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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH JAIPUR

O.A.No.537/94

Date of order: 19-9-1995

Kanwar Pal Sharma : Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. Deputy Chief Electrical Engineer (Workshop) Western Railway, Ajmer.

: Respondents

Mr. N.K.Gautam, Counsel for the applicant
Mr. U.D.Sharma, Counsel for the respondents

CORAM:

HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL))

The applicant Kanwar Pal Sharma, a retired Master Craft Fitter under the Deputy Chief Electrical Engineer (Workshop) Ajmer has filed this OA to claim the following reliefs:

- i) That the letter dated 3.12.1993 (Annexure A-1) be quashed;
- ii) That it be declared that the option given by him has been in time, valid and genuine;
- iii) Fix the salary of the applicant as per option given by him alongwith all consequential benefits;
- iv) Calculate his pension and other retiral dues after fixation as per option given by him.

2. Facts relevant to this application are that the applicant was initially appointed as a Substitute Khallasi on 22.5.1954 and retired from the post of Master Craft Fitter on 31.1.1993 on superannuation. It is the case of the applicant that in consequence of the Railway Board's letter dated 2.6.1984 (Annexure A-2) option for fixation of pay from a date subsequent to 1.3.1973 were permitted to be made upto 25.08.1984 and in compliance of which he submitted his option on 16.8.1984 electing 6.1.1976 as the date from which

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his revised pay was to be fixed. Vide letter dated 28.8.1987 (Annexure A-3) respondent No.2 i.e. Deputy Chief Electrical Engineer(Workshop), Western Railway Ajmer asked the applicant to submit duplicate option form as the original was not available in their office, whereupon the applicant again submitted his option form on 18.10.1987. It is further the case of the applicant that respondent No.1 the General Manager, Western Railway, Churchgate Bombay vide their letter dated 2.3.1990 (Annexure A-4) advised the applicant that he had exercised his option on 16.8.1984 and as such his pay could be fixed on that basis. This decision was further confirmed by respondent No.1 vide their letter dated 10.11.1991 (Annexure A-5), 18.12.1991 (Ann.A-6) and 27.5.1992 (Annexure A-7). The grievance of the applicant is that inspite of all these three letters Annexure A-5, Annexure A-6 and Annexure A-7, respondent No.2 did not do fixation according to the option exercised by the applicant that but/ respondent No.1 vide their letter dated 3.8.1992 (Annexure A-1) cancelled/also its earlier letter dated 2.3.1990 (Annexure A-4). It is further the grievance of the applicant that while communicating the impugned order as at Annexure A-1, respondent No.2 did not provide him a copy of the letter dated 3.8.1992 and also did not give him any opportunity of hearing, nor any show cause notice was issued to him.

3. Aggrieved, the applicant filed an earlier OA No.460/94 before Jaipur Bench of the Tribunal which was permitted to be withdrawn with liberty to file fresh application provided it is not hit by the bar of limitation vide its order dated 29.7.1994 (Annexure A-8). The applicant having come to know that his case of tendering the option has been finally closed and cancelled only through the

impugned order dated 3.12.1993 (Annexure A-1) he has been constrained to file this application to claim the aforesaid reliefs.

4. The respondents have contested this application by filing a written reply. The stand of the respondents has been that the Railway Board's letter dated 2.6.1984 was duly brought to the notice of all the employees vide which they were given time upto 27.8.1984 to file their options. The applicant did not submit his option within the aforesaid period and in consequence of his representation he was erroneously asked to supply a duplicate option form. It has also been ascertained that the letter dated 20.11.1991 had been sent to the applicant on the basis of an information furnished by the office of respondent No.2. That on re-examination the office of respondent No.2 came to the conclusion that the correctness and the validity of the inquiry earlier made in the matter of giving option was questionable and as such it was felt that it would not be appropriate to comply with the instructions received by the Headquarters vide their letter dated 2.3.1990. The respondent No.2 sent a detailed letter dated 5.5.1992 on the subject to respondent No.1 (Annexure R/1). Consequently on receipt of letter dated 5.5.92, respondent No.1 issued letter dated 11.6.1992 (Annexure R/2) and informed the respondent No.2 that the letter dated 5.5.1992 was under detailed examination and that further advice will follow after the said

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examination was completed and that in the meantime no action should be taken on the letter dated 27.5.1992 (Annexure A-7) which stood cancelled. It has therefore been averred on behalf of the respondents that since the aforesaid letter dated 27.5.1992 (Annexure A-7) stood cancelled, earlier letters dated 2.3.1990 (Annexure A-4), 20.11.1991 (Annexure A-5) and 18.12.1991 (Annexure A-6) stood automatically cancelled and did not remain in operation. Thus the stand of the respondents virtually has been that the applicant did not furnish any option pursuant to the Board circular dated 2.5.1984 and as such the question of fixing his pay does not arise, inasmuch as when the applicant himself has been a signatory to a joint statement (Annexure P/3) alongwith 11 other employees on 8.5.1985 stating that the notice with regard to stepping up of pay was not put up on notice board and that they had not submitted their options in time. It has accordingly been claimed that there is no merit in the OA filed by the applicant which should be dismissed.

5. I heard the learned counsel for the applicant as also the respondents and have carefully gone through the record of the case.

6. The only question which falls for determination in this OA is whether any vested right of hearing has accrued to the applicant prior to the issuance by respondent No.1 the impugned letter dated 3.12.1993 (Annexure A-1) which had the effect of the cancellation of earlier communications Annexures A-4, A-5 & A-6 of respondent No.1?

7. The argument of the learned counsel for the applicant has been that since the applicant has given his option within time in pursuance of the circular letter of the Railway Board dated 2.5.1984 which has also been admitted not only by respondent No.2 but also by respondent No.1 vide their communications dated 2.3.1990 (Annexure A-4), 20.11.1991 (Annexure A-5) and 18.12.1991 (Annexure A-6) and further in letter dated 27.5.1992 (Annexure A-7); the respondents are now estopped to take a stand that the applicant has not given his option within time. It has also been urged by the learned counsel for the applicant that in any view of the matter, the respondents were duty bound to give ^a hearing before the issuance of the impugned order (Annexure A-1).

8. On the contrary, it has been argued on behalf of the respondents that no vested right has accrued in favour of the applicant because of the issuance of the aforesaid communications Annexures A-4, A-5 A-6 or for that matter by letter dated 27.5.1992 (Annexure A-7) since the matter was thoroughly examined by respondent No.2 and on finding that the applicant has really not tendered any option within the requisite time frame; there was no occasion for issuance of the aforesaid communications which have been issued on an erroneous finding. It has also been urged by Shri U.D.Sharma, the learned counsel for the respondents that even if it is believed for the sake of argument that communications Annexures A-4,

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A-5 and A-6 were issued under a mistaken belief, yet it does not create a bar against the respondents to revise its findings on thorough examination of the matter and issue letter to the applicant intimating the correct position about the submission/non-submission of option within the time frame given by the Railway Board in its letter dated 2.6.1984. It has been vehemently argued that in any view of the matter impugned order Annexure A-1, is an executive order revising and giving the correct position about non-tendering of option by the applicant and that an administrative authority has an inherent right to correct its error/mistake at any time before any vested right inheres in the applicant. It has also been urged that since no order of pay fixation has been issued by the respondent NO.2 in consequence of the communications dated 2.3.1990 (Annexure A-4), 20.11.1991 (Annexure A-5) and 18.12.1991 (Annexure A-6) and for that matter also after the issuance of letter dated 27.5.1992 (Annexure A-7), the respondents are not estopped from correcting their error. In support of above arguments, the learned counsel for the respondents has cited M.V.Balachandran Pillai Vs. Central Administrative Tribunal New Delhi and another (1995) 23 ATC 450;

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T.R.Midha and others Vs. Union of India and others 1994 (7)SLR 49 (PB) and Rameshwar Dass Vs. Union of India 1993 (3)SLR 88 (DH).

9. Another argument raised on behalf of the respondents has been that the OA is barred by the limitation as the cause of action, if any, arose for the first time after the receipt of letter dated 28.8.1987 (Annexure A-3), then on receipt of letter dated 2.3.1990 (Annexure A-4), thereafter on receipt of letter dated 20.11.1991 (Annexure A-5) and lastly after the receipt of letter dated 18.12.1991 (Annexure A-6) by the applicant. It has further been urged that Annexure A-1 dated 3.12.93, in fact does not give any cause of action to the applicant as it was a communication in pursuance of his application before 'Pension Adalat'. Applicant should have approached the Tribunal within one year of letter dated 18.12.1991 but he having failed to do so, his OA is barred by limitation as well. It has accordingly been argued that the applicant's OA is without any substance and may be dismissed.

10. I have given anxious thought to the able arguments addressed to by the learned counsel Shri N.K.Gautam and Shri U.D.Sharma.

11. Although it is true that communications as at Annexures A-4, A-5, A-6 & A-7 were issued which

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in fact indicated that the applicant has given his option within the time frame fixed by the Railway Board letter dated 2.6.1984, yet it is also undisputed that consequent to these communications no formal order of pay fixation has been issued by any of the respondents, nor any payment has been made to the applicant. The doctrine of estoppel comes into play only when a person makes a statement knowing it to be false and on the basis of it the other party acts or is obliged to act and thus results in vesting in such a person a legal right enforceable under law. In the instant case, communications as at Annexure A-4, A-5, A-6 or for that matter Annexure A-7 cannot be termed to be made on behalf of the respondents knowing them to be false. When these communications were issued the respondents were of the view that the applicant has given his option in time but subsequently on thorough examination of the matter and the respondents having come to know that in fact the applicant has not tendered the option within the time frame given by the Circular letter dated 2.6.1984; respondent No.1 immediately issued the letter dated 11.6.1992 (Annexure R-2) informing the respondent No.2 that letter dated 5.5.1992 (Annexure R-1) is under detailed examination and that further advice will follow after the said examination was completed and that in the meantime no action should be taken on the letter dated 27.5.1992 (Annexure A-7) which stands cancelled. Pursuant to this decision of respondent No.1, respondent No.2 issued the letter dated 3.12.1993 (Annexure A-1) and thereby closed the matter finally about the giving

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of option by the applicant. It is pertinent to note that none of the respondents in consequence of the communications Annexures A-4 to A-7 have issued any orders re-fixing the pay of the applicant, nor any payments have been made to the applicant thereunder and as such it cannot be said that any loss has occasioned to the applicant because of the issuance of impugned order (Annexure A-1). In any view of the matter, no right has vested in the applicant to insist the respondents not to correct the mistake which has resulted in the issuance of communications as at Annexures A-4 to A-7. This conclusion is also supported by a judgment of the Principal Bench of the Tribunal in the case of T.R.Midha Vs. Union of India, 1994 (7) SLR 49 wherein it has been held that when there has been erroneous determination of pension, the concerned authority is competent to re-determine the pension and correct the erroneous order passed earlier fixing the pension. The ratio laid down in this decision also applies to the instant case where the respondents have corrected an error which has come to their notice before issuance of the actual order of pay fixation of the applicant.

12. To the argument of the learned counsel for the applicant that before issuance of impugned order dated 3.12.1993 (Annexure A-1), he should have been issued a show cause notice or should

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have been provided an opportunity of hearing; the learned counsel for the respondents has relied upon the judgment of Delhi High Court in Pameshwar Dass Vs. Union of India, 1993 (3)SLR 88. This decision in fact relates to the correction of clerical mistake resulting in reduction in salary wherein it was held that there was no necessity of issuing any notice to show cause or an opportunity of hearing to the aggrieved individual before correcting the mistake of clerical nature. In the instant case, the fact being distinguishable and not related to correction of clerical mistake, the decision relied upon by the learned counsel for the respondents is of no avail. Be that as it may, the ratio laid down in the case of T.R.Midha (supra) is applicable in the instant case and the respondents have been within their right to correct their earlier stand by issuing the impugned order Annexure A-1; more so when the alleged earlier communications have not resulted in the vesting of any legal right in favour of the applicant. If the argument of the learned counsel for the applicant to the contrary is accepted, it would mean that the Executive/ Administrative authority has no right to correct its own errors before any vested right accrues in favour of any person. In any view of the matter, the action of the respondents in the issuance of letter dated 3.12.1993 (Annexure A-1) does not entail any civil consequences and hence there is no infirmity or illegality in the issuance of it.

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13. On the aspect of plea of limitation raised on behalf of the respondents, it is suffice to mention that the applicant has not been vigilant in persuing his remedy within the time prescribed under Section 21 of the Administrative Tribunal's Act, 1985. It is settled law that repeated representations do not extend the period of limitation as has been held by Hon'ble the Supreme Court in the case of S.S.Rathore Vs. State of M.P. AIR 1990 SC 10. Further as has been held by the Ernakulam Bench of the Tribunal in M.K.Balachandran Pillai Vs. Central Administrative Tribunal, New Delhi and another (1995)29 AITC 450, reply to ^a delayed representation does not confer or give rise to a fresh limitation period. There is a force in the argument of the learned counsel for the respondents that in fact impugned order as at Annexure A-1 is a reply of a representation made by the applicant before the Pension Adalat. Reply to the aforesaid representation thus does not extend the period of limitation. Accordingly this OA is also held to be barred by the limitation as well.

14. Consequently in this OA neither the question of applicability of doctrine of estoppel as against the respondents apply, nor the applicant has any right to demand issuance of a show cause notice or hearing before the issuance of order
 ✓ Annexure A-1 and hence the issue raised in this

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OA is answered in the negative.

15. For all the aforesaid reasons, there is no merit in the OA filed by the applicant which is hereby dismissed with no order as to the costs.

Rattan Prakash
19.9.95

(RATTAN PRAKASH)
MEMBER (JUDICIAL)