

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 686/94

Transfer Application No:

DATE OF DECISION: 3.10.1994

Shri Solomon David

Petitioner

Shri M.A.Mahalle

Advocate for the Petitioner

Versus

Union of India & Obs.

Respondent

Shri R.K.Shetty

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri M.R.Kolhatkar, Member (A)

1. To be referred to the Reporter or not ? NO

2. Whether it needs to be circulated to other Benches of  
the Tribunal ? NO

M.R.Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

M.S.Deshpande

(M.S.DESHPANDE)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA.NO. 686/94

Shri Solomon David

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande  
Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Shri M.A.Mahalle  
Advocate  
for the Applicant

Shri R.K.Shetty  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 3.10.1994

(PER: M.S.Deshpande, Vice Chairman)

The question which arises for consideration here is whether the delay in filing the present OA, should be condoned. The applicant filed the OA. for getting appropriate pension in view of 16 years service rendered by him. The last of his representations was made on 29.1.1993 (Annexure-A). The submission on behalf of the respondents is that the applicant had made similar representations earlier and they were also rejected by the letter dated 2.3.1990 (Ex.A-1). The applicant's <sup>case</sup> was that his request for sanction of proportionate pension for 16 years of service rendered by him could not be acceded to as no orders existed for the same during that time. Even the letter dated 29.1.1993 refers to earlier representations which came to be rejected and mentioned that there was no point in pressing the item any further. The applicant sought to explain the delay of two months in filing this application by stating that the applicant had sustained a heart attack and had been undergoing

treatment. The delay from 2.3.1990 to 1993 has not been explained. Obviously, the cause of action accrued when the letter dated 2.3.1990 was sent.

2. Shri Mahalle, however, relies on the observations in Balwant Singh vs. Union of India & Anr. (1990) 14 ATC 258, which were as follows :-

"Different Benches of the Tribunal have held that applications based on cause of action arising before 1.11.1982 are not to be entertained. A Division Bench in the case of V.K. Mehra v. Secretary, Ministry of I & B has held that where the cause of action had arisen prior to 1.11.1982, the Tribunal had no jurisdiction to entertain the matter. This view had been modified later by holding that the view will not apply in a case where the cause of action is a continuing one, e.g., regarding salary or pension etc. An argument was raised that similar is the position in regard to a claim for seniority. We are not inclined to accept this contention. If the claim has been rejected, the cause of action would arise then and would not continue."

with the applicant's-contention  
We are unable to agree/because the Supreme Court in  
Balakrishna Savalram Pujari Waghmare & Ors. vs. Shree  
Dhyaneswar Maharaj Sansthan & Ors. AIR 1959 SC 798  
explained what was the continuing right, which may  
be extracted as follows :-

"Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that S.23 can be invoked."

3. Merely because if the pension were to have been granted ~~it~~ it would have been paid from month to month, it would not amount to a recurring cause of action because the wrong was committed ~~when~~ the pension was refused earlier and that would be the event which would afford the cause of action. We find that sufficient cause has not been made out for condoning ~~the~~ the delay and ventilating the applicant's grievance before the Tribunal after his removal in the year 1956. The application for condonation of delay is dismissed. The DA. is dismissed as barred by time.

M.R.Kolhatkar

(M.R.KOLHATKAR)  
MEMBER (A)

M.S.Deshpande

(M.S.DESHPANDE)  
VICE CHAIRMAN

mrj.