15. The learned counsel has referred to para 50 of D.S. Nakara's case, where the Hon'ble Supreme Court has observed " while examining the case under article 14, the approach is not 'either take it or leave it', the approach is removal of arbitrariness and if that can be brought about by severing the mischievous portion the court ought to remove the discriminatory part retaining the beneficial portion". The learned counsel has contended that the period from 1.10.1964 to 31.12.1965 during which no provisions for exercising option was available to the employees is a mischievous part of which the applicant has become a victim. I have already dealt with the facts of the present case and have found that the case of the applicant is different from the

case before the New Bombay Bench of the Tribunal. In D.S. Nakara's case Hon'ble Supreme Court was dealing with cut off/^{date} which discriminated between pensioners who form a class ~~of persons who are not pensioners~~. In the present case there is no discrimination between persons of same class due to any state action. The applicant should have, at any time, during his service period between 1957 till the date of his voluntary retirement in 1965, expressed his desire to opt for pension scheme, but the applicant failed. Thus, the decision in D.S. Nakara's case is of no help to the applicant.

15. The facts of T.S. Thiruvengadam's case and the point for decision therein are totally different. In T.S. Thiruvengadam's case Central Govt. employees absorbed in Public Sector undertaking prior to June, 16 1967 were discriminated for grant of revised pensionary benefits to those absorbed after June 16, 1967. In the case before this Bench, several opportunities were available to the applicant K.K. Kalra but he failed to exercise the option.

16. Lastly, the learned counsel for the applicant has relied on the decision dated 29.5.1992 of Lucknow Bench of Allahabad High Court given in the case of Lucknow University Retired Teacher's Association. The grounds of challenge before the High court involved

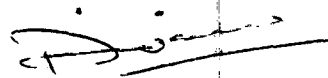
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question of law , different from the question of law involved before this Bench of the Tribunal . In the Retired Teacher's Association case the retired Degree College Teachers were given benefit of pension scheme in 1979 but such pensionary benefits were made admissible under G.O. dated 24.12.1983 to University Teachers who retired on or after 1.1.1984. High Court held that ^{is} this discriminatory and arbitrary and directed to give benefit of the pension scheme to all retired teachers of the universities irrespective of date of their retirement as available to the Teachers of the Degree College. However, the teachers who had utilised employees contribution under the Contributory Provident Fund Scheme, the opposite parties were directed to take option, if necessary. This decision of High Court actually supports the view which has been taken in this case. In the instant case, as mentioned earlier, applicant K.K. Kalra had several opportunity to exercise option but no such option has been ever exercised by applicant K.L. Kalra , hence, the case before High Court stands on a different footing.

18. ^{in view} Besides the above of the pronouncement of the Hon'ble Supreme Court in Bhoop Singh's case that inordinate and unexplained delay is by itself a ground to refuse relief, ⁵ ~~in view of~~ the applicant of the present case is not entitled to any relief as he slept over his alleged right for more than 26 years. *L*

19. To conclude it is held that the O.A. is excessively time barred and that the case of the applicant is not like similarly placed person, as applicants of New Bombay Bench case.

20. In my view, no case is made -out for grant of any relief and O.A. is liable to be dismissed and is dismissed. No costs.



MEMBER (J)

LUCKNOW : DATED: 18.10.94

SRIVASTAVA/-