

(2018) 12 CAT CK 0002

In the Central Administrative Tribunal

Case No : M. A. No. 473 Of 2018 In O. A. 530 Of 2016

Maruti R. Wankhede

APPELLANT

Vs

Union of India, And Ors

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 21, 21(2)(b)

Citation : (2018) 12 CAT CK 0002

Hon'ble Judges : Bhagwan Sahai, J;R. N. Singh, J

Bench : Single Bench

Advocate : Anupam Chattopadhyay, N.K. Rajpurohit

Final Decision : Dismissed

Judgement

1. This M.A. has been filed by Shri Maruti R. Wankhede, the applicant in O.A.530/2016 seeking condonation of delay in filing the O.A. In it he contends that he had earlier filed O.A.No.358/2014 on 21.02.2014 i.e. within one year of rejection of his prayer for grant of pro-rata pension on 12.06.2013. Thereafter when the present O.A.530/2016 was filed, another M.A.290/2017 was filed but the applicant himself concedes that the M.A. was found to be technically not correct as the request of the applicant had been rejected twice earlier i.e. on 14.12.1988 and on 02.06.1989. Therefore, under the law the delay in filing the application should be reckoned from 15.12.1988 i.e. the day next to the date on which his first representation was rejected. Thus the applicant submits that there has been a delay of 24 years, 2 months and 7 days in filing the present O.A. on 30.06.2016.

2. It is claimed by him that this delay has taken place due to his impression that he would get justice in the Department itself and found that after initial rejection of his request, his subsequent representations were infructuous and the repeated applications submitted by him to the Department would not give him relief for computing the delay. Therefore, the delay of 24 years, 2 months and 7 days in filing the present O.A. should be allowed/condoned and the applicant should also

be permitted to withdraw the earlier M.A.290/2017 filed for the same purpose.

3. The applicant further claims that as per the opinion of Ahmedabad Bench of this Tribunal in O.A.No.13/1989, challenge to a void order is not to be rejected only on the ground of delay. Since the applicant is praying for grant of pro-rata pension from 02.07.1985 when he was permitted to be permanently absorbed in the National Building Construction Corporation (NBCC), it is a continuous cause as per the Apex Court view in M.R. Gupta Vs. Union of India & Ors. 1996 AIR 669 and in Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. 1987 AIR 1353, - substantial justice should not be defeated only on the ground of delay unless it is deliberate and since the order challenged is itself a void order, the inadvertently committed delay be condoned.

The applicant further contends that the delay was not deliberate, a letter of 1986 was made applicable from 06.03.1985 and as held by Principal Bench of the Tribunal in Dhuru Mohan Vs. Union of India and others in which reliance was placed on the Supreme Court decision in case of State of M.P. Vs. Syed Qamarali. A 5-Judge Bench of the Apex Court has also opined in Chairman, Railway Board and Ors. Vs. C.R. Rangadhamaiah and others that pension is also a fundamental right. Another 5 Judge Bench of the Apex Court in Ramchandra Shankar Deodhar & Ors. Vs. The State of Maharashtra & Ors. also held that challenge to breach of fundamental right cannot be defeated only on the ground of delay.

4. In reply to this M.A., the respondents have contended that the applicant had earlier filed M.A.290/2017 but he himself withdrew it later. As per Section 21 of the Administrative Tribunals Act, 1985, a person aggrieved by an order has to challenge it within a period of one year of the order issued by the authority. In the present case the applicant claims that there has been a delay of 24 years, 2 months and 7 days as the O.M. of 13.06.1988 under Para (xi) has been challenged which clearly mentioned that if the applicant Shri Wankhede resigns from the NBCC, his resignation for the purpose of these orders will be treated as resignation from Government service entailing forfeiture of earlier service under the Government and loss of pensionary benefits including gratuity under these orders. Under item no.1 in that O.M., it has also been mentioned that permanent absorption shall have effect from 02.07.1985 forenoon.

5. The applicant had himself accepted the terms and conditions of that OM of 13.06.1988 when he got permanently absorbed in NBCC. Since he resigned from the NBCC in 1987, his request was earlier rejected by the order of 14.12.1988 and again on 02.06.1989 which was also accepted by the applicant and it was never challenged at that time. His request was again rejected on 12.06.2013 which will not give a fresh cause of action to him because of rejection of his request earlier.

6. As per Supreme Court view in Naresh Kumar Vs. Department of Atomic Energy and others (2010) 7 SCC 525, if an employee keeps on making repeated representations which are consistently rejected, he cannot seek any relief on that

ground. Since his request was rejected on 14.12.1988, 02.06.1989 and 12.06.2013, his present application for condoning the delay should be rejected. Also as per the Apex Court view in Udai Shankar Awasthi Vs. State of U.P. And another, (2013) 2 SCC 435, repeated representations cannot enable the aggrieved person to explain the delay as per the provisions of Limitation Act.

7. Also in Jai Dev Gupta Vs. State of Himachal Pradesh and another (1987) 11 SCC 13, the same has been the view that submission of number of representations to the departmental authorities is not a valid ground for approaching the Tribunal late.

8. In view of this settled position of law, the present O.A. is hopelessly time-barred and should be dismissed with cost. The applicant has mentioned that technically the delay in filing the O.A. is of more than 24 years but the delay is factual and not technical. The applicant has been wasting time of the Tribunal by making applications and then withdrawing them on his own.

9. The applicant's claim that O.M. dated 08.04.1976 has been superseded by the O.M. of 31.01.1986 is his own interpretation and that O.M. does not talk about suppression of the earlier O.M. in any manner and it is only a clarification on the instructions issued vide Ministry of Finance O.M. dated 06.03.1985. Therefore, the application filed by the applicant for condoning the delay is without any foundation, devoid of merits and should be dismissed with cost.

10. Analysis and conclusions:

10(a). The applicant in this M.A. and the O.A. has claimed delay of 24 years, 2 months and 7 days and that delay is to be reckoned from 15.12.1988. However, when this M.A.473/2018 has been filed on 31.07.2018, by this time the delay is of almost 30 years. Even at the time of filing of present O.A. on 30.06.2016, the delay was not only of 24 years, but it was of almost 28 years and when the earlier M.A. for condonation of delay was filed on 13.04.2017, the delay was already of 28 years and half. This also reveals that by that time the present O.A. and the M.A. were filed, the issue involved in them had already become a stale/dead issue.

10(b). The applicant has filed repeated MAs for condonation of the delay i.e. first he filed M.A.290/2017 on 13.04.2017 and now M.A.473/2018 filed on 31.07.2018 in which the permission to withdraw the earlier M.A. has also been sought. This reveals that the applicant has filed these MAs in a very casual manner making incorrect claim that the order under challenge is a void order.

10(c). In fact as mentioned by the applicant himself, the earlier order dated 06.03.1985 of Ministry of Finance, Bureau of Public Enterprises came to be superseded by the DOPT OM of 31.01.1986 making that order effective from 06.03.1985. In view of this, the cause of action for the applicant arose from that date i.e. from 31.01.1986 and if the delay is reckoned from that date, by now it will be of 31 years and half.

10(d). But as per the Supreme Court view in the case of S.S. Rathore Vs. State of Madhya Pradesh 1990 AIR 10, when there is a provision of statutory remedy for entertaining appeal or representations and an order is made on such appeal or representation, then the date of arising of cause of action is to be taken after six months from the date of preferring of the statutory appeal against the order or making of the representation as provided under Section 21(2)(b) of the Administrative Tribunals Act, 1985

10(e). Going by this, at the most the calculation of period of delay could be reckoned from 15.12.1988 when the first representation of the applicant was rejected by the respondent authorities. In view of this as contended by the respondents, because of rejection of repeated representations of the applicant, his claim that the delay should be calculated from the decision of 2013 is not acceptable.

10(f). In this regard the view taken in the 3 caselaws cited by the respondents i.e. Jai Dev Gupta Vs. State of Himachal Pradesh and another, Naresh Kumar Vs. Department of Atomic Energy and others and Udai Shankar Awasthi Vs. State of U.P. and another prevails. Even on the claim of the applicant that the order under challenge was itself void, the delay involved cannot be condoned as has been held in the case of Dhiru Mohan Vs. Union of India and others (cited by the applicant himself) in para 28 that an application against even a void order under Section 19 of the Administrative Tribunals Act, 1985 is also governed by the period of limitation as prescribed by the Section 21 of the Act.

10(g). Based on the above discussion, I conclude that the M.A.473/2018 filed by the applicant for condonation of long delay in filing the O.A.530/2016 is a repeated attempt on the same subject and the cause of action having arisen in 1988, the delay is without any justification and satisfactory explanation. The reason given for it is utterly superficial and devoid of merit. Therefore, the M.A.473/2018 is dismissed. As a result, the O.A. 530/2016 also stands dismissed for delay having been not condoned.