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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW ~~MUMBAI~~ BOMBAY BENCH

O.A. No. 198

T.A. No. 25/1988

(In Civil Appeal No.17/1984
RCS No.477/80)

DATE OF DECISION 13-7-1989

Shri Bhojsingh D.Daswani Petitioner

Shri A.S.Bhambhani, Advocate for the Petitioner(s)

Versus

Union of India & Another Respondent

Shri R.K.Shetty, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. P.S. Chaudhuri, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? ☒
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. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

P.S. Chaudhuri
(P.S. Chaudhuri)
Member (A)

Amitav Banerji
(Amitav Banerji)
Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

(8)

Transferred Application No.25/1988. Date of decision: 13-7-1989
(In Civil Appeal No.17/1984
RCS No.477/80)

Shri Bhojsingh D.Daswani Plaintiff- Applicant.

Vs.

Union of India & Another ... Defendants- Respondents.

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. P.S.Chaudhuri, Member (Administrative).

For the applicant Shri A.S.Bhambhani, Advocate.

For the respondents ... Shri R.K.Shetty, Advocate.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

The plaintiff-Applicant, Shri Bhojsingh D.

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Daswani filed a Regular Civil Suit No.477/1980 in the court of Civil Judge, Senior Division, Nashik. He had prayed for ~~for~~ mandatory injunction directing the defendants to refix the plaintiff's pay as per the recommendations of the two Boards of Officers held in the past. The suit was dismissed by the Civil Judge by his judgment and decree dated 6.8.1983. It was held that the cause of action for the suit arose in 1972 by the latest if not in 1964, and the present suit filed in the year 1980 is clearly barred as per Article 58 of the Limitation Act. ~~The~~ The court held that the plaintiff was not entitled to the mandatory injunction in view of the decision on issue Nos. 1 to 4 and the suit was dismissed

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with costs.

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Against the judgment and decree, the plaintiff filed Civil Appeal No.17/1984 in the court of the District Judge, Nashik and challenged the findings of the trial court. The appeal was filed within time. It remained pending until 9.3.1988 when it was transferred to the New Bombay Bench of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'). On 2.6.1988, notice was ordered to be issued to the applicant (original Appellant) and respondents (original Defendants) in the Civil Appeal No.17/1984, fixing 10.8.1988. The matter came up before us thereafter for final hearing.

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The principal question which we have to consider in this case, is one of limitation. If the suit had not been filed within time and the finding was that the suit was barred by limitation, (as found by the trial court), then the appellant had to challenge the said finding. The question whether the applicant would be entitled to any further relief as prayed for in the suit would depend on whether the court was satisfied that the finding on the question of limitation had been wrongly decided. In that event, the court would be entitled to go into other questions arising in the appeal. In case the decision of the trial court was correct on the question of limitation, no other question would be considered. In the present case, if we come to the conclusion that the finding on the question of limitation was correct and the trial court had taken a

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correct view of the law and facts, then in that event, the appeal will have to be dismissed without going into any further question.

An effort was made by the learned counsel for the applicant that the question of limitation would not arise since the appeal has now been transferred to the Tribunal.

We have no hesitation in holding that merely by filing an Application before the Tribunal or the transfer of a suit or appeal to the Tribunal, no fresh period of limitation accrues under the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'). The question of limitation pertains to the filing of the suit in the trial court. That will be governed by the law applicable at that point of time. The Limitation Act, 1963, would be applicable. Article 226(5) in schedule to the Limitation Act pertains to the limitation for a suit to obtain any other declaration. The period of limitation is three years from when the right to sue first accrues. The question of applying the provisions of the Act to the question of limitation does not arise at all. In any event, the Full Bench of the Tribunal in MEHARBAN KHAN vs. UNION OF INDIA (1988 (8) ATC 575) clearly held that limitation even after transfer has to be seen with reference to the Limitation Act in the case of a transferred suit. The provisions of Section 21 of the Act will not be applicable in such cases. As the right to plead that the suit is barred by time vests in the defendant the moment the suit is filed, and that vested right cannot be taken away by implication, a suit pending in a civil court which was barred by time

having regard to the provisions of the Limitation Act cannot be declared to be within the time when there is no express provision either under the Administrative Tribunals Act or under the Limitation Act merely because it stood transferred from one forum to the other. The point is well settled and does not require any further elaboration.

Another aspect of the matter which was urged by the learned counsel for the applicant was that the limitation did not begin to run in this case at all since the applicant filed an appeal to the President of India 25 years ago and that remained pending and had not been disposed of. The point is whether the pendency of the appeal before the President of India would give a cause of action to the applicant to come to the court and ask for a declaration. Article 58 of the Limitation Act, Column 3 speaks about the time from which period ~~begins~~ to run. That point has been described as "When the right to sue first accrues". If the right would accrue only after the decision of the President of India on the appeal, then in that event, the suit would be premature in the absence of cause of action. But that is not the case of the applicant. The applicant, however, states that it was not in 1964 that the cause of action arose but at a later date i.e. 7.6.1980 when the statutory period of two months had expired after the notice under Section 80 of the Civil Procedure Code was received by the defendants. In the notice under Section 80, he had stated that he filed an appeal to the President of India for refixation of his pay but he doubted whether the appeal had at all gone to the President for his consideration. The Commandant, School of Artillery had strongly recommended his case for refixation of his pay but the Army Headquarters went on refusing to refix the pay of the applicant. The correspondence went on from 1953 till 1972 and thereafter it was not possible for the applicant to reopen his case during the emergency and due to the negative attitude shown by the applicant's superior officers. Since he

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was to retire shortly and his pay had not been refixed as per the recommendations of the Board of Officers. He was hopeful of getting a good amount by way of arrears of pay after refixation which will enable him to support himself and his family. Since the pay of the applicant was not fixed, the cause of action subsists till the date of giving the notice.

It is apparent from the perusal of the plaintⁱⁿ/the suit applicant had served as a civilian as Supervisor (Stores) at the rate of Rs.4/- per day at Ordnance Depot Drigh Road from 7 September 1942 to 15th November, 1947. He was absorbed in Ordnance Depot, Talegaon Dabhade where he served till 17th April, 1953. He was initially granted pay @ Rs.55/- per month and subsequently it was provisionally refixed at Rs.105/- per month by audit authorities in February, 1949. A Board of Officers was held in Ordnance Depot, Talegaon Dabhade on 10th September, 1949 for the purpose of refixation of the pay of displaced personnel. The said Board approved the pay fixation of the applicant on the basis of collateral evidence at Rs.105/- per month. The applicant continued to draw the pay at the rate of Rs.105/- till January, 1951. By that time the applicant was due for two increments the 1st one on 2.7.1949 and the 2nd one on 2nd July, 1950 but no action was taken by the authorities. The applicant's pay was, however, reduced to Rs.55.00 per month from 2.7.1948. Later, the Audit Authority fixed his pay at the rate of Rs.76.00

per month including increments on the ground that the post of Lower Divisional Clerk and that of a Supervisor (Stores) were not comparable. His pay was reduced and he had to refund the difference overdrawn by him. On 28.2.1951, a second Board of Officers was held and it had recommended the fixation of applicant's pay at the rate of Rs.104-00 per month. But the higher officers did not implement the recommendations of the Board. However, since at the time of leaving Pakistan the applicant was getting Rs.4/- per day and the same was recorded in both the copies of certificate, the original as well as the C.T.C. This mistake^{in typing} was regretted by the applicant. But he was awarded censure by the Commandant, School of Artillery on 8.9.1953. Consequently, he was not allowed to take the benefit for the refixation of the pay at the rate of Rs.104/- per month as recommended by the Second Board of Officers.

All these facts were stated in the notice under Section 80 of the CPC so as to make out a case that great injustice had been done to him by reducing his pay from Rs.105/- to Rs.55/- and not implementing the decision of the Second Board of Officers at Rs.104/- per month. All this shows that when the pay was reduced from Rs.105 to Rs.55/- per month, a cause of action arose. Again, when the Second Board of Officers recommendation for fixation of

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pay at Rs.104/- per month ^{was} not accepted and implemented, again a cause of action arose. It is clear that the applicant did not approach any court of law for the redressal of his grievance at that stage. He went on corresponding with his officers and superiors from 1953 to 1972. He was a civilian employee in an ordnance organisation under the Army. He could approach either the High Court or the Civil court. He did not do so. He waited till 1980 to send the notice under Section 80 of the CPC and there-upon filed the suit in the Court of Civil Judge, Senior Division, Nashik. Article 58 of the Limitation is very clear that the period of limitation is three years from when the right to sue first accrues. When his pay was reduced from Rs.105/- to Rs.55 per month, he did not file the suit then. Secondly, recommendation of Board of Officers for fixation of pay was neither accepted nor implemented. There is no record to show that the recommendation by the Board of Officers was accepted by the Army Authorities. Consequently, the implementation of the recommendation does not arise. If he had been informed of the non-acceptance of the recommendation by the Second Board of Officers, he could still approach the court at that time. Thirdly, serving of a copy of Notice under Section 80 CPC does not give rise to a cause of action. The notice is given to settle the matter within a period of two months failing which the party aggrieved may file a suit for the redressal of his grievances.

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It will, therefore be seen that the applicant had not approached the court at any point of time before 1980 whereas the first accrual of cause of action was on 2nd July, 1948, when his pay was reduced to Rs.55/- per month. Admittedly, he did not file any suit at that stage nor at any other stage until the filing of the present suit on 20.6.1980.

Regarding the filing of the appeal to the President of India, the first point to be seen is whether any statutory appeal was provided against the such orders to the President of India. Nothing could be shown in this regard to us. If it was not a statutory appeal the time spent during its pendency cannot be excluded. Further, the mere filing of a representation (termed as an appeal) will not enhance the period of limitation.

Further, Art.58 emphasises the period of limitation starts/commences 'when the right to sue first accrues'. If the reduction of the pay or the pay scale was ordered it gave rise to challenge the order by way of a suit. That was ordered on 2.7.1948. Since that order was being challenged in the present suit, it was necessary to file the suit within three years of that date. This was not done, and no notice under Sec.80 CPC was even sent at this stage.

Moreover, the Trial Court has also observed that the respondents had clearly informed the Applicant/Plaintiff in 1972 that his case was finally closed and he was advised not to enter into any further correspondence in the matter. The trial ^{court} proceeded to hold that the cause of action for the suit arose in 1972 by the latest, if not in 1964. Even by that standard, the present suit was still barred.

We have carefully looked into the question of limitation and also heard the learned counsel for the parties at some length but we do not find anything to interfere with the finding of the trial court on the question of limitation. The finding that the suit is barred by time is correct and we hold accordingly.

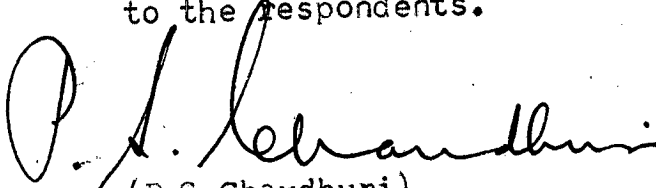
Some arguments were advanced by the learned Counsel for the applicant that if the order complained of was void time does not run and the said order can be challenged at anytime. The proposition is not disputed but the question is whether the order challenged was void. In the case of Kamini Kumar vs State of W.Bengal 1972 SLR 746 (at page 750) Hon. Beg J. speaking for the Supreme Court, observed "A case in which a tax is imposed under a clearly void law is different from one where seriously contested ~~XXXXXXXXXX~~ questions of fact have to be decided before an order of dismissal could be held to be void." In the present case the order complained of was of reduction of pay. Actually, it was a case of fixation of pay. The applicant had come from Pakistan and claimed that his pay should be fixed on the basis of his getting Rs. 4/- per day in Pakistan. The burden was on the applicant that he was employed there on a regular basis and the scale of pay he was drawing. This had to be established by evidence. He failed to establish that he was in regular service in Pakistan. The rate of pay at Rs. 4/- per day indicated that he was temporarily employed at the most. The question of giving him a similar scale of pay would arise if he was in regular service in Pakistan. The correspondence on the record shows that the applicant had made wrong statements several times and the authorities were not prepared to accept the same. All these matters pertained to questions of fact. The applicant has not been able to show how the order was void, or 'void ab-initio'. Consequently, the contention that the suit was not barred by time as the order was void, is wholly untenable in this case.


Once it is held that the suit was barred by time, it will be futile to consider the merits of the Civil Appeal. We, therefore do not think it just

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and proper to refer to all the arguments or ^{record} our answers to the questions raised by the learned counsel in this regard.

We are satisfied that the decision of the trial court on the question of limitation is in accordance with law and the finding that the suit is barred by time is correct. For the reasons indicated above, we decline to interfere with the judgment of the trial court and dismiss this Transferred Application (Civil Appeal No.17/84). In the normal course, costs should follow the event. But taking into consideration that the applicant was a low paid employee in the Defence establishment and has since been retired in 1980, we decline to award any costs to the respondents.


(P.S. Chaudhuri)
Member (A)


(Amitav Banerji)
Chairman.

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