

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

O.A.NO. 1087 : Date of decision: 28.7.93

Dwarka Prasad

Upadhyaya & Ors : Applicants.

Mr. Mahendra Shah : Counsel for the applicants.

VERSUS

Union of India & Ors. : Respondents.

Mr.K.N.Sharma : Counsel for the respondents.

CORAM:

HON'BLE MR. GOPAL KRISHNA, JUDL.MEMBER

HON'BLE MR. O.P.SHARMA, ADMINISTRATIVE MEMBER

PER HON'BLE MR. O.P.SHARMA, ADMINISTRATIVE MEMBER

The applicants ^{have} ~~has~~ filed this application
on 13.7.89 praying for the following reliefs:-

- "(a) That the applicants submit that their pay may kindly be stepped-up equivalent to the non-petitioner No.3 who is drawing more salary than the applicants inspite of that applicants are senior to the non-petitioner No.3 or other alternative relief which this Hon'ble Court may deem just and proper.

(b) That the officiating promotion given to the non-petitioner No.3 w.e.f. 24.9.78 and all the consequent benefits given to him may kindly be declared wrong, illegal and unconstitutional and kindly be quashed. "

At the outset the learned counsel for the applicants stated that he does not want to press for relief in respect of ground (b) in the relief clause.

2. The ground which has been pressed relates to the stepping up of the pay of the applicants equivalent to that of respondent No.3, as the applicants are claiming to be senior to respondent No.3. The learned counsel for the respondents has taken two preliminary objections to the application. One is that the application has been filed against order Annexure J-i (perhaps order Annexure.A/1), which is a communication dated 12.3.87 from the Govt. respondents by which the representation for stepping up of the pay of the seniors was turned down. Mr. K.N.Shrimal has stated that the applicants were not parties to the said representation which was rejected by communication dated 12.3.87, Therefore, they could not have a cause of action viz-a-viz the communication dated 12.3.87, Therefore, on this ground the application is not maintainable. Secondly, according to him

even assuming that some cause of action arose on account of the communication dated 12.3.87, the application was barred by limitation because it had been filed after 2 years and 4 months from the date of the communication dated 12.3.87.

3. Mr. Mahendra Shah, the learned counsel for the applicants, has drawn our attention to two decisions of the Tribunal according to which in the matter of fixation of pay the Tribunal have taken the view that limitation need not **apply**.

These decisions are mentioned below:-

1. 1992 Vol. 21 ATC 163 C.A.T.
Celima L V Azavedp & Anr. Vs. U.O.I. & Ors.
2. 1992 Vol 21 ATC 382 C.A.T.
M. Laxmanarayana Vs. Member Audit Board

As regards the first decision the delay of 18 years was condoned. As regards the second decision the delay of 3 and a half years was condoned. He has also referred to another decision of the Tribunal, in Anand Dev Vs. U.O.I. & Ors. reported at 1992 Vol. 21 ATC 882, in which the view has been taken that relief should not be denied on the technical ground of limitation.

4. We have heard the learned counsel for the parties and we have also perused the judgments cited by the learned counsel for the applicant. We find that the issues and facts on which the decisions have been given by the Tribunal, which has been relied upon by the learned counsel for the applicants, are different from those in the present case. The present case relates to a claim for stepping up the pay equivalent to that of the juniors. No continuing cause of action arises in the matter of stepping up. The applicants should have made the application at the time when the cause of action initially arose. In this connection we may refer to an authority reported in 1990 (4) SLR 579, Shri H.V. Dhruva Rao Vs. The Post Master General Bangalore & Ors, ^{and} a decision of a Division Bench of this Tribunal in O.A. No. 586/1990, dated 27th Sept. 1991 Naurang Lal Nandwana Vs. U.O.I. & Ors. According to this decision, the matter of stepping up of pay by the grant of appropriate number of increments is not akin to the grant of normal increments on fixation of pay and as such cannot be regarded as a continuing cause of action.

5. The learned counsel for the applicants has, during the arguments also cited another decision of the Tribunal in N. Lalitha (Smt.) and others Vs. Union of India and others,

given by the Hyderabad Bench of the Tribunal in O.A.No. 816 of 1989. The decision was given on 15.11.1991. He has drawn our attention to para.6 of the said order which, according to him, says that limitation in a matter like stepping up of pay does not apply. The said para. 6 reads as under:-

" The learned counsel for the respondents Shri V. Ramana, raised the point of limitation. It is seen that even at the time of admission, this question was considered and the application was admitted subject to limitation. The representation of the applicants was rejected on 5.8.1987 and this was enough cause for the applicants to seek legal redressal within the time limit of one year thereof. They however, pursued the matter at other levels and this does not save them from limitation. The learned counsel for the respondents, therefore, wanted the application to be dismissed on this score. No doubt, there has been lapses on the part of the applicants but then this a recurring event and every month when the seniors draw less pay than their juniors for


no fault of their, it is a grievance repeating itself regularly. At the same time, question of limitation cannot also be overlooked Sub- section (a) of Section 21 of the Administrative Tribunals Act, 1985 requires that where a final order causing grievance had been passed, the application should be made within one year from the date on which such final order had been made. In this case the applicants had clearly failed to do this However, I am not inclined to dismiss the application on this score and since the point of law is very much in favour of the applicants I am inclined to give them the benefit of higher pay fixation but within the limits imposed by Section 21 of the Administrative Tribunals Act, 1985. This application was filed by the applicants on 21.9.1989. In terms of Section 21 of the Administrative Tribunals Act, 1985 I am inclined to take the cause of action as having arisen on 22.9.1988. "

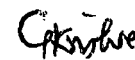
A perusal of the above para suggests that the case was not decided by the Tribunal on merits but on

the peculiar facts of that case.

6. The applicant has also prayed for condonation of delay by filing a separate application on 7.8.89. In this application the delay in filing the O.A. has not been explained. The application therefore, fails on the ground of limitation. Annexure J(i) (which should read as Annexure.A/1), is a communication dated 12.3.87 rejecting the representation of various employees for stepping up of pay. Admittedly the applicants here were not parties to the said representation. Therefore, rejection of that representation by communication dated 12.3.87 does not furnish any cause of action to the applicant. Therefore, the application also fails on this ground.

7. In view of the fact that preliminary objections raised by the learned counsel for the respondents are held as valid, it is not necessary for us now to deal with various issues raised in the application on merits. The O.A. is dismissed accordingly with no order as to costs.


(O.P. SHARMA)
Adm. Member


(GOPAL KRISHNA)
Judl. Member

Anil