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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1188 OF 2015

Madhav V. Chhatre	...	Petitioner
Vs.		
Union of India and ors.	...	Respondents

Mr. Madhav V. Chhatre, Petitioner in person.
Ms Neeta V. Masurkar for Respondent Nos.2 and 3.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

DATE : JUNE 27, 2016

P. C.

1] Rule. Rule is made returnable forthwith, with the consent of learned counsel appearing for respondent Nos.2 and 3.

2] The challenge in his petition is to the order dated 3 February 2015 made in Original Application No. 109 of 2011 by the Central Administrative Tribunal (CAT), Mumbai.

3] The Original Application No. 109 of 2011 was instituted by the petitioner, who is aggrieved by the unilateral withdrawal of advance increments and the recovery of certain amounts from him, whilst he was in service. It is the case of the petitioner that only one

advance increment was rightfully granted to him, upon his completing the computer training on 13 January 2000 and that the same has been withdrawn without even minimum compliance with principles of natural justice and fair play, upon the mistaken basis that this was the second advance increment granted to the petitioner. It is the case of the petitioner that the representation made by him from time to time were under consideration of the respondents. It is only after the representation was finally disposed of by the order dated 31 March 2010 that the petitioner instituted Original Application No. 109 of 2011 within the prescribed period of limitation. The petitioner, who appears in person, has submitted that the impugned order, almost entirely proceeds on the basis that the Original Application NO. 109 of 2011 was barred by limitation and that, there is hardly any consideration bestowed to the petitioner's case that he was not in receipt of his two advance increments, whether by mistake or otherwise.

4] Ms Neeta Masurkar, learned counsel for the respondent Nos.2 and 3, has submitted that the cause of action for the petitioner arose some time in the year 2005, when, the excess amounts were recovered from him. She submitted that pendency of representations neither extends the period of limitation, nor can same be construed as sufficient cause in the matter of condonation of delay. Ms Masurkar submitted that the CAT, even on merits, has rightly held against the

petitioner and therefore, the impugned order may not be interfered with by this Court in the exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India.

5] We have heard the petitioner, a retired employee of BSNL in person and Ms Masurkar, learned counsel for respondent Nos.2 and 3. We have perused the record as also the impugned order. We find that there is hardly any consideration of the petitioner's case on merits in the impugned order made by the CAT. The entire impugned order is premised on the basis that the Original Application No. 109 of 2011 instituted by the petitioner is barred by limitation. In the peculiar facts and circumstances of the present case, we are satisfied that this was not a fit case to be rejected on the ground of any bar of limitation. The original application instituted by the petitioner was not barred by limitation, particularly since the same was instituted within the prescribed period of limitation from the date of communication of the order dated 31 March 2010, by which, the representation made by the petitioner came to be finally rejected by assigning the reasons for such rejection.

6] This is not a case where the petitioner kept on making repeated representations, even though, the same may have been repeatedly rejected. The record indicates that the petitioner was informed by the respondents with regard to pendency of his

representations before various authorities and it was held out to him that they are under consideration. However, no communication has been pointed out to us, in terms of which, the petitioner's representations were formally rejected in the same manner as they have been, vide order dated 31 March 2010. Thus construed, it is quite evident that the petitioner's representations were under consideration and they were finally disposed of by order dated 31 March 2010. This is the only communication which indicates reasons for rejection.

7] Besides, this clearly not a case where the petitioner has gained anything by not approaching the CAT within reasonable period. The petitioner, who appears in person, and who has, by now, retired was under *bonafide* impression that he is precluded from approaching the CAT until his representations are disposed of by the departmental authorities. If the facts on record are construed from this perspective, we are satisfied that the petitioner's original application was not barred by limitation and that the case of the petitioner on merits, was required to be considered by the CAT in greater details.

8] Accordingly, we set aside the impugned order and remand the Original Application No. 109 of 2011 to the CAT for fresh adjudication on merits. We make it clear that we have not examined the contentions of the parties on merits and therefore, such contentions are kept open for decision by the CAT. We, however, request the CAT

to dispose of the Original Application No. 109 of 2011 as expeditiously as possible.

9] Rule is made absolute to the aforesaid extent. There shall, however, be no order as to costs.

[M. S. SONAK, J.]

[V. M. KANADE, J.]