

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3856/2011

Reserved on : 03.02.2017.

Pronounced on : 15.02.2017.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Sh. Kuldeep Singh,
S/o late Sh. Bachan Singh,
Aged 59 years,
R/o Village Deokhan, P.O. Takolikhali,
District Pauri Garhwal,
Uttrakhand. Applicant

(through Sh. A.K. Mishra with Sh. Amit Kumar Pandey, Advocate)

Versus

Delhi Transport Corporation
Through its Chairman/CMD
H.Qrs. Indraprastha Estate,
New Delhi. Respondents

(through Ms. Arati Mahajan Sedha with Sh. Manoj Kumar, Advocate)

O R D E R

Mr. Shekhar Aggarwal, Member (A)

Brief facts of this case are that the applicant joined the respondent Corporation in 1978 as a Conductor. On 26.02.2003 he requested the Corporation for pre-mature retirement w.e.f. 22.02.2003. He sought pre-mature retirement on the ground of family problems. The Corporation, however, treated this as resignation and

accepted the same vide letter dated 05.06.2003 ostensibly because DRTA (Condition of Appointment & Service) Regulations, 1952 permit pre-mature retirement only when an employee is declared medically unfit. Thereafter, the gratuity of the applicant was calculated and released on 17.09.2004 and provident fund share was also released on 31.03.2011. The applicant then filed OA-2489/2010 seeking pension as per CCS Pension Rules. This was disposed of by the Tribunal vide order dated 18.01.2011 with a direction to the respondents to consider and dispose of the representation dated 28.01.2010 of the applicant. This representation was rejected by the respondents vide impugned order dated 20.05.2011. Now the applicant has filed this O.A.

2. In their reply the respondents have taken a preliminary objection that this case is hopelessly barred by limitation, inasmuch as the applicant's resignation was accepted on 05.06.2003 and subsequently his retiral dues have also been settled. The respondents have relied on the judgments of Apex Court in the case of **UOI Vs. M.K. Sarkar**, 2010(2) SCC 59 and in the case of **D.C.S. Negi Vs. UOI & Ors.**, (CC No. 3709/2011) on 07.03.2011 to say that this Tribunal has no jurisdiction to entertain this O.A. at this belated stage. They have also submitted that direction given by this Tribunal in OA-2489/2010 to dispose of applicant's representation will not extend limitation period as has been held by the Apex Court in the above

mentioned judgments. Further, they have submitted that the argument of the applicant that pension payment was a continuing cause of action will also not hold in this case as it was a onetime decision to decide whether the applicant was covered by the Pension Scheme or by Contributory Provident Fund.

3. We proceeded to decide this preliminary objection raised by the respondents first before going into the merits of this case. We find that there is merit in their submission. The order accepting the resignation of the applicant was passed on 05.06.2003, which was the date on which cause of action arose for the applicant since the respondents had decided to accept his resignation and relieve him from service. The applicant accepted this order and stopped working in the service of the Corporation. Thereafter, he accepted the amount of gratuity released to him on 17.09.2004 as well as his own share of the Provident Fund. Thus, it shows that the applicant had accepted the decision of the Corporation to treat his application for voluntary retirement as resignation.

4. It is true that he had earlier approached this Tribunal by filing OA-2489/2010 in which directions were given to the respondents to decide his representation. The respondents decided his representation vide their impugned order dated 20.05.2011. This O.A. was filed thereafter on 11.10.2011. Learned counsel for the

applicant had argued that limitation should count from the date on which representation of the applicant was rejected. We are not inclined to agree with this argument as the Apex Court in the judgment in the case of **M.K. Sarkar** (supra) relied upon by the respondents the following has been held:-

"The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

5. Thus, we find that this O.A. was filed on 11.01.2011 by the applicant whereas the cause of action had arisen to him on 05.06.2003. In view of the aforesaid, this O.A. is barred by limitation

and is dismissed as such. There is no need to go into the merits of the case. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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