

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

Date of decision: May 20, 2013

+ **W.P.(C) 2747/2012**

POORAN SINGH

..... Petitioner

Represented by: Mr.H.P Chakravorty,
Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.Ravinder Agarwal and
Mr.Girish, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The challenge in this writ petition is to the orders dated July 28, 2011 in O.A No.2692/2011 and September 28, 2011 passed in R.A No.298/2011 in O.A No.2692/2011, whereby the O.A, as well as the review petition filed by the petitioners were dismissed.
2. The claim of the petitioner in the O.A is that he may be granted salary in the pay scale of ₹110-155 (2nd Pay Commission) revised to ₹260-350 (3rd Pay Commission) and further revised to ₹950-1500 (4th Pay Commission) retrospectively with 18% interest per annum.
3. It is noted that during the course of hearing the petitioner had

confined his prayer for grant of pay scale of ₹260-350. It is further noted that the petitioner had superannuated on February 28, 1998. The petitioner had earlier agitated the matter by filing O.A before Allahabad Bench of the Tribunal which had directed the petitioner to seek departmental remedy. Subsequently he filed a Labour Court Application No.93/1993 seeking computation of payment. The Labour Court dismissed the same in view of the judgment of the Supreme Court reported as (1995) 1 SCC 235 Municipal Corporation of Delhi vs. Ganesh Razak. The matter was brought to this court by the petitioner in Writ Petition (Civil) No.3703/2000. The same was also dismissed by this Court vide order dated February 24, 2010, finding no error in the order of the Labour Court. On July 25, 2011 the petitioner filed O.A No.2692/2011 from which the impugned order has arisen, wherein the petitioner sought direction against the respondents to grant him the scale of ₹110-155 (2nd Pay Commission) revised to ₹260-350 (3rd Pay Commission) and further revised to ₹950-1500 (4th Pay Commission) retrospectively with 18% interest per annum. The Tribunal decided the O.A at the admission stage itself by concluding as under:

“We are unable to agree with the applicant’s submission in view of the fact the applicant stood retired from service on 28.02.1998 whereupon the rights and liabilities of the applicant get crystallized and the cause of action thereafter no longer remained a continuing one. Furthermore, whether the previous litigation would amount to sufficient cause warranting condonation of delay in filing the application after the expiry of the prescribed period of limitation could have gone

into, had the applicant filed an application citing this as a ground for condonation of delay. In the absence of any application making such a prayer, it is not open for us to go into this aspect of the matter. Once an application has been found to have been filed after the expiry of the period of limitation under Section 21 of the Administrative Tribunals Act, 1985, the same cannot be admitted unless an order is passed in terms of Section 3(1) for entertaining the application after the prescribed period of limitation. The applicant has not adduced any sufficient cause for making the application beyond the period of limitation. On the other hand, he maintains the application to be within the period of limitation for having been filed in pursuance of the liberty granted by this Tribunal while allowing him to withdraw the O.A-22-9/2010. Such liberty will neither give a fresh right to the applicant nor will operate to extend the period of limitation that has otherwise expired.”

4. Mr.H.P Chakravorti, learned counsel for the petitioner would submit that the Tribunal could not have rejected the case on the ground of limitation. According to him the issue of pay is a continuous cause of action and the O.A was filed pursuant to the liberty granted by the Tribunal in O.A No.2209/2010 dated March 25, 2011.
5. On the other hand, learned counsel for the respondent would justify the order of the Tribunal and says that the petitioner is seeking pay with effect from 1974 and hence the claim is badly barred by limitation.
6. During the course of submission, Mr.H.P Chakravorti, learned counsel for the petitioner states that he would be satisfied if the effect

of the pay in terms of the relief para is considered for the purpose of pensionary benefits only. In other words, the petitioners would not press of arrears, if the relief is granted. In view of the submission of Mr.Chakravorty, we proceed to decide the issue which falls for our consideration as to whether the O.A filed by the petitioner is barred by limitation.

7. The settled law in terms of the judgment of the Supreme Court in the decision reported as (1995) 5 SCC 628 M.R Gupta vs. Union of India, is as under:

“Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. 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 period. 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.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Others vs. Mattapalli Raju and Others, AIR 1950 Federal Court 1)."

8. Further, the Supreme Court in the judgment reported as (2008) 8 SCC 648 Union of India & Ors. vs. Tarsem Singh has, inter-alia, held that normally a belated service related claim will be rejected on the ground of delay and laches or limitation. One of the exceptions to the said rule is cases relating to a continuing wrong. Where a

service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy. A further exception has been carved out if the issue relates to payment or refixation of pay or pension, relief may be granted inspite of delay as it does not affect the rights of the third party. The Supreme Court in that case has restricted the consequential relief relating to arrears only to three years before the date of writ petition or from the date of demand to a date of writ petition, whichever is lesser.

9. In the present case it is seen that the petitioner's prayer is for grant of pay scale of ₹260-350 and the subsequent revision thereof. The denial of the said pay had an effect, every month, when the pay was being received by the petitioner. Further, it has a bearing on the pension that is being drawn by him. The case is squarely covered by the ratio of the judgment of the Supreme Court in M.R Gupta's case (supra) and Tarsem Singh's case (supra).

10. Since the Tribunal has not dealt with the matter on merit, we deem it appropriate to remand the case back to the Tribunal to decide the issue of the pay scale of ₹260-350 and subsequent revision thereof. We hereby set aside the orders of the Tribunal dated July 28, 2011 in O.A No.2692/2011 and September 28, 2011 passed in R.A No.298/2011 in O.A No.2692/2011 and revive the Original Application to its original number i.e. 2692/2011. The parties to appear before the Registrar of the Tribunal on July 01, 2013, on which date the Registrar may consider grant of time to the parties to complete the pleadings. Once the pleadings are complete, the same be listed before the Bench of the Tribunal for disposal. The writ

petition is, accordingly, disposed of in terms of the above.

11. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 20, 2013
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