

(2021) 10 CAT CK 0020

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 180, 00405 Of 2021 In Original
Application No. 180, 00274 Of 2021, Original Application No. 180,
00274 Of 2021

M M Kurian

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2021) 10 CAT CK 0020

Hon'ble Judges : P. Madhavan, Member J; K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : N. Shobha, M.T. Muraleedharan

Final Decision : Dismissed

Judgement

P. Madhavan, Member J

1. This Miscellaneous Application is filed seeking condonation of delay occurred in filing the Original Application.

2. In short the applicant's case is that the applicant entered into the Military Engineering Service in October, 1963 in the grade of Superintendent Grade-II. He was promoted as Grade-I in 1967 and again promoted to the post of Assistant Engineer in 1986. He retired from the office of the 4th respondent as Assistant Engineer on 28.2.1999. At present he is residing in Pathanamthitta District in Kerala. According to the applicant the 1st respondent had issued an Office Memorandum F. No. 1(9)/E.III-A/97 dated 22.7.1998 on the basis of the Vth Central Pay Commission granting an ad-hoc increment to an employee stagnating at the maximum of his pay scale. On the basis of the above OM, the 3rd respondent Director General of Military Engineering Service had issued a letter dated 10.12.2003 granting 2nd financial upgradation under the Assured Career Progression Scheme (ACP Scheme) with respect to Assistant Engineers (Civil and

E/M) of Military Engineering Service under the Ministry of Defence. The said order is produced as Annexure A2. The Departmental Screening Committee was held and consequent financial upgradation under ACP Scheme was granted to the employees from 9.8.1999 onwards. But on going through the list of 475 names given in the appendix, the applicant's name was not found and he was not granted the benefit. Though the applicant is entitled to get the benefit of Annexure A2 the same was denied to the applicant. Some of the Assistant Engineers who were drawing lesser pay than the applicant had approached the Tribunal and filed OA No. 52 of 2011 and the Tribunal by way of an order dated 17.11.2011 directed the respondents for considering the grant of the same to the applicants therein. The copy of the order is produced as Annexure A3. As per the direction of the Tribunal in Annexure A3, applicants' in the said OA was granted 2nd financial upgradation under the ACP Scheme. The applicant is also a similarly situated person and he is also entitled to get the benefit. The respondents ought to have granted the benefit with effect from 28.2.1999 onwards. Since the applicant was not granted the upgradation, he gave a representation dated 3.2.2021 to the 3rd respondent with a copy to the 5th respondent requesting to grant him the benefit of 2nd financial upgradation. He had also produced the copy of the order of the Tribunal which is produced as Annexure A3 in the said representation. The copy of the representation is produced as Annexure A4. The 5th respondent rejected the said representation stating that the applicant had retired from service on 28.2.1999 itself before the implementation of the ACP Scheme and hence he is not entitled to get the benefit. The letter is produced as Annexure A5. Again the applicant gave a representation on 23.3.2021 to the 5th respondent seeking the financial upgradation. The 4th respondent sent a reply stating that the claim put forward by the applicant being a policy matter is taken up with the appropriate authority for further action. The applicant is a retired person with effect from 28.2.1999. Because of the denial of the above benefits some of his juniors are getting more pension. There has occurred delay in filing the OA and he seeks to condone the delay.

3. The counsel for the respondents filed a statement objecting to the condonation of delay. According to them the applicant is a pensioner who retired from service on 28.2.1999 from the office of the 4th respondent. The applicant had sent a representation only on 3.2.2021 to the 3rd respondent for granting the 2nd financial upgradation under the ACP Scheme. The request of the applicant was rejected by the appropriate authority and the same was intimated to him as per letter dated 10.3.2021 stating that the ACP Scheme was implemented with effect from 9.8.1999 only i.e. after the retirement of the applicant. There has taken place undue and inordinate delay in approaching the Tribunal with this OA. Through this MA the applicant seeks condonation of delay of more than 17 years in filing the OA.

4. We have heard the counsel appearing for the parties and on a perusal of the pleadings of the applicant it can be seen that the 2nd financial upgradation under the ACP Scheme was granted on 10.12.2003 as per Annexure A2 and the

applicant's name was not there in the list. So the original cause of action had arisen on 10.12.2003. But the applicant did not take any action against the same. He has given a representation to the competent authority only in the year 2021. According to the applicant he is similarly placed to the applicants in OA No. 52 of 2011 and he is entitled to get the benefit. On a perusal of Annexure A3 it appears that, that was a case where the applicants were entitled to get the 2nd financial upgradation under the ACP Scheme and the respondents admitted that they have already taken steps for granting the 2nd financial upgradation under the ACP Scheme and the Tribunal directed the respondents to grant the relief without delay. The said order cannot be automatically applied to the case of the applicant. Even that order came in the year 2011 and even then also the applicant did not take steps to file any OA at that point of time. Now the applicant has chosen to file the OA after completion of more than 17½ years after the cause of action has arisen. As per Section 21 of the Administrative Tribunals Act, 1985, the Tribunal cannot entertain an OA which was not filed within one year from the date of the impugned order. Section 21 of the Administrative Tribunals Act, 1985 reads as follows:

"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.

(2) Notwithstanding anything contained in sub-section (1), where--

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months

specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

5. On going through the above provision it can be seen that there has occurred unusual and inordinate delay in filing the OA. More than 17½ years have elapsed since the claim of the applicant for 2nd financial upgradation under the ACP Scheme was denied to the applicant. The applicant ought to have approached the Tribunal within a period of one year. The order of the Tribunal which is relied upon by the applicant is also passed in the year 2011. More than 10 years is over after the passing of the said order. It appears that this is a matter completely barred by limitation and there is no sufficient reason put forward to condone the delay in filing the OA. Accordingly, MA No. 180/405/2021 for condonation of delay in filing the OA is dismissed. Consequently, OA No. 180/274/2021 is also dismissed as barred by limitation. No order as to costs.