
(2009) 03 AHC CK 0073
In the Allahabad High Court

Chaman Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Citation : (2009) 03 AHC CK 0073

Hon'ble Judges : Dilip Gupta, J;C.K. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Sri Sanjay Kumar Om, counsel for the petitioner and Sri Tarun Verma, counsel appearing for the respondents.

2. This petition has been filed for issue of a writ in the nature of certiorari for quashing the order dated 3rd September, 2002 passed by the Allahabad Bench of the Central Administrative Tribunal (hereinafter referred to as the ""Tribunal") in Misc. Application No. 3391 of 2002.

3. Shorn of unnecessary details, facts giving arise to the present Appeal are that by order 11th July, 1978, the petitioner, who was working as Chief Travelling Ticket Examiner, was removed from service. On an Appeal preferred by him, the punishment was reduced to that of reversion. Petitioner challenged the aforesaid order by filing a writ application before this Court which, after coming into force of the Administrative Tribunals Act, 1985, was transferred to the Tribunal. The Tribunal set aside the order of removal from service as also the appellate order of reversion. In the light thereof, petitioner was reinstated in service and seniority was fixed by the order dated 8th March, 1991.

4. Petitioner thereafter filed O.A. No. 891 of 1992 before the Tribunal inter-alia seeking direction to the respondents "to make him equivalent in pay to his juniors". However, when the said application was taken up by the Tribunal, the petitioner confined his relief to the payment of arrears of full salary for the period of suspension i.e. 23rd August, 1972 to 21st May, 1975 as also the salary for the

period of earlier suspension from 28th November, 1969 to 14th October, 1970. The respondents took a plea that full salary had been paid for the period aforesaid. Infact, the Tribunal has also recorded that the petitioner is not aggrieved by denial of arrears of salary on the basis of notional promotion to the next higher post. This is evident from the observation of the Tribunal as contained in its order dated 24th February, 1997, which reads as follows:-

...In the present O.A., learned Counsel for the applicant submitted that he is confining his relief to the payment of arrears of full salary for the period of suspension from 23.8.1972 to 21.5.1975. So far as the earlier suspension period from 28.11.69 to 14.10.1970 is concerned, the payment for the same has been made. In the counter affidavit the respondents in para 11 have very categorically stated that the period of suspension/removal from 28.11.1969 to 14.7.1970 and 23.8.1972 to 21.5.1975 has been regularized as period spent on duty and he has been paid full salary. In the rejoinder affidavit, the payment for subsequent period of suspension has been disputed. We see no reason to disbelieve the averments made by the respondents in the counter affidavit that the payment has been made and the period has been regularized as period spent on duty. Since no other relief is claimed, the O.A. is dismissed and disposed of accordingly having no merit. The applicant has been admittedly allowed promotion to higher posts and notional fixation has also been done. He is not aggrieved by denial of arrears of salary on the basis of notional promotion to the next higher post.

5. Undaunted by the aforesaid, the petitioner chose to file a representation dated 17th March, 1998 before the General Manager, North Eastern Railway, Gorakhpur inter-alia praying that his pay be re-fixed from the date of promotion of his junior Sri Ram Avatar as well as restore his seniority. The prayer of the petitioner was primarily based on the assertion that one Sri Ram Avatar, a person junior to him, had been promoted to the higher post by the order dated 5th January, 1987. This representation was followed by another representation dated 16th March, 2000. Respondents by the communication dated 18th November, 2000 informed the petitioner that he had not held the promotional post and, as such, the payment of salary on the said post shall not be admissible to him. Petitioner challenged the aforesaid order dated 18th November, 2000 before the Tribunal. Alongwith the application, the petitioner also filed an application for condoning the delay in filing the application. The Tribunal declined to condone the delay in filing the application. While refusing to condone the delay, the Tribunal observed as follows:

...In this circumstances, we are of the view that the applicant was fully aware of the promotion of Sri Ram Avatar right from 1988 and the cause of action, in any case, arose to him since 1988. Law requires that the applicant could wait only for 6 months for the decision on his representation. If the order was not passed he was free to come to this Tribunal after expiry of the period of six months. It is also well settled that the successive representations cannot give fresh cause of action. If the applicant has filed another representation in 2000 and the order has been passed on 18.11.2000 as impugned in this O.A., it cannot extend the

limitation as the limitation started running from initial stage which in any case was from 1988.

The learned Counsel for the applicant has placed reliance in case of S. Raghurajan v. U.O.I. and Ors. 1989 (11) ATC 995. In the judgment cited, the Division Bench has mentioned the circumstances whether the limitation should be computed from the date of second representation. In the present case, we have found that delay caused in filing the O.A. is right from 1988, hence the case is distinguishable and does not help the case of the applicant.

In the circumstance, we do not find any good ground for condoning the delay. In fact the delay caused in filing the O.A. starts from 1988, the application is accordingly rejected.

6. Mr. Sanjay Kumar Om appearing on behalf of the petitioner submits that the Tribunal ought to have condoned the delay in filing the application and decided the case on merit. He points out that the petitioner came to know about the promotion of his junior Sri Ram Avatar in the year 1998 and only thereafter filed the representation which has been rejected by the order dated 18th November, 2000.

7. From the order of the Tribunal, passage whereof has been quoted above, it is evident that petitioner knew about the promotion of Sri Ram Avatar. In fact in the earlier application i.e. O.A. No. 891 of 1992 prayer was made to pay him salary equivalent to that paid to his junior, but he had abandoned that prayer and the application was disposed of by the Tribunal by the order dated 24th February, 1997. In that view of the matter, we are of the opinion that the Tribunal did not err in rejecting the application.

8. However, a good cause may not be lost on the ground of limitation. We have, prima-facie, examined the merit of the case. Undisputedly, petitioner never made any prayer for promotion to the higher post from the date his junior was promoted. What he emphasized in the representation was for fixation of pay from the date his junior was promoted. The Authority had communicated to him that he had not held the higher post and, therefore, the question of payment of pay of the said post does not arise. We are of the opinion that the petitioner can claim payment of salary in the higher scale of pay only when he is so promoted. Undisputedly, he has not been promoted to the higher post and thus he is not entitled to the promotional pay. Subsequent promotion of the petitioner to the higher post shall not entitle him to get salary of the said post from retrospective date. We are, therefore, of the opinion that, even otherwise, no error has been committed by the Authority in passing the order dated 18th November, 2000.

9. We do not find any merit in the petition. It is, accordingly, dismissed.