

Chief Justice's Court

Case :- WRIT - A No. - 8151 of 2016

Petitioner :- Union Of India And 2 Others

Respondent :- Ashraf Khan And Another

Counsel for Petitioner :- Ashok Kumar Gaur, Navaneet Chandra Tripathi, Rajnish Kumar Rai

Counsel for Respondent :- Syed Mushfiq Ali, Prashant Kumar Tripathi, Rajeev Misra, Siddharth Khare

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. Impugned in the present proceedings at the instance of Union of India through General Manager, Head Quarter, North Central Railway, Subedarganj, Allahabad (in short 'Railways') is the order dated 02.12.2015 of the Central Administrative Tribunal, Allahabad Bench Allahabad (in short 'Tribunal') passed in O.A. No. 330/01505 of 2014 (Ashraf Khan v. Union of India and others) whereby the original application preferred by Ashraf Khan (in short 'original applicant') came to be allowed with a direction to the petitioners herein to consider his claim for fixation of pay at maximum of Rs. 940/- in the pay scale of Rs. 750-940/- at the time of initial appointment and also to consider the claim with regard to payment of consequential benefits within a period of three months from the date of the presentation of the certified copy of the order.

2. The case projected by original applicant before the Tribunal was that he was initially appointed under sports quota in Group 'D' post of the Railways *vide* order dated 18.12.1992. The original applicant claimed that he had represented the Central Railway in the Senior Hockey League and was playing in National Bombay Gold Club Hockey Tournament. On the strength of the same, the

original applicant staked entitlement of grant of maximum of pay scale to the tune of Rs. 940/- which according to him was wrongly fixed as Rs. 846/-.

3. An Original Application No. 330/00865 of 2014 was preferred by the original applicant which came to be disposed of on 04.08.2014 requiring the petitioners herein to consider his claim. Thereafter on 20.10.2018, the petitioners herein proceeded to pass an order rejecting the claim of the original applicant holding that the claim set up by him was belated, after a period of 20-22 years and since the original applicant had been conferred with the benefits of eight increments thus he was not entitled for maximum pay scale.

4. Challenging the order dated 20.10.2014 of the petitioners, the original applicant instituted O.A. No. 330/01505 of 2014 (Ashraf Khan v. Union of India and others) seeking following reliefs:

"i. To quash the impugned order dated 20.10.2014 passed by Divisional Railway Manager, Jhansi (Annexure no.A-1).

ii. to provide correct maximum grade pay Rs.940 from the date recruitment alongwith arrears in the light of Railway Board Circular 21.2.1986 and in the light of similarity as granted to similar sports persons.

iii. to refixation of correct pay and pay the other benefits from due date as per rules.

iv. to pass any such/other order as deem fit in the facts and circumstances of the case.

v. award cost of the petition."

5. On contest, the said original application came to be allowed by the Tribunal vide order dated 10.04.2015, operative portion whereof is being quoted hereinunder:

"12. Considering the above facts and circumstances we are of the view that wrong fixation of pay has a recurring cause of action and the applicant cannot be denied the rightful fixation of pay even on the ground of delay and latches. However, it is apparent from the record that the applicant was agitating his claim from time to time and his case was also recommended for approval, but Clie competent authority kept his case pending without passing any final order. The applicant cannot be discriminated to those similarly situated sport persons who have been granted maximum pay in the Pay Scale of Rs. 750-940 at the time of initial pay fixation.

13. In view of Railway Board's Circular dated 21.02.1986 and various orders of Bhopal and Jhansi Divisions and the order passed by the Tribunal are of considered opinion that the applicant was also entitled to get the maximum pay of Rs. 940/- in the Pay Scale of Rs. 750-940 and his pay was wrongly fixed as Rs. 846/-.

14. Accordingly, the OA is allowed and respondents are directed to consider the claim of the applicant for fixing his pay at the maximum of 940/- in the Pay Scale of Rs 750-940 at the time of initial recruitment and pay him all the consequential benefits within a period of 03 months from the date of receipt of copy of this order. No order as to costs."

6. The order of the Tribunal was subject matter of challenge at the instance of the writ petitioners herein, Writ A No. 38898 of 2015 (Union of India through General Manager and 2 others v. Ashraf Khan and another) in which on 16.07.2015 the following order was passed:

"We have heard counsel for the parties and having gone through the records, we are of the considered opinion that no interference is called for against that part of the order of the Tribunal, whereby it is held that the claim of the respondent no.1 for fixation of correct pay be examined as in the original application such right is not being denied to the respondent no.1. The finding, in that regard, is affirmed by us for the reasons recorded by the Tribunal and the plea of latches raised is therefore rejected. So far as the second plea on behalf of the petitioner is concerned, we find substance therein. The

petitioners are correct in contending that the Railway Board's circular only confers a discretionary power upon the appointing authority to fix the salary at the maximum of the pay-scale applicable and there should have been a finding by the Tribunal in the facts of the case that fixation of salary of respondent no.1, providing eight advance increments, and not the maximum of pay-scale, was discriminatory or arbitrary, which finding has not been returned. We may further record that the Tribunal has not recorded any finding with regard to any inferior sportsmen having been provided maximum of the pay-scale, and that petitioners before the Tribunal had been dealt with in a discriminatory/arbitrary manner.

After examining the order of the Tribunal, we are of the opinion that the Tribunal could not have issued a positive direction to the effect that the respondent no.1 was entitled to grant of maximum pay of Rs.940/-. At best the Tribunal could have asked the authorities to revisit the matter, and to consider the matter of fixation of salary of the respondent no.1, in terms of the Board's circular dated 21.2.1986 as modified vide circular dated 24.2.1994, conferring power upon the appointing authority to fix the salary of a person at the maximum of the pay-scale, after assessing the caliber of such sports person. The Tribunal has not considered the plea raised by the respondent no.1 qua his being discriminated as against other sports person, in the matter of fixation of pay.

For the aforesaid reasons, the order of the Central Administrative Tribunal dated 10.5.2015 passed in Original Application No.330/00865 of 2014 cannot be legally sustained and is hereby set aside. The aforesaid Original Application is restored to its original number. The Tribunal is directed to re-examine the claim of the respondent no.1, in light of the observations made in this order. The said exercise shall be completed, preferably within a period of four months from the date of presentation of a certified copy of this order.

The writ petition is allowed accordingly."

7. In the meantime, the original applicant preferred an another Original Application No. 330/01307 of 2015 (Ashraf Khan v. Union of India and three others) wherein challenge was raised to

the Condition No. (ii) of the circular dated 24.02.1994 which provided that with regard to the past cases decisions already taken by the appointing authority at the time of original appointment should not be reopened. The said original application came to be dismissed on merits as well as limitation on 29.09.2015, operative portion whereof is being quoted hereinunder:

"5. Even otherwise, basic pay of the applicant at Rs. 846/- was fixed in his appointment letter dated 18.12.1992 (Annexure A. 3) itself. The applicant has, however, filed O.A. No. 1505/2014 the year 2014 i.e. after 21 years, practically challenging the fixation of his pay vide appointment letter dated 18.12.1992. In these circumstances, no ground for condoning the long delay in filing the instant O.A. is made out merely on the basis that the respondents took shelter under the impugned circular dated 24.02.1994 in their counter affidavit in the previous O.A. of the applicant.

6. Besides it, even on merits, condition No. (ii) in the impugned circular cannot be said to be unconstitutional, arbitrary or ultravires. According to the said condition, decisions already taken in the past cases should not be reopened. There is nothing illegal in the said condition because reopening of the past cases would open pandora's box.

7. Besides it, even if the impugned condition (ii) aforesaid is ignored, the appointing authority had discretion under circular dated 21.02.1986 (being relied on by the applicant). The appointing authority had discretion to fix the starting pay right upto the maximum of scale after assessing caliber of the sports person.

8. In the appointment letter dated 18.12.1992, starting pay of the applicant was fixed at Rs.846/- giving him benefit of eight increments in the pay scale of Rs.750-940/- Consequently, even under condition (i) in the impugned circular, the appointed sports person does not have a vested right to get the maximum of the scale as starting pay. On the contrary, his caliber is to be assessed by the appointing authority and starting pay has to be fixed accordingly.

9. According to circular dated 21.02.1986 as pointed out by counsel for the

applicant at page No. 27 of the paper book, recruitments were to be made with fixation of pay at the maximum of the grade, unless the sportsmen recruited were complete youngsters. In the instant case, the applicant was appointed at the age of 22 years and the eligibility age was 18 to 25 years as submitted for counsel for the applicant. Consequently, the applicant fell mid-way and accordingly has been given mid-way benefit of 8 increments.

10. For the reasons aforesaid, we find that there is no ground to condone the long and inordinate delay of more than 20 years in filing the O.A. Accordingly, M. A. No. 3853/2015 for condonation of delay in filing the O.A. is dismissed. Consequently the O.A. is liable to be dismissed as time barred. Even on merits, the O.A. deserves to be dismissed. Resultantly, the OA is dismissed at the admission stage as time barred as well as on merit."

8. The said order of the Tribunal was challenged by the original applicant while filing Writ-A No. 3748 of 2016 (Ashraf Khan v. Union of India) before this Court which came to be rejected on 28.01.2016 holding as under:

"7. We do not find that clause (ii) of the circular dated 24.2.1994, which deals in regard to past cases, decisions already taken by the appointing authority at the time of original appointment should not be reopened, is ultra vires. Once the petitioner had been inducted in regular services on the basis of the said circular and accorded 8 increments at a time at the initial stage, then at this stage we do not find any infirmity in the order impugned.

8. Accordingly, the writ petition is dismissed."

9. Post remand, Original Application No. 330/01505 of 2014 (Ashraf Khan v. Union of India and three others) preferred by the original applicant came to be decided by virtue of the judgment and order dated 02.12.2015 directing the writ petitioners herein to consider the claim of the original applicant for fixation of the pay at the maximum of Rs. 940/- in the pay-scale of Rs. 750-940/- at the time of the initial appointment and for payment of

consequential benefits within a period of three months from the date of the presentation of the certified copy of the order.

10. Questioning the said order, the writ petitioners have preferred the present writ petition.

11. This Court while entertaining the writ petition on 23.02.2016 proceeded to pass the following order:

"On the matter being taken up today, Sri A.K. Gaur, learned counsel for the petitioners has pointed out before us that in the present case caveat application has been filed by Sri S.M. Ali, Advocate on behalf of Ashraf Khan, respondent no.1, who has refused to take notice of the writ petition in question. When we proceeded to start with the matter, then mention has been made on behalf of Rajiv Mishra, Advocate that he has accepted Vakalatnama on behalf of the respondent no.1 Ashraf Khan and he is not in position to appear before the Court today. Once such is the factual situation and purpose of caveat is that counsel should be present in Court to resist grant of stay.

Once there has been caveate and counsel, who has filed Vakalatnama, has refused to accept the notice of the writ petition and other counsel has chosen not to appear before the Court, and what we find from the record that relief that has been accorded by the Central Administrative Tribunal, Allahabad, is totally in the teeth of the order dated 28.01.2016 passed by this Court in Civil Misc. Writ Petition No.3748 of 2016 (Ashraf Khan Versus Union of India and 2 others).

Once such is the factual situation, in view of this, we proceeded to ask the respondent no.1 Ashraf Khan to file his counter affidavit within four weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List after six weeks.

During this interregnum period, operation of impugned order dated 02.12.2015 passed by Central Administrative Tribunal, Allahabad, is directed to be kept in abeyance."

12. A counter affidavit has been filed by the original applicant to which a rejoinder affidavit has been filed.

13. A joint statement has been made by the learned counsel for the parties that they do not propose to file any additional affidavits and the writ petition be decided at the admission stage on the basis of the documents available on record.

14. Shri Rajesh Tripathi, learned counsel for the Railways has sought to argue that the judgment and order of the Tribunal cannot be sustained for the single moment. Elaborating the said submission, it is being submitted that it was not open for the original applicant to have raised the issue with regard to the entitlement of the fixation of the pay at the maximum of Rs. 940/- in the pay-scale of Rs. 750-940/- as previously, the original applicant had agitated the said issue in Original Application No. 330/01307 of 2017 (Ashraf Khan v. Union of India) while questioning the Condition No. (ii) of the circular dated 24.02.1994 of the Railways and the Tribunal *vide* judgment and order dated 29.09.2015 had recorded a categorical finding that the claims set up by the original applicant was barred by delay and laches of 21 years and further the said circular was *intra vires* and not *ultra vires* and the fixation of the pay to the tune of Rs. 846/- after giving eight increments was valid.

15. Submission is that the said order of the Tribunal stood affirmed by this Court in Coordinate Bench of this Court in Writ A No. 3748 of 2016 (Ashraf Khan v. Union of India) decided on 28.01.2016 wherein it was held that the original applicant was not entitled to the maximum pay scale of Rs. 940/- since the discretion to grant the benefit had been exercised and the original applicant was made entitled to eight increments.

16. In nutshell it is being submitted that the order of the Coordinate Bench of this Court has attained finality as it has not been put to challenge before the higher forum and further the findings so recorded in the said proceedings would act as a *res judicata*. It is also being argued that from the plain reading of the impugned order which is subject matter of challenge before this Court in the present proceedings, it would be evident that the order dated 29.09.2015 passed in O.A. No. 330/10307 of 2015 in the proceedings instituted by the original applicant has not been even noticed which makes the order impugned in the writ petitions vulnerable and vitiated. Additionally, it has been argued that the Railway Board Circular dated 21.02.1986 would not *ipso facto* confer an indefeasible right to be accorded benefits of maximum pay, particularly, when it is the discretion of the employer subject to consideration of the various aspects before grant of the said benefit, therefore, it is prayed that the writ petition be allowed and the order of the Tribunal be quashed.

17. Countering the submission made on behalf of the counsel for the Railways, Shri Ashok Khare, learned Senior Counsel assisted by Shri Anurag Ojha, counsel for the original applicant have submitted that the order of the Tribunal needs no interference, particularly, when there happens to be a positive order in favour of the original applicant in the shape of the decision of the Tribunal dated 10.04.2015 in O.A. No. 330/10505 of 2014 affirmed by a Coordinate Bench of the Hon'ble High Court in Writ-A No. 38898 of 2015 decided on 16.07.2015.

18. Submission is that the objection with regard to delay and laches was not open to be raised by the Railways, particularly, when the Coordinate Bench of this Court had already held that the

claim of the original applicant was within limitation. It is further submitted that the circular dated 21.02.1986 provides for grant of maximum pay scale of the grade under sports quota except in the cases of youngsters, thus, there is no question of discretion to be exercised by the Railways, particularly, when the original applicant holds necessary eligibility.

19. In other words, according to Shri Ashok Khare, the judgment and order of the Tribunal in O.A. No. 330/01307 of 2014 seeking to challenge the Condition No. (ii) of the circular dated 24.02.1994, the order dated 29.09.2015 and affirmance of the same by the Writ Court in Writ-A No. 3748 of 2016 would not be of any relevance, particularly, the claim of the original applicant stands covered under the circular dated 21.02.1986.

20. We have heard the learned counsel for the parties and perused the record carefully.

21. The facts are not in issue. It is not in dispute that the original applicant was appointed under sports quota in Group 'D' post vide order dated 18.12.1992. Parties are in agreement that the original applicant had represented the Central Railway in the Senior Hockey League and also played National Bombay Gold Club Hockey Tournament. The dispute arose when the original applicant claimed the maximum pay of Rs. 940/- against the alleged wrong fixation of Rs. 846/-. An order dated 20.10.2014 came to be passed by the petitioners denying the claim which was subject matter of challenge in O.A. No. 330/01505 of 2014 which came to be allowed on 10.04.2015. On challenge by the writ petitioners in Writ-A No. 38898 of 2015, the writ petition came to be allowed on 16.07.2015 quashing the order of the Tribunal dated 10.04.2015. While remitting the matter back to the Tribunal while restoring the

proceedings requiring the matter to be re-examined. The original applicant challenged the circular dated 24.02.1994 of the Railways which created an embargo that the past cases where decisions have already been taken by the authority at the time of the original appointment would not be reopened. The original application came to be rejected on merits as well as on delay holding that the Condition No. (ii) of the circular is neither unconstitutional, arbitrary nor *ultra vires* while observing that the fixation of the pay to the tune of Rs. 846/- and grant of eight increments were appropriate and the original applicant could not claim any further benefits. The order of the Tribunal was challenged by original applicant in Writ-A No. 3748 of 2016 (Ashraf Khan v. Union of India) which came to be dismissed on 28.01.2016.

22. In the opinion of the Court, once a finding has been recorded by the Tribunal affirmed in writ proceedings by this Court has attained finality then it would bind the original applicant and he cannot resile from the said position.

23. Nonetheless we find that the order dated 29.09.2015 passed in O.A. No. 330/01307 of 2015 dismissing the original application of the original applicant has not been even noticed in the impugned judgment which was passed on 02.12.2015. Certainly, in the wake of the aforesaid facts and circumstances, it is not open for the original applicant to insist for the grant of maximum pay, particularly, when the original applicant has been conferred with the benefits of grant of eight increments.

24. Viewing the case from all angles, we find that the judgment and order of the Tribunal cannot be sustained. Accordingly, the judgment and order dated 02.12.2015 passed in O.A. No. 330/01505 of 2014 of the Tribunal is set aside.

25. Resultantly, the writ petition stands **allowed**.

Order Date :- 2.7.2024

A. Prajapati

(Vikas Budhwar, J.) (Arun Bhansali, C.J.)