

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00426/2016
With Misc. Application No.290/00271/2016

Reserved on : 26.02.2019
Pronounced on : 05.03.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Lal Chand s/o Shri Rameshwar Dayal r/o Village and Post
Kaithal Khurd, District Mahendragarh, Haryana.

...Applicant

(By Advocate: Shri Nishant Motsara)

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur
2. The Senior Divisional Personnel Officer, North Western Railway, Bikaner.

...Respondents

(By Advocate: Shri Darshan Jain, proxy counsel for Shri Vinay Jain)

ORDER

Per Mrs. Hina P.Sha, M(J)

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant prays for the following reliefs:-

- i) The applicant may be given salary for the period of 15.4.2002 to 23.05.2003 with interest by issuing an order to the respondents.
- ii) That respondents may be given an order to give composite/travelling allowance to the applicant for the year 2004 when he was transferred from Luharu to Bhivani with interest which this Hon'ble Court deems proper.
- iii) The delay which is not on the part of the applicant may also be ignore as it is continuous cause of action and applicant is still in service.
- iv) Any other favourable order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- v) Original Application filed by the applicant may kindly be allowed.

2. In the present case, the grievance of the applicant relates to non-payment of salary for the period from 15.4.2002 to 23.5.2003 and also with regard to composite/travelling allowance when he was transferred on medical grounds from Luharu to Bhiwani. For claiming the above relief, he has approached this Tribunal on 20.9.2016 by filing the present OA for redressal of his grievance.

3. For condonation of delay in approaching the Tribunal, the applicant has filed a Misc. Application bearing No. 271/2016. In this Misc. Application, the applicant has pleaded that he has made number of representations. His representation of 2007 is pending before the respondents and now he has been orally denied to pay the salary. Further, the respondents were giving assurance that before

retirement, they would give salary of the aforesaid period and pay composite allowance, which is a continuous cause of action as the applicant is in service. Further, the delay is bonafide and cannot be treated as deliberate. Therefore, the delay in filing the OA may be ignored.

4. The respondents have filed reply to the Misc. application pointing out that the applicant has filed the present OA after a delay of 13 years, which has not been properly explained by the applicant.

5. Heard Shri Nishant Motsara, learned counsel for the applicant and Shri Darshan Jain, proxy counsel for Shri Vinay Jain, learned counsel for the respondents and perused the material available on record.

6. From the facts and the material placed on record, it is evident that the applicant is seeking payment of salary for the period from 15.4.2002 to 23.5.2003 and also the composite allowance of the year 2004 when he was transferred from Luharu to Bhiwani by filing the present OA on 20.09.2016. The mere ground for condonation of delay is that he has made various representations and the respondents have given assurance, which is continuous

cause of action, therefore, delay being bonafide, the same should be condoned.

7. Admittedly, the matter relates to his salary for the period from 15.4.2002 to 23.05.2003. According to him, he made representation to the respondents dated 11.6.2003 (Ann.A/3) and no reply has been given by the respondents till date. Further, he has sent letter for demand of composite allowance on 20.01.2007 (Ann.A/4), and continuously demanding the same. But, in my view, the same cannot be said to be a sufficient and cogent reason for condoning the delay of about 12-13 years. The applicant failed to properly explain the reasons for not approaching the Tribunal within the period prescribed under the rules.

8. The provisions with regard to limitation u/s Section 21 of the Administrative Tribunals Act, 1985 provides as under:-

“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."

In view of the above provisions, the applicant has to approach the Tribunal within one year. Mere submission of the applicant that he made representation in the year 2003 or 2007 and was given assurance for giving his dues cannot be said to be sufficient explanation for gross delay of 12-13 years to be condoned. After considering the matter on the question of limitation, I do not find any cogent or sufficient reason for condonation of delay.

9. The matter is not res-integra and is well settled. A question came to be decided by a three Judges Bench of Hon'ble Apex Court in the case of **Bhoop singh vs. Union of India etc.** (1992) 3 SCC 136, wherein it was ruled that:-

"Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence".

Further, in the case of **State of Karnataka and Ors. vs. S.M.Kotrayya and Ors.**, (1996) 6 SCC 267, the Hon'ble Apex Court observed as under:-

"9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required to them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

In the case of **D.C.S Negi v. U.O.I.**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.3.2011, it has been held as under:

"A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)".

In the case of **S.S. Rathore v. State of M.P.**, (1989) 4 SCC 582, the Hon'ble Apex Court rules that:-

We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle. It is appropriate to notice the provision regarding limitation under S. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub- section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue.

Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.

10. In view of above, it is clear that the applicant has miserably failed to plead and prove the grounds, much less sufficient and cogent to condone the inordinate delay of 12-13 years. The ratio laid down by the Hon'ble Supreme Court in the aforesaid judgments is mutatis-mutandis applicable to the present case.

11. In the light of the aforesaid reasons, the Misc. Application for condonation of delay is dismissed.

Resultantly, the OA shall also stand dismissed being barred by limitation. No order as to costs.

(HINA P.SHAH)
JUDL. MEMBER

R/