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HIGH COURT OF DELHI : NEW DELHI

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WP(C) No. 698/2007

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**Judgment reserved on: 20.11.2007
Judgment delivered on: 02.05.2008**

Prakash Chandra Petitioner
Through: Petitioner in person.

versus

Union of India & Anr. Respondents
Through: Mr. Ashish Mohan & Ms.Swati
Manchanda, Advocates

CORAM:

**HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J.

1. A very short question arises for consideration in this case i.e. whether the Original Application filed by the petitioner before the Central Administrative Tribunal, Principal Bench, New Delhi (for short 'the Tribunal') under Section 19 of the Administrative Tribunals Act, filed in August, 2006 was barred by limitation in respect of the relief

sought by the petitioner to refix his pay for the posts of Superintendent, A.P.O and S.P.O with consequential relief of arrears of pay and refixation of pension. The Tribunal by its impugned order dated 30.8.2006 passed in OA. No.1741/2006 has dismissed the aforesaid Original Application of the petitioner on the ground that the same was barred by limitation.

2. The petitioner was originally appointed as a Clerk in the Railways on 10.1.1961 in the pay scale of Rs.110-180(RS) and thereafter promoted as Senior Clerk in the grade of Rs.130-300(RS) on 28.12.1965. He was then promoted as Law Assistant in the scale of Rs.550-750(RS) on 15.1.1975 on ad hoc basis. He continued to work in that capacity till 12.9.1985. He was then promoted as Superintendent(Works) in the pay scale of Rs.700-900(RS) on 31.7.1985 and his pay was fixed at Rs.795/-. On 4.4.1989 he was further promoted as Assistant Personal Officer (APO) and continued to work in that position till 21.6.1993. His next promotion was to the post of Senior Personal Officer (SPO) in the grade of Rs.3000-4500 under the headquarters office at Baroda House and he finally retired while serving in that position on 30.9.1996.

3. The petitioner filed the aforesaid Original Application in August 2006 claiming the relief, inter alia, as aforesaid. The foundation of the said claim was that at the time of implementation of the IVth Pay Commission's recommendations, the petitioner's pay was

fixed at Rs.2120/- in the scale of 2000-3200 instead of Rs.2450/-. This anomaly is stated to have arisen on account of taking the pay of the petitioner as Rs.700/-instead of Rs.795/- in the scale of Rs.700-900(RS). This was stated to be in violation of Rule 2018-B, R-II read with Fundamental Rule 22. So the petitioner sought a direction to refix his pay in the post of Superintendent (to which post he was promoted on 31.7.1985 and the IVth Pay Commission recommendation became effective from 1.1.1986), and consequently he also sought refixation of his pay in the further promoted posts of Assistant Personnel Officer (APO) and Senior Personnel Officer(SPO), and also sought consequential arrears of pay and refixation of pension.

4. The Tribunal has rejected the claim by placing reliance on ***E. Parmasivan & Others V. Union of India & Ors*** (2003) 12 SCC 270 and has rejected the petitioner's contention that the claim made by him was based on a recurring cause of action, and has also held that the judgment of the Supreme Court in ***M.R.Gupta V. UOI & Ors*** (1995) 5 SCC 628 which was relied upon by the petitioner is not applicable in the facts of his case.

5. Before us the submission of the petitioner is that the decision of the Supreme Court in ***M.R.Gupta*** (supra) is applicable in his case since he is seeking the revision of the pension payable to him and the right to receive pension gives a continuous cause of action.

6. Having heard learned counsel for the parties, we are of the view that the claim made by the petitioner was barred by limitation and the Tribunal has rightly rejected the Original Application of the petitioner. The cause of action arose in favour of the petitioner as early as in 1985, or at the latest upon the implementation of the IVth Pay Commission's recommendations, since the claim of the petitioner is that the pay of the petitioner was wrongly fixed in the post of Superintendent upon the implementation of the said recommendations at Rs.2120/- instead of Rs.2450/- It is that single act which is claimed to be illegal and is the foundation of the petitioner's claim for revision of his pay in the post of Superintendent, APO and SPO as well as for his claim towards arrears of pay and revision of his pension.

7. The decision of the Supreme Court in **M.R. Gupta**(supra) was rendered in a somewhat different factual background. In that case the appellant **M.R. Gupta**(supra) had disputed his pay fixation from 1.8.1978 when he joined the service in the Railways, on the ground that he was not granted one additional increment. He was still in service when he had filed the original application on 4.9.1989. The original application was opposed on the ground of limitation. The Tribunal held that the raising of the matter after a lapse of 11 years since the initial pay fixation in 1978 was barred by time. The Supreme Court observed that "*so long as the appellant is in service, a*

fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past periods. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action."

8. As rightly pointed out by the Tribunal, in present case the petitioner had retired as early as on 30.9.1996. He had filed the original application thereafter only in August, 2006 that is nearly a decade after the date of his retirement. Admittedly there was no

other circumstance brought forth by the petitioner to seek the extension of limitation, and the corner stone of his argument is founded upon the decision of the Supreme Court in **M.R. Gupta** (supra). From the afore-extracted portion of the said decision, it is clear that the said decision not only does not advance the case of the petitioner but it in fact goes against the petitioner. The petitioner is seeking reliefs which were available to him to seek in 1986 and thereabout. He is seeking refixation of his pay from 1986 onwards. He cannot be granted the said relief today and could not have been granted the same in 2006, after nearly 20 years of the course of action having arisen, particularly since he was not even in service, and was not drawing a salary in 2006 when the Original Application was filed by him. If his pay could not be refixed as claimed by him from 1986 onwards, for any purpose in 2006, the pension of the petitioner also could not be revised on the assumption that the pay stands revised. In our view the reliance placed by the Tribunal on the decision of the Supreme Court in **E. Paramasivan**(supra) was justified. The facts in that case were that the employees had retired from service between January, 1974 and May, 1985. They had filed the original application in the year 1995 claiming fixation of their pay on promotion in terms of the OM dated 12.1.1976 of the Ministry of Defence. The said claim was made since, in the mean time, similar cases had been decided on 13.11.1992. The Tribunal rejected the

claim of the applicants on the ground of limitation. The Supreme Court affirmed the decision of the Tribunal by observing that the anomaly in the scale of pay of the petitioner arose as early as on 12.1.1976. Therefore, the petitioners could have raised objections regarding the anomaly in their scale of pay at that point of time or even thereafter, when they retired from service they could have made the claim for pay fixation in terms of the concordance table and for calculation of pension on that basis. They did not take any steps in that regard till 1995. Consequently, the decision of the Tribunal was affirmed. The factual position in the present case is *pari materia* with that decision of the Supreme Court.

9. For the aforesaid reasons, we find no merit in this petition. Dismissed.

(VIPIN SANGHI)
JUDGE

(A.K.SIKRI)
JUDGE

May 02, 2008
as/aj