

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/155/2018

Date of decision: 16.8.2019

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).

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Balwinder Singh S/o Sh. Madha Singh, aged 67 years, R/o Village Jodh Nagri, P.O. Dairywala, Tehsil Baba Bakala, District Amritsar. Group C.

...APPLICANT

VERSUS

1. Union of India through its General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Workshop Manager, Northern Railways Mechanical Workshop, Amritsar.

...RESPONDENTS

PRESENT: Sh. Vivek Salathia, counsel for the applicant.
Sh. Yogesh Putney, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant is before this Court impugning notification dated 20.11.2017, whereby his representation/mercy plea for award of pension has been rejected. He has further sought issuance of a direction to the respondents to award pension to him.
2. Facts broadly are not in dispute.
3. Applicant Sh. Balwinder Singh initially joined the respondent department as Technician Grade-I in Northern Railways on 27.4.1973. He was absent from duty w.e.f. 06.12.1993 and by order dated 30.6.1995, he was removed from service. Applicant did not file any

appeal against removal order. The applicant filed mercy petition on 04.10.2017 (Annexure A-11), which was rejected by the respondents vide order dated 20.11.2017, as impugned in this O.A. on the ground of being illegal.

4. In support of above plea, learned counsel for the applicant vehemently argued that applicant is having more than 20 years of service to his credit and could not challenge order of removal due to personal problems. He submitted that in the year 2017, applicant submitted representation in shape of mercy petition to consider his claim for grant of pension, which has been rejected by the respondents by passing the impugned order. He submitted that since applicant is having more than 20 years of service, therefore, in terms of instructions issued by Railways on 4.11.2008 (Annexure A-13), case of the applicant can be considered for grant of at least compassionate allowance. Therefore, he prayed that let a direction be issued to the respondents to consider his case for grant of compassionate allowance sympathetically by considering his unblemished service of more than 20 years.
5. On notice, respondents have filed detailed written statement taking preliminary objection of delay and laches. It has also been submitted therein that by not challenging order dated 30.6.1995, applicant has accepted legality of order passed by the respondents. Therefore, they prayed that O.A. may be dismissed on the ground of delay as well as estoppel. Even claim of the applicant for compassionate allowance as per policy has been considered by the respondents way back in 2010 and vide order dated 15.12.2010 (Annexure A-8), it had been turned down. This order has also not been challenged. Mercy petition, which

the applicant had filed, is only to cover limitation and rejection order of 2017 reiterates the earlier decision.

6. Learned counsel for the respondents submitted that once claim of the applicant has been rejected in 2010 which has not been challenged, then subsequent order reiterating earlier decision will not extend limitation. To buttress his plea, he placed reliance on judgment in the case of **State of Bihar vs. Amrendra Kumar Mishra** 2006(7) SCC 374 and **R.K. Agrawal vs. State of Rajasthan**, 2006(8) SCC 826 and regarding continuous cause of action, he relied on judgment in the case of **S.S. Rathore vs. State of Madhya Pradesh**, SLJ 1990 (1) SC 98.
7. I have given my thoughtful consideration to entire matter.
8. Based upon the material available on record coupled with arguments advanced, it is clear that respondents have passed order of removal dated 30.6.1995, which has not been challenged by the applicant either before departmental authorities or before any Court of law. Plea of the applicant for grant of compassionate allowance has also been considered by the respondents and has been rejected vide order dated 15.12.2010 (Annexure A-8), by passing a detailed order which has not been challenged before Court of law thus, plea of the applicant that respondents have passed subsequent order on his mercy petition filed in 2017 will not extend period of limitation as it merely reiterates earlier decision. This proposition of limitation has been considered in the case of **Union of India & Ors. Versus M.K.Sarkar** (2010(2) S.C.C. 58), where Lordships have considered Section 21 of the A.T. Act, 1985, which deals with the limitation. In the present case limitation for grant of compassionate allowance, if

any, was available to the applicant from the date when his claim was rejected i.e. on 15.12.2010, which he did not avail, therefore, subsequent order passed on 24.10.2017 cannot extend limitation. In the case of **S.S. Rathore vs State Of Madhya Pradesh** (1989 SCC (4) 582), it has been held that subsequent order will not extend limitation and limitation is to be taken from the date of original cause of action.

9. In view of the above, I am of the considered view that subsequent order passed by the respondents on applicant's belated mercy petition will not extend limitation. Allowing petition at this stage would amount to extending limitation and allowing a stale claim, which is not permissible in view of the indicated legal position. More so, when the applicant has not even cared to file an M.A. for condonation of delay despite the fact that order dated 20.11.2017 reiterates the earlier decision taken by the respondents. The O.A. is accordingly dismissed.

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 16.8.2019.
Place: Chandigarh.

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