

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3076/2003

New Delhi, this the 13th day of August, 2004

Hon'ble Shri S.K. Naik, Member(A)

P.S.Antriwala
C/o Vijay Taneja
B-89, Amar Colony
Lajpat Nagar, New Delhi

Applicant

(Shri B.S. Mainee, Advocate)

versus

Union of India, through

1.. General Manager
Central Railway, Mumbai
2. Divisional Railway Manager
Central Railway, Bhopal

Respondents

(Shri R.L.Dhawan, Advocate)

ORDER

When this OA was taken up for consideration, Shri R.L.Dhawan, learned counsel for the respondents has submitted that his preliminary objections should be first taken up. Accordingly, the matter has been heard on preliminary objections.

2. Learned counsel for the respondents raised three objections. His first objection is that the applicant is bad for nonjoinder of necessary parties. According to him, General Manager, West-Central Railway, Jabalpur and the Divisional Railway Manager, Bhopal Division, West-Central Railway, Bhopal are the necessary parties but they have not been impleaded in the OA. His second objection relates to the point of limitation and thirdly that the Principal Bench of this Tribunal has no territorial jurisdiction to entertain this application.

3. Taking up the last contention first on the point of territorial jurisdiction, learned counsel has stated that the applicant is a permanent resident of Arjun Nagar, Bhopal. This is abundantly clear from the host of references which he has himself

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appended to the OA. Since the OA is outside the territorial jurisdiction of the Tribunal, OA is liable to be dismissed on this ground.

4. In reply to this, Shri B.S.Mainee, counsel for the applicant however has submitted that the question of territorial jurisdiction having been adjudicated upon and decided by the Tribunal vide its order dated 15.7.2004, the same cannot be reopened by the counsel for the respondents. On a perusal of the order passed on 15.7.2004, I find that the Tribunal has held it to be quite appropriate that the application has been filed in the Principal Bench. Thus the argument of learned counsel for the respondents has to be rejected.

5, On the question of nonjoinder of parties, learned counsel has referred to the memo of parties and contended that the General Manager, Northern Railway, Mumbai CST and DRM, Central Railway Bhopal are not the parties relevant to the dispute under adjudication and any order passed to be passed will have to be implemented by the GM, West Central Railway, Jabalpur and the DRM, Bhopal Division of the West Central Railway, Bhopal. Since they have not been impleaded in the array of parties, the counsel contends that the application is liable to be dismissed on the ground of nonjoinder of necessary parties.

6. In reply to this argument of the learned counsel for respondents, Shri Mainee has submitted that while there may have been some changes in the nomenclature of the erstwhile GM, Central Railway and the DRM, Central Railway, Bhopal because of restructuring of the Railway and their Division, DRM, Bhopal who is to provide the main relief continues to remain as DRM, Bhopal Division and the respondents are unnecessarily raising this objection on this ground which cannot but be termed as hyper technical and should be overruled in the interest of justice.

7. Learned counsel for the respondents thereafter contended that the OA is hopelessly barred by limitation and not maintainable under section 21 of the AT Act, 1985. He states that the relief sought for by the applicant is for grant of interest on

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payment of arrears or stepping up of pay for the period from 1.2.92 to May, 1996 and the present application has been filed after a lapse of more than seven years. The counsel contends that payments on account of stepping up of pay of the applicant were made to him on 17.3.1996. If the applicant was aggrieved in the matter, he should have agitated the matter before the Tribunal within the period of limitation. However, in order to cover up this lapse, the applicant filed OA 3300/2002 beyond the date of limitation which was disposed of by this Tribunal at the admission stage itself without giving any opportunity to the respondents. The counsel argued that had the respondents been heard at that stage, they would have placed before the Tribunal the factual position and got it dismissed on the ground of limitation. Just because respondents have passed the impugned order dated 12.3.2003 in obeyance to the direction of the Tribunal in OA 3300/2002 dated 9.1.2002, counsel submits that implementation of the judgement of the Tribunal will not extend the period of limitation. He in fact has contended that it was a calculated and clever move by the applicant to file an OA in which the only relief sought was a direction to the respondents to dispose of his representations, meaning thereby that once the respondents pass the order in response to the direction of the Tribunal he would claim that date of passing of the order to be the date on which the limitation will start. In other words, by filing an OA and obtaining a direction for disposal of the representation, applicant cleverly intends to reopen the issue which stood settled long ago. The counsel therefore has contended that since a number of representations filed on the same subject by the applicant stood finally disposed of during the year 1997 until 12.12.2001 as per the statement enclosed with the impugned order by the applicant himself, the impugned order by which his representation has again been rejected, will not help him to waive the delay. In support of his contention, he has relied upon the judgement of the Supreme Court in the case of S.S.Rathore Vs.State of MP SLJ 1990(1) SC 98. He has also relied upon the judgement of the Supreme Court in the case of R.C.Samanta Vs. UOI JT 1993(3) SC 418 in which it has been held that "delay deprives a person of the remedy available in law, a person who has

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lost his remedy by lapse of time loses his right as well". Relying further on the judgment of the Supreme Court in Bhoop Singh Vs. UOI AIR 1992(2) 278, the counsel contends that inordinate and unexplained delay or latches is by itself a ground to refuse relief to the petitioner irrespective of the merit of his claim. It has been held therein that "if a person entitled to relief chooses to remain silent for long, thereby he 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." In the case in hand, the counsel contends that after having received whatever dues entitled to him long back in 1996, the applicant has subsequently woken up to claim interest thereon and this not being a continuous cause of action, it has to be held that the OA is hopelessly barred by limitation.

8. In response to the arguments advanced by the learned counsel for respondents, Shri Mainee has referred to the judgment in B.Kumar Vs. UOI SLJ 1989(1) CAT 97 and contended that in case subsequent representation is again heard and disposed of, limitation will start from subsequent rejection. He has relied upon the judgement in State of Bihar Vs. Kamleshwar Prasad Singh SLJ 2001(1) SC 76 and contended that if substantial justice and technical consideration are pitted against each other, cause of justice is to be preferred. He therefore contends that the objections raised by the learned counsel for respondents on limitation should be treated as technical.

9. I have considered the arguments advanced by the learned counsel on both sides and also perused the records of the case.

10. I find that the relief sought for by the applicant relates to payment of interest at the rate of 18% from 1.2.92 to May, 1996. The applicant has made representations in this regard way back during the years 1997 to 2001. As can be seen from the enclosures to the impugned order, each one of the representations submitted by the applicant during the year 1997 until 2001 have been replied to by the respondents

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then and there. However, the applicant kept quite over the matter and filed an OA only to cover up the delay and a request was made to dispose of the same at the admission stage with a direction to the respondents to dispose of the representation with liberty to approach this Tribunal if any grievance survives thereafter. The counsel contends that this was deliberately done to elicit another communication from the respondents in order to revive the cause of action. The applicant will not however succeed in his attempt as repeated representations in any case will not cover up the delay and extend the period of limitation, as has been held by the apex court. In fact having regard to the judgments of apex court (supra) cited by respondents' counsel, even if the same is treated as another representation, it will not absolve the applicant from making a belated claim for payment of interest. The case cited by applicant's counsel is dated 12.11.89, while that of respondents' counsel is of later period (1990).

11.. In the result having, regard to the judgments of the Supreme Court(supra) and also the detailed discussions made above, I have no hesitation to hold that the present OA is badly hit by limitation and thus not maintainable. Accordingly the OA dismissed with no order as to costs.

Naik
(S.K. Naik)
Member(A)

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