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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 3435/2013**

THE UNION OF INDIA AND ORS. ..... Petitioners
Represented by: Mr.Asish Nischal, Advocate

versus

KULDEEP KUMAR SHARMA AND ORS ..... Respondents
Represented by: Mr.V.P.S.Tyagi, Advocate

W.P.(C) 3436/2013

THE UNION OF INDIA AND ORS. ..... Petitioners
Represented by: Mr.Asish Nischal, Advocate

versus

SHRI B.B.KHANNA ..... Respondent
Represented by: Mr.V.P.S.Tyagi, Advocate

W.P.(C) 3516/2013

THE UNION OF INDIA AND ORS. ..... Petitioners
Represented by: Mr.Asish Nischal, Advocate

versus

A.K.NAURIYAL & ORS. ..... Respondents
Represented by: Mr.V.P.S.Tyagi, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **24.05.2013**

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CM No.6516/2013 in W.P.(C) No.3435/2013
CM No.6518/2013 in W.P.(C) No.3436/2013
CM No.6628/2013 in W.P.(C) No.3516/2013

Allowed subject to just exceptions.

W.P.(C) Nos.3435/2013, 3436/2013 and 3516/2013

1. Mr.V.P.S.Tyagi, Advocate who had appeared for the respondents of all the writ petitions before the Central Administrative Tribunal in the Original Applications filed by the respondents enters appearance on advance copy of the writ petitions being served upon him.

2. Vide impugned decision dated December 14, 2012, seven Original Applications numbered as: (i) 1979/2011; (ii) 3587/2011; (iii) 3903/2011; (iv) 2385/2011; (v) 2454/2011; (vi) 3902/2011; and (vii) 4541/2011 have been disposed of.

3. Instant writ petitions pertain to the order in question relatable to Original Application Nos.1979/2011, 2385/2011and 3902/2011.

4. The four writ petitions relating to Original Applications Nos.3587/2011, 2454/2011, 3903/2011 and 4541/2011 were disposed of yesterday i.e. May 23, 2013.

5. The issue at hand is short.

6. Original Application No.260/2002 was allowed by the Madras Bench of the Central Administrative Tribunal on November 13, 2002. The issue decided was: '*Whether the applications before the Tribunal, employees of the Controller General of Defence Accounts, would be entitled to step up of pay with effect from July 03, 1995, the date when persons junior to them*

started receiving salary in the higher grade'.

7. Applying the principle of stepping up of pay i.e. where a situation arises in which a senior gets less salary than the junior, salary of the senior needs to be stepped up and brought at par with that of the junior, relief was granted to the applicants before the Tribunal in Original Application No.260/2002. The department challenged the decision of the Tribunal by filing W.P.(C) No.20774/2003 which was dismissed by the Roster Bench of the Madras High Court on November 27, 2008. Further challenge by the department before the Supreme Court failed when the Petition seeking Leave to Appeal was dismissed by the Supreme Court on October 01, 2009. The decision in favour of the applicants of Original Application No.260/2002 was thereafter implemented by the department.

8. Other similarly situated employees also made a similar claim to the department praying that even they would be entitled to step up of pay with effect from July 03, 1995, ignoring that on the principle of law declared by the Bench of the Administrative Tribunal at Madras, they could claim stepping up of pay with effect from the date person junior to them started receiving salary more than them.

9. This claim was made by these people after the Supreme Court decided the Petition seeking Special Leave to Appeal filed by the department. The department refused, taking the stand that those who are fence sitters would not be entitled to reap the harvest, seeds whereof was sown by others.

10. This necessitated the respondents of the above captioned writ petition to file Original Applications before the Central Administrative Tribunal.

11. On the merits of the issue, the writ petitioners had no case and so

conceded before the Tribunal, but projected a technical defence. The defence was that the Original Applications filed in the year 2011 raised a stale claim relating back to July 03, 1995 and hence the Original Applications were liable to be dismissed being barred by limitation.

12. Vide impugned order dated December 14, 2012, the Central Administrative Tribunal has simply noted the past history relating to the litigation commencing with O.A. No.260/2002 and its terminal destination upto the Supreme Court. This was not required to be discussed by the Tribunal, because on merits the writ petitioners had admitted the legality of the claim but had sought to defeat the same by pleading the bar of limitation.

13. The defence pertaining to the bar of limitation has not even been discussed by the Tribunal.

14. Having heard learned counsel for the parties, suffice would it be to state that those who sit on the fence and look at the field on the other side and permit others to sow the seeds cannot be entitled to partake the harvest from the date their toiling brethren harvested the same.

15. Law pertaining to limitation guides us that a monetary claim if found to be legally admissible can be restricted with respect to payment required to be made on the law of limitation. Vide Section 21 of the Central Administrative's Tribunal Act 1985 the limitation within which the Tribunal must be approached is one year from the date when cause of action accrued and by doing reverse engineering one can safely say that a monetary claim can be restricted to the period of one year preceding the date when the claim was filed before the Tribunal.

16. Accordingly, we dispose of the instant petitions modifying the

directions issued by the Central Administrative Tribunal as per the impugned order dated December 14, 2012. We hold that the respondents would be entitled to stepping up of pay on notional basis from the date persons junior to them started receiving higher salary but actual amount to be paid to the respondents would be limited to the period commencing from the date one year preceding to when the Original Applications were filed by the respondents.

17. No Costs.

18. Dasti.

CM No.6515/2013 in W.P.(C) No.3435/2013
CM No.6517/2013 in W.P.(C) No.3436/2013
CM No.6627/2013 in W.P.(C) No.3516/2013

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

V. KAMESWAR RAO, J.

MAY 24, 2013
mamta

Fwd
1) RP 522 [illegible]
2) CM 1532 [illegible] - 2 days delay in [illegible]