

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 19th day of September, 2006

ORIGINAL APPLICATION No 348/2006.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIV

Pratap Singh Panwar,
s/o late Shri Madan Singh,
aged 46 years,
r/o 352, Jaswant Nagar,
Khatipura,
Jaipur.

..Applicant

(By Advocate: Shri Rahul Sharma)

Versus

1. Union of India,
through the Secretary of
Ministry of Railways,
Govt. of India,
New Delhi.
2. The General Manager,
Western Railway,
Churchgate, Mumbai.
3. The General Manager,
North Western Railway,
GM Office, Opp. Railway Hospital,
Near Railway Station,
Jaipur Junction,
Jaipur
4. The Dy. Director Establishment (Sports),
Railway Board,
New Delhi.

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5. The Divisional Railway Manager,
North Western Railway,
DRM Office,
Power House Road,
Jaipur.

.. Respondents

(By Advocate: ...)

ORDER (ORAL)

The applicant has filed this Original Application in the nature of execution petition under Section 27 of the Administrative Tribunals Act, 1985 thereby praying that the respondents may be directed to comply the order/judgment dated 17.04.2002 (Ann.A1) and fix the applicant in the pay scale of Rs. 1400-2300 (Rs. 5000-8000 after protection of his pay in pursuance of the order dated 17.05.1995 with all consequential benefits.

2. Briefly stated, facts of the case are that the Railway Board vide order dated 17.5.1995 approved change of category of the applicant from Guard to T.C. as a special case with a stipulation that his pay will be fixed in the manner that there is no financial loss in terms of his basic pay plus running allowance, but in spite of this order, the applicant was given the pay scale of Rs. 1200-2040 which was applicable for Guards and not for T.C. Feeling aggrieved, the

applicant filed OA No.513 of 1999 before this Tribunal and the said OA was disposed of vide order dated 17.04.2002 thereby quashing the impugned orders dated 5.2.99 and 18.10.97 and the respondents were directed to fix the pay of the applicant in the scale of Rs. 1400-2300 (Rs. 5000-8000) after protection of his pay in pursuance of the order dated 17.5.95 and pay him arrears within 3 months from the date of receipt of a copy of the order. The grievance of the applicant is that despite repeated requests and reminders, the respondents have not complied with the order of this Hon'ble Tribunal. Accordingly, the applicant served a legal notice to the respondents through his advocate on 02.05.2005, copy of which has been placed on record as Ann.A2. It is further case of the applicant that he also submitted an application under the provisions of Right to Information Act, in the office of respondent No.5, Divisional Railway Manager, North Western Railway, Jaipur with the prayer of informing about and making compliance of the order dated 17.4.2002. Reply to the said notice was received by the applicant vide letter dated 03.07.2006 from the Sr. DFM, Jaipur Division, Jaipur thereby stating that in OA No.513/99, the General Manager, Churchgate, Mumbai and Dy. Director Establishment (Sports), Railway Board, New Delhi have been made as respondents and no information has been received from the Head Office, Churchgate, as such, the relevant information may be sought from the

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Head Office, Churchgate, Mumbai. It is thereafter that the applicant has filed this OA in the nature of execution petition.

3. In para 3 of the OA, the applicant has declared that the application is within limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. Though the applicant has stated that the application is within limitation, however, he has also filed a Misc. Application No.243/2006 under Section 21 (3) of the Administrative Tribunals Act, 1985 for condonation of delay. In the Misc. Application the plea taken for not filing the execution petition within the prescribed period is that the applicant has requested the non-applicants for making compliance of the order but he was informed that the matter has been referred to the Head Office, Mumbai and compliance will be made as soon as instruction is received from the Head Office and when the direction given by this Tribunal was not complied with, he served a legal notice dated 2.5.2005. It is further stated that the applicant has also submitted an application/representation to the Divisional Railway Manager on 20.6.2006. It is on these facts that the applicant has sought condonation of delay in filing the OA. This Misc. Application for condonation of delay has been filed after filing of the OA.

4. We have heard the learned counsel for the applicant and gone through the material placed on record.

5. We are of the view that the present application cannot be entertained as the same has not been made within the time prescribed for execution of the order under Section 27 of the Administrative Tribunals Act, 1985. Further, the applicant has also not made out any case for condonation of delay. The matter on this point is no longer res-integra. The Apex court in the case of Hukam Raj Khinvsara vs. Union of India and ors., 1997 SCC (L&S) 943 after noticing the relevant provisions of the Administrative Tribunals Act held that the order passed by the Tribunal is executable under Section 27 of the AT Act within one year from the date of its becoming final. At this stage, it will be useful to quote paragraphs 5 to 8 of the judgment which thus reads:-

"5. The only question is whether the application seeking implementation of the earlier order of the Tribunal was barred by limitation. Section 27 of the Administrative Tribunals Act, 1985 (for short "the Act") envisages thus:

"27. Execution of orders of a Tribunal – Subject to the other provisions of this Act and the rules, the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including the High Court) and such order shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) of Section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed."

6. Relevant part to sub-section (2) of section 20 of the Act postulates that:

"20. (2) For the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievance.

7. Section 21 prescribes limitation in that behalf. Sub-section (1)(a) of Section 21 postulates that:-

"21 (1) A Tribunal shall not admit an application:-

(a) in a case where a final order such as 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."

8. Thus, it could be seen that the final order passed by the Tribunal is executable under Section 27 of the Act within one year from the date of its becoming final. Admittedly, the final order was passed on 13.3.1992. Consequently, the appellant was required to file the execution application within one year from the said date unless the order of the Tribunal was suspended by this court in a special leave petition/appeal which is not the case herein. Admittedly, the application came to be filed by the appellant on 13.12.1994 which is well beyond one year. Under these circumstances, the Tribunal was right in its conclusion that the application was barred by limitation."

6. Admittedly, in this case the final order was passed on 17.4.2002 and the respondents were directed to fix pay of the applicant in the scale of Rs. 1400-2300 (Rs. 5000-8000) after protecting his pay in pursuance of the order dated 17.5.95 and pay him arrears within 3 months from the date of receipt of a copy of the order. Thus, the respondents were bound to comply the order of this Tribunal till July, 2002. In case the order of the Tribunal was not complied before, July, 2002 the applicant was not remediless and it was open for him to file execution petition under Section 27 of the Act till July, 2003.

Admittedly, such an application has been filed by the

applicant only on 13.9.2006 i.e. after more than four years of passing of the order.

6. Now the next question which requires consideration is whether the applicant has made out a case for condonation of delay. According to us, the applicant has failed to make out a case for condonation of delay in the light of the law laid down by the Apex Court in several decisions. As already stated above, the only reason given by the applicant for not filing the execution petition within the period prescribed under the Administrative Tribunals Act, is that the applicant was pursuing the matter with the non-applicants and for that purpose he has sent requests and reminders to the non-applicants and when nothing was heard, a notice dated 2.5.2005 was sent. However, the applicant has not placed on record any contemporaneous record to show that he has sent reminders to the non-applicants prior to the legal notice dated 2.5.2005. As such, ipsi dixit of the applicant that he was pursuing the remedy before the respondents by sending reminders cannot be accepted. The Constitution Bench of the Hon'ble Apex Court in the case of S.S.Rathore vs. State of M.P. AIR 1990 SC 10 has held that repeated representations will not extend the period of limitation. This Constitutional Bench decision was rendered by the 7 Judges Bench whereby the scope of Section 20 and 21 of the

Administrative Tribunals Act was noticed. Further, Apex Court in the case of State of Karnataka vs. S.M.Kotrayya 1996 SCC (L&S) 1488 has held that it is not necessary that respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) and (2) of Section 21 of the Administrative Tribunals act but they should give explanation for the delay which occasioned after the expiry of the aforesaid period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. Admittedly, the applicant has not given any satisfactory explanation for the delay which occasioned after the expiry of one year when the final order passed by this Tribunal became executable i.e. after July, 2003. According to us, the explanation given by the applicant that he was making repeated representations and pursuing the matter with the respondents cannot be said to be valid explanation what to talk of sufficient explanation as required under sub-section (3) of Section 21 for condonation of delay. Thus, we are of the firm view that this application is clearly barred by limitation and the applicant has not made out any case for condonation of delay.

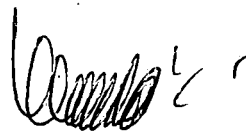
7. Further, the applicant cannot take any assistance from the letter dated 3.7.2006 (Ann.A4) which

information has been supplied to the applicant in view of the application dated 20.6.2006 made under the Right to Information Act. Vide Ann.A4 what the railway authority of the Northern Western Railway had informed the applicant is that the matter pertains to the General Manager, Head Office, Chirchgate, as such, the information in that behalf be taken from the Head Office, Churchgate and also that it was the General Manager, Western Railway, Churchgate, Mumbai and the Deputy Director Establishment (Sports), Railway Board, New Delhi who were party in that OA.

8. For the foregoing reasons, the Misc. Application as well as the OA is dismissed at admission stage with no order as to costs.



Member (ADM)



(M.L. CHAUHAN)

Member (JUDL)

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