

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 922/97

Date of Decision: 19/11/98

P.N.Bhiwapurkar

Applicant.

Shri S.P.Kulkarni

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

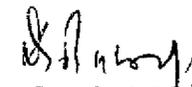
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.922/97

Presented this the 19th day of November 1998

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Pandurang Narayan Bhiwapurkar
R/at 'Kusum', 7-Swanandnagar,
Behind Chetana Nagar,
Aurangabad- 431 001.

By Advocate Shri S.P.Kulkarni ... Applicant

v/s.

Union of India through

1. Chief General Manager,
Telecom, Maharashtra Circle,
Old G.P.O.Bldg. through
Sr.Accounts Officer (T.A.-II),
O/o.Chief Accounts Officer(T.A.),
O/o.C.G.M.Maharashtra Telecom
Circle, Prestige Chamber, 5th Floor,
Kalyan Street, Masjid Bunder (W),
Mumbai.
2. Director (P.G.),
Department of Telecommunications,
Oak Bhawan, Parliament Street,
New Delhi.
3. Director (P.G.),
Directorate of Public Grievances,
Cabinet Secretariat, Govt. of India,
Sardar Patel Bhawan, New Delhi.
4. Telecom District Engineer,
Aurangabad, Anvikar Bldg.,
Adalat Road, Aurangabad.
5. General Manager, (Telecom),
Marathwada Region, Somesh Colony,
At P.D.Nanded.

By Advocate Shri V.S.Masurkar ... Respondents

ORDER

(Per: Shri D.S.Baweja, Member (A))

The applicant while working as Time
Scale Clerk in the Department of Telecommunication
under Divisional Engineer Telegraph, Aurangabad
applied through proper channel for the post of



Superintendent-II (Accounts) in Hindustan Machines Tools Dairy Machinery Unit Chikal-thana, Aurangabad during 1981. The applicant was selected for the same. The applicant submitted his resignation on 9.9.1981 and the same was accepted and thereafter on the same day he joined Hindustan Machine Tools. Before this, Divisional Engineer Telegraph as per his letter dated 14.8.1981 had issued 'no objection certificate' for joining Hindustan Machine Tools. The applicant at the time of submission of the resignation had 13 years and 11 months of service in the Department of Telecommunications. The applicant made an application as per his letter dated 1.9.1981 and 28.1.1982 for payment of pension and gratuity which he claimed to be admissible based on his qualifying service and the fact that he had sent the application through proper channel. However, the claim for gratuity was rejected by the Divisional Engineer Telegraphs as per his letter dated 6.7.1982 stating that he is not entitled for terminal gratuity as he was the permanent employee. Thereafter, the applicant kept representing for payment of gratuity as well as pension as per his letters dated 10.6.1984, 10.12.1984, 5.2.1985 and 2.2.1987 but he did not get any response from the Department. Thereafter, he started representing again from 8.1.1992 onwards to the Director- Posts & Telegraph, General, Department of Telecom, New Delhi as well as to the Minister for Communication. The Department as per letter dated 24.7.1993 sought for the copies of the earlier representations and other details from



the applicant. These were furnished by the applicant. Thereafter, he made several representations and in respect of some, he got some interim replies also. Finally, the sanction of pension, commuted value of pension and gratuity was conveyed to the applicant on 8.11.1994. Subsequent to the payment of these retiral benefits, the applicant made a representation on 25.11.1994 for payment of the interest on account of delay in the payment of settlement dues which became payable when the applicant was relieved on 9.9.1981. This request was, however, rejected by the department as per letter dated 7.12.1995. However, the applicant kept representing thereafter to various authorities and finally agitated the matter for legal remedy through filing of this OA. on 24.9.1997 seeking the following reliefs :- (a) to direct the respondents to consider his representations made since 1994 and pass speaking order. (b) To allow interest of 12% as per rules on account of delay in payment of gratuity and commuted value of pension. (c) to allow further interest of 6%, i.e. total of 18% based on the market rate for delay in the payment of dues. (d) Cost of the OA.

2. The main contention of the applicant is that the applicant was entitled for payment of pension and the gratuity as per the extant rules. The claim of the applicant had been not settled by the respondents due to mis-interpretation of the rules inspite of repeatedly representing for the same.

The delay is exclusively on account of administrative lapses and therefore the applicant is entitled for payment of interest on account of delay in payment.

3. The respondents have opposed the application through the written statement. The respondents have admitted the facts with regard to the issue of 'no objection certificate' and acceptance of the resignation for joining Hindustan Machine Tools, Aurangabad. Respondents also submit that as per letter dated 6.7.1982 the applicant was also replied by Divisional Engineer Telecom that he is not entitled for the gratuity. The respondents submits that the applicant's case was considered as a permanent transfer to Hindustan Machine Tools having resigned from service and thus and therefore he was treated as he was not entitled for terminal benefits. However, on his repeated representations in 1992, the matter was again examined at the appropriate level and finally his claim was allowed and the payments were made to the applicant. The respondents plead that the delay is not on account administrative lapses but on account of the fact that there was dispute with regard to admissibility of the retiral benefits on prorata basis. The matter was decided only after deliberations at various levels and therefore the applicant is not entitled for the payment of the interest for the delay in payment. The respondents have also opposed the application on the plea that it is barred by limitation as the cause of action arose in 1981 and the present DA. has been filed in 1997.

4. The applicant has not filed any rejoinder reply for the written statement.

5. I have heard the arguments of Shri S.P.Kulkarni, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents.

6. From the facts of the case, it is noted that the applicant was relieved on 9.9.1981 for joining Hindustan Machine Tools, Aurangabad. The applicant was paid the retiral benefits in November, 1994 and the present application has been filed on 24.9.1997. The respondents have taken a plea that the application is barred by limitation as the cause of action arose in 1985. The applicant in the original application has stated that the application is filed within the limitation period as prescribed in Section 21 of the Administrative Tribunals Act, 1985. The applicant as indicated earlier, has not filed any rejoinder to controvert the plea of the limitation taken by the respondents in the written statement. However, during the oral submissions, the learned counsel for the applicant repelled the ground of limitation taken by the respondents placing reliance on the judgement of Hon'ble Supreme Court in the case of S.R.Bhanrale vs. Union of India & Ors., 1996(2) S.C.SLJ 362 and Hon'ble High Court of Punjab and Haryana in the case of R.S.Randhawa vs. State of Punjab and Ors., 1997(2) ATJ 597. These judgements are reviewed as under :-

S.R.Bhanrale vs. Union of India & Ors. :-

In this case, the payment of retiral benefits, arrears of increments and special pay etc. was delayed to the petitioner for a period of more than 12 years. The plea of limitation was raised by the department before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court has held that the plea of limitation is not maintainable on the facts of the case. From the facts of the case, it is noted that apart from the payment of DCRG and GPF which were paid after a short period after retirement, the other payments of leave encashment, increment arrears and proforma promotion arrears were paid to the applicant after a period of 12 years. While considering the claim of the interest, the Hon'ble Supreme Court has observed as under in Para 4 :-

"4. The amounts now paid to the appellant admittedly fell due to him much before his retirement. The same was wrongfully withheld. It was, to say the least improper on the part of the Union of India to plead the bar of limitation against such claims of its employees, when it had defaulted in making the payments promptly when the same fell due. It is not as if the appellant had woken up after a decade to claim his dues. He had been asking the department to pay him his dues both while in service and after superannuations also but to no avail. In these circumstances it ill behoved the Union of India to plead bar of limitation against the dues of the appellant."

R.S.Randhawa vs. State of Punjab & Ors. :-

In this case also the payment of settlement dues was delayed and the Hon'ble High Court has held that no satisfactory explanation for delay in

payment of retiral benefits to the petitioner has been brought out by the respondents and therefore the petitioner is entitled for interest at the rate of 12% p.a. for the period of delay.

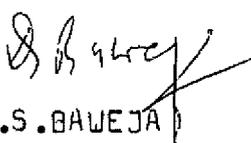
Keeping in view what is held in these **two relied** upon judgements, the issue of limitation has been examined subsequently.

7. The applicant was relieved from service from the Department of Telecommunications on 9.9.1981. The applicant made representations for payment of gratuity and pension as per his letters dated 1.9.1981 and 28.1.1982. As per letter dated 6.7.1982, the applicant was advised that he is not entitled for payment of gratuity. From the averments made in Para 4.8 of the OA., it is noted that thereafter he represented on 16.6.1984, 10.12.1984, 5.2.1985 and 2.2.1987. The applicant has not brought on record any of these representations. The respondents in reply to this para have also not admitted of having received any of these representations. Thereafter, the applicant represented only on 8.1.1992 after a period of five years, even if the contention of the applicant is accepted that his last representation was in 1987. From these facts, it is obvious that after the claim of applicant for settlement dues had been rejected, the applicant has been keeping quiet till he represented again on 8.1.1992. It is noted that after 8.1.1992 he was pursuing the **matter vigorously** and

from the written reply it is noted that his case was re-examined at the higher level and finally the claim for settlement dues were accepted on 8.11.1994. On these facts, the case of the applicant is distinguishable from the cases covered in the above referred two judgements. In the case of S.R.Bhanrale, there was no dispute with regard to the admissibility of the settlement & other ^{payable} dues to the petitioner and this was a case of delay on the part of administration. In the present case, the claim of the applicant had been rejected in 1982 and therefore the matter was under dispute whether the applicant was entitled for payment of settlement dues keeping in view the nature of resignation submitted by him. Only after re-examination of issue at higher level after his representations in 1992 onwards, the claim of the applicant was accepted. Therefore the ratio of this judgement does not apply to the case of the applicant. Similarly, the case of the applicant is not covered by what is held in the judgement of R.S.Randhawa. In this judgement, the payment of interest has been allowed on the ground that no satisfactory explanation for delay in disbursing of retiral benefits had been made by the respondents. In the present case, as indicated earlier, the matter was under dispute in view of the interpretation of the rules with regard to submission of resignation for joining public sector undertaking. After the rejection of the claim, the applicant also kept quiet

for considerable period and only after more than 10 years he took up the issue again. Keeping this in view, it cannot be accepted that the delay in payment was entirely on account of administrative lapses. If the claim of the applicant had been rejected for admissibility of retiral benefits, the applicant should have agitated the matter at appropriate time instead of making repeated representations. Further, it is also noted that the request for payment of interest on account of delay in payment of retiral benefits had been also rejected as per letter dated 8.8.1995 and subsequently again advised as per letter dated 7.12.1995. The present application has been filed only on 24.9.1997, i.e. after more than two years after rejection of his claim for payment of interest. Keeping in view the provisions under Section 21 of the Administrative Tribunals Act, 1985, the applicant should have approached the Tribunal within a year for seeking the relief as claimed in the present OA. Keeping these observations in view, I am of the opinion that the present OA suffers from delay and laches as well as from limitation.

8. In the result of the above, the OA lacks merit and therefore it is dismissed accordingly. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)