

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 7.3.1996

OA 595/94

B.Ram, IAS (Retd.)

... Applicant

Versus

Union of India and another

... Respondents.

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. O.P. SHARMA, MEMBER (A)

For the Applicant

... Mr. R.N. Mathur

For the Respondents

... Mr. B.N. Purohit

O R D E R

PER. HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

Applicant, Shri B.Ram, has filed this application u/s 19 of the Administrative Tribunals Act, 1985, praying therein that the respondents be directed to pay to him a fixed salary of Rs.8000/- for the period he had occupied the post of Chairman, Rajasthan Sales Tax Tribunal, from 8.8.1988 to 28.2.1989 and for the period when he was posted as Chairman and Managing Director, Rajasthan State Agro Industries Corporation, from 8.8.1989 to 27.1.1991 as also for the period during which he had occupied the post of Director, HCM State Institute of Public Administration, from 28.1.1991 to 31.8.1991. The applicant also sought a direction to the respondents to calculate his pension on the basis of the higher salary, which the applicant is entitled to get in accordance with the directions sought above. The applicant further prayed for a direction to the respondents to issue a revised Pension Payment Order and to pay the difference of the amount, which the applicant is entitled to get on the basis of the higher pay claimed for the period mentioned above.

2. The facts of the case leading to this application may be briefly stated as follows. The applicant was in the Rajasthan Cadre of the Indian Administrative Service, (for short, the IAS). He retired from service on 31.8.91. He was transferred on the post of Chairman, Rajasthan Sales Tax Tribunal, vide order dated 18.7.88, passed by the Government of Rajasthan. He occupied the said post from 8.8.88 to 28.2.89, only for a period of six months. Persons named in para 4.2 of the OA also held the same post and they were in the fixed pay of Rs.8000/- p.m. since the post of the Chairman, Rajasthan Sales Tax Tribunal, was declared as equivalent in status and rank to that of the Chairman, Board of Revenue, Rajasthan, vide notification dated 24.10.85

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(Ann.A-2). Vide Ann.A-3, the Chairman of the Rajasthan Sales Tax Tribunal was appointed from amongst the officers in the Super Time Scale of the IAS. The contention of the applicant is that his predecessors and successors were in the fixed pay of Rs.8000/- p.m. though there was no change in the responsibilities, duties and qualifications, yet a discrimination was made in the matter of the payment of salary to the different Chairmen and to the applicant. The applicant was in the pay scale of Rs.7300-100-7600, when he held the post of Chairman, Rajasthan Sales Tax Tribunal. The post of Chairman, Rajasthan Sales Tax Tribunal, is a non-Cadre post. It has also been stated that in the amendment made in the Sales Tax Rules, 1955, it has been provided that the post of Chairman, Rajasthan Sales Tax Tribunal, shall be occupied by an officer of the IAS from the Super Time Scale not below the rank of an Additional Secretary to the Government of India. The main contention of the applicant is that the posts of Chairman and Managing Director, Rajasthan State Agro Industries Corporation, and the Director, HCM State Institute of Public Administration, have also been declared equivalent to that of the Chairman, Board of Revenue, and as such on the basis of equal pay for equal work, the applicant was entitled to get the pay of Rs.8000/- p.m. so long as he was posted as Chairman, Rajasthan Sales Tax Tribunal, but the representation made by the applicant has been rejected vide Ann.A-1 dated 13.12.93 without proper consideration. It is pleaded that denial of the fixed pay of Rs.8000/- p.m., in the circumstances, to the applicant is negation of the right of equality guaranteed by Article 14 of the Constitution. The applicant has stated in the rejoinder to the reply of respondent No.2 that he had made a representation dated 23.7.93 in continuation of his earlier representation dated 10.11.92 and had made request for grant of a fixed pay of Rs.8000/- on the basis of equal pay for equal work and as such this application is not barred by limitation in view of the fact that his representation dated 23.7.93 was decided on merits vide communication dated 13.12.93, at Ann.A-1.

3. On the contrary, respondent No.2 contested the application on the ground that this application was filed on 23.11.94, relating to the period from 8.8.88 to 28.2.89. It is stated that the claim of the applicant is stale as he did not make his claim for more than three years and in the circumstances the present application is barred by limitation. Non-Cadre post of Chairman, Rajasthan Sales Tax Tribunal, and that of Chairman and Managing Director, Rajasthan State Agro Industries Corporation, Jaipur, were declared as equivalent in status and responsibilities to the IAS Cadre post of Chairman, Board of Revenue, vide orders at Ann.A-2 dated 24.10.85 and Ann.A-4 dated 23.3.91 respectively. It is pleaded by respondent No.2 that a non-Cadre post can

be created in any scale to cope with the ministerial responsibilities in accordance with Rule 9(1) of the IAS (Pay) Rules, 1954, and an IAS Officer can be appointed to such a post. Such an IAS Officer can draw his own salary and a scale above the Super Time Scale of Rs.7300-7600 is given on the basis of selection/seniority and the applicant cannot claim it merely on the ground that others drawing higher salary had held these posts subsequently or previously. It is also stated that on posting to a non-Cadre post an officer can draw salary which he would have drawn had he been posted to a cadre post. The applicant had accepted his posting as Chairman, Rajasthan Sales Tax Tribunal, in the pay scale of Rs.7300-7600 without any demur and now it cannot be challenged after a lapse of more than three years. It is also contended in the reply of respondent No.2 that the applicant's representation dated 23.7.93 pertains to the period during which he had been holding the non-Cadre posts of the Chairman, Rajasthan Sales Tax Tribunal, as well as that of the Chairman and Managing Director, Rajasthan State Agro Industries Corporation, and not for the cadre post from which he had retired.

4. We have heard the learned counsel for the parties and have carefully perused the records.

5. The first and the foremost question that falls for determination, is limitation. The plea of bar of limitation has been taken by the respondents. It is true that the Ex-Cadre posts of the Chairman, Rajasthan Sales Tax Tribunal, Ajmer, and that of the Chairman and Managing Director, Rajasthan State Agro Industries Corporation, Jaipur, were declared as equivalent in status and responsibilities to the IAS Cadre post of the Chairman, Board of Revenue, under Rule 9(1) of the Indian Administrative Service (Pay) Rules, 1954. There is nothing on the record to show that the ~~first~~ post of the Director, HCM State Institute of Public Administration, was also declared as equivalent in status and responsibilities to that of the Chairman, Board of Revenue. The applicant has claimed a fixed pay of Rs.8000/- p.m. during the period he had held the post of the Chairman, Rajasthan Sales Tax Tribunal, Ajmer, from 8.8.1988 to 28.2.1989 and during the period when he was posted as the Chairman and Managing Director, Rajasthan State Agro Industries Corporation, Jaipur, from 8.8.1989 to 27.1.1991 and also for the period during which he had occupied the post of Director, HCM State Institute of Public Administration, from 28.1.1991 to 31.8.1991. The contention of the applicant is that denial of the aforesaid pay to him is negation of the right to equality guaranteed by Article 14 of the Constitution since some officers holding these posts before or after him had drawn the fixed

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pay of Rs.8000/- p.m. The applicant retired from service on 31.8.1991. The present application was filed on 23.11.1994. The learned counsel for the applicant relied on 1995 (1) SLJ (CAT) 583, B.L. Behl v. Union of India and others, and urged that it is open to the department to consider a matter at any stage and redress the grievance or grant the relief or reject the same on merits even though earlier representations have not been considered and it would be inequitable and unfair to dismiss an application on the ground of limitation. It has also been contended that where the respondents had chosen to entertain another representation and examined the same on merits and rejected it, the plea of limitation cannot be raised nor can it adversely affect the applicant. The learned counsel for the applicant has also placed reliance on 1974 SCC (L&S) 165, E.P. Royappa v. State of Tamil Nadu and another to urge that an IAS Officer can be posted to a Non-Cadre post only after a declaration of equivalence has been issued and, therefore, once such declaration is issued, the officer holding the Ex-Cadre post is entitled to the same pay which is attached to the cadre post to which the Ex-Cadre post has been declared as equivalent.

6. An application u/s 19 of the Administrative Tribunals Act, 1985, (for short, the Act), is governed by the provisions contained in Section 21 of the Act regarding limitation. The said provisions read as follows :-

- "21. Limitation.--(1) A Tribunal shall not admit an application,-
- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made ;
  - (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

Section 21 of the Act provides that an application u/s 19 has to be made within one year from the date on which the cause of action accrues or in a case where an appeal or representation has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months. In the present case, the cause of action for grant of a fixed pay of Rs.8000/- p.m. accrued to the applicant on 8.8.1988 when he had

joined the post of the Chairman, Rajasthan Sales Tax Tribunal at Ajmer. The applicant did not claim the fixed pay of Rs.8000/-p.m. at any point of time before his retirement on 31.8.1991. After more than a year of his retirement he made a representation to respondent No.2 by a communication dated 10.11.1992 requesting that the fixed pay of Rs.8000/- p.m. may be allowed to him w.e.f. 8.8.1988 i.e. the date on which he had taken the charge of the post of the Chairman, Rajasthan Sales Tax Tribunal. In this representation he did not claim the fixed pay of Rs.8000/- p.m. for the period he held the post of the Chairman and Managing Director of the Rajasthan State Agro Industries Corporation, which he had held from 8.8.1989 to 27.1.1991. In the representation dated 23.7.1993, which was rejected on 13.12.1993, the applicant of course claimed the fixed pay of Rs.8000/- p.m. for the period during which he held the posts of Chairman, Rajasthan Sales Tax Tribunal, and for the period during which he held the post of the Chairman and Managing Director of the Rajasthan State Agro Industries Corporation. It is pertinent to note that in the subsequent representation dated 23.7.1993, which was rejected by order dated 13.12.1993, the applicant had not claimed the fixed pay of Rs.8000/- for the period during which he had held the post of the Director, HCM State Institute of Public Administration, from 28.1.1991 till his retirement on 31.8.1991. In the circumstances, the applicant has not been able to make out any current claim to the fixed pay of Rs.8000/- p.m. It has been urged on behalf of the respondents that the applicant's claim for arrears for the period from 8.8.1988 to 28.2.1989 during which he held the post of the Chairman, Rajasthan Sales Tax Tribunal, and for the period from 8.8.1989 to 27.1.1991 during which he held the post of Chairman and Managing Director, Rajasthan State Agro Industries Corporation, and for the period from 28.1.1991 to 31.8.1991 during which he occupied the post of the Director, HCM State Institute of Public Administration, having been made beyond the period of one year preceding the presentation of this application is clearly time barred and it deserves to be rejected. The learned counsel for the respondents has relied on (1995) 29 ATC 450, M.K. Balachandran Pillai v. Central Administrative Tribunal, represented by Registrar, New Delhi, and another, in which the Ernakulam Bench of the Tribunal made the following observations :-

"5. Firstly on limitation, Section 21 of the Administrative Tribunals Act gives a period of one year for redressal of the grievance from the date of the order. The applicant was serving in the Tribunal which is a judicial forum. He was also serving earlier in a judicial forum like Allahabad High Court and cannot be said to be ignorant of legal aspects and limitations which


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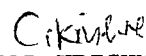
are primary matters. The order aggrieved against is passed in August 1986. Though he has accepted the order; but he assails the same before the Tribunal in 1993. One year is provided to assail the order (if representation is filed, 1-1½ years which includes six months' waiting period for the reply). The argument of the learned counsel that the impugned order was passed in April 1993 cannot give him extended limitation because this impugned order was only in reply to the representation made by the applicant in April 1992. When a representation is made by an employee, the administration has to reply to the same. The silence on their part may be interpreted in thousand manners in a judicial forum. The point of limitation was dealt with by the Hon'ble Supreme Court in S.S. Rathore v. State of M.P., Gurdev Singh v. State of Punjab, and in the recent decision in Roop Singh v. Union of India. In all the cases, the Hon'ble Supreme Court has held that like any other case in service matters, the party has to approach the judicial forum well in time. Thus the present application is hopelessly barred by limitation."

7. The applicant has claimed the fixed pay of Rs.8000/- p.m. on the principle of equivalence of post and on the principle of equal pay for equal work. The matter of equivalence of post and equivalence of pay is not a matter which is akin to the matter of routine pay fixation or grant of grade increments. It is not a matter which is akin to the matter of stepping up of pay to bring it at par with that of a junior. In our view, such a matter, as the present one, in the circumstances, does not give rise to a recurring cause of action. On the facts of this application, the reply vide Ann. A-1 dated 13.12.1993 to a belated representation dated 23.7.1993 did not give rise to a fresh period of limitation. The applicant had retired from service on 31.8.1991. The first representation in regard to his grievance was made after a lapse of more than one year, on 10.11.1992. The present application was filed on 23.11.1994. The applicant having failed to make out any current claim for the grant of a fixed pay of Rs.8000/- p.m., the arrears on this count for the period from 8.8.1988 to 28.2.1989, from 8.8.1989 to 27.1.1991 and from 28.1.1991 to 31.8.1991, during which periods he held the posts of Chairman, Rajasthan Sales Tax Tribunal, Chairman and Managing Director, Rajasthan State Agro Industries Corporation and that of the Director, HCM State Institute of Public Administration respectively are barred by limitation for the reason that they relate to a period much beyond one year preceding the date of the filing of this application.

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8. We find that this application is hit by the bar of limitation. Any exercise to examine the applicant's case on merits would, therefore, be futile. The result is that this application is dismissed as being barred by limitation.

  
(O.P. SHARMA)  
MEMBER (A)

  
(GOPAL KRISHNA)  
VICE CHAIRMAN

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