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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 9100 OF 2016

|                         |     |             |
|-------------------------|-----|-------------|
| Union of India and ors. | ... | Petitioners |
| Vs.                     |     |             |
| Shri. K.H. Kartha       | ... | Respondent  |

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Mr. R.M. Haridas for the Petitioners.  
None for the Respondent.

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CORAM : V. M. KANADE, AND  
M. S. SONAK, JJ.  
DATE : AUGUST 09, 2016.

P.C.:-

1] The petitioners-Union of India challenges the judgment and order dated 30 June 2015 made by the Central Administrative Tribunal (CAT), Mumbai in Original Application No. 47 of 2014 instituted by the respondent herein, seeking benefit of revised pension.

2] Mr. R.M. Haridas, learned counsel for the petitioners, submitted that the original application instituted by the respondent was barred by law of limitation. If the respondent had any grievances with regard to non-payment of revised pension, the respondent ought to have instituted the original application early and not until similar matters were decided by the CAT or Calcutta High Court. Mr. Haridas

submitted that the CAT has incorrectly held that the original application instituted by the respondent was not barred by limitation. Mainly, upon these grounds, Mr. R.M. Haridas submitted that the impugned judgment and order made by the CAT warrants interference.

3] In the present case, there is no dispute that the relief similar to one claimed by the respondent came to be granted to similarly placed employees, both by the CAT as well as the Calcutta High Court. There is also no dispute that the Calcutta High Court had issued directions for extension of such relief not only to the parties before the Court, but also, to the parties who were similarly placed. There is also no dispute that the Union of India extended the benefit of revised pension to the parties who had succeeded in the proceedings before the CAT and the High Court. The submission was made that such benefit was also extended to some similarly placed employees, who may not have been parties to the proceedings before the CAT or the High Court. However, such benefit was not extended to the respondent and therefore, the respondent was constrained to institute the original Application No. 47 of 2014.

4] The CAT, in its detailed judgment and order dated 30 June 2015 has appreciated the grievances raised by the respondent in its proper perspective. On merits in fact, no submissions were made in the present petition as to the eligibility of the respondent to the

benefits of revised pension. This was rightly so, particularly since, the CAT and the Calcutta High Court has already ruled upon this aspect and such ruling has been duly accepted by the petitioners in several cases. The CAT, in the facts and circumstances of the present case, has held that the original application instituted by the respondent was not barred by limitation. This is on the basis of the material on record, is a correct finding. In fact, the petitioners were duty bound to extend the benefits of revised pension to the respondent. The respondent accordingly, represented in the matter of grant of revised pension and since revised pension was not being extended to the respondent, original application came to be instituted. In such circumstances, it cannot be said that the original application was barred by law of limitation. There is no case made out to interfere with the impugned judgment and order. It is unfortunate that the Union of India not only raises, but further, pursues such objections with regard to limitation, particularly in matters of payment of pension. In fact, the petitioners were duty bound to extend the benefit of revised pension to the respondent, without compelling the respondent to approach the CAT by institution of original application.

5] In ***Amrit Lal Berry Vs. Collector of Central Excise, New Delhi and ors.*** - (1975) 4 SCC 714, the Hon'ble Supreme Court has held that when a citizen aggrieved by the action of a government department has approached the Court and obtained declaration of law

in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievance to Court. At paragraphs 11 and 24, the Hon'ble Supreme Court has observed thus:

*11. It does appear to us that, insofar as memorandum of 1972 does not direct reconsideration of cases of all those persons who have actually missed confirmation or who were not considered at all for promotion at the time when they ought to have been considered, it fails to give due and complete effect, as a matter of general policy, to what was decided by this Court in Ravi Varma's case (supra). The excuse put forward on behalf of the respondent is that rights said to be created by the actual facts of confirmations and promotions in the past cannot now be taken away by the respondents and that more persons cannot be introduced in any grade than its sanctioned strength. It is true that the petitioners were not parties to the decision in Ravi Varma's case so that they cannot claim the benefit directly of any direction given in that case. It seems that it is for this reason that learned counsel for the respondents attaches considerable importance to delay in approaching this Court against alleged illegalities. We are unable to commend the argument, coming as it does on behalf of a Department of the State, that the effect of the decision of this Court in Ravi Varma's case must be confined to parties before the Court in that case. We are, however, concerned here with the meaning and effect of the memorandum of 1972 which proceeds on the correct footing that the Central Excise Department was duty bound to give effect to the law declared by this Court in Ravi Varma's case. But, we may point out here that a mere failure to apply a rule which ought to have been applied may not, by itself, justify an*

*invocation of the powers of this Court under Article 32 of the Constitution. In order to succeed in a petition under Article 32 of the Constitution the petitioner has to disclose how his fundamental right has been infringed by a particular rule or decision or its application. The impact of the Rule or decision upon the facts of each petitioner case has to be clearly brought out.*

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**24.** *It may be mentioned here that an attempt was made by Amrit Lal Berry to account for delay in filing his petition. He said that he had made two departmental representations, one, dated March 6, 1965 and another, dated August 13, 1971, of which he filed copies, to which no replies had been received so far by him. It was denied by the excise department that he ever sent the first representation. It is evident that he had waited for a considerable period before making his representation in 1965 even if we were to assume that he did make such a representation then. Furthermore, the copy of the alleged representation of 1965 shows that it was directed only against the imposition of a test by examination before confirmation. We do not think that, merely by filing repeated or delayed representations, a petitioner can get over the obstacles which delay in approaching the Court creates because equitable rights of others have arisen. We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.*

*(emphasis supplied)*

6] In the present case, not only that the original application instituted by the respondent was not barred by limitation, but further, this is also not a case where any equitable rights have arisen in others, on account of delay, if any, on the part of the respondent in approaching the CAT. In the present case, we are only concerned with the extension of benefits of revised pension. As noted earlier, not even a contention was raised that the respondent was not eligible to the benefits of such revised pension. In almost identical circumstances, the CAT and Calcutta High Court has extended benefits of revised pension and such orders were being duly complied with by the petitioners.

7] Although, there was no interim relief granted in this petition, the petitioners, without any excuse have failed to comply with the directions for payment of revised pension arrears to the respondent. The mere institution of the petition or its pendency is not a ground to avoid implementation of the impugned order. The respondent, being a pensioner, has been put to serious prejudice, not just by denial of benefits of revised pension, but also on account of being required to institute proceedings before the CAT, in order to obtain his legitimate pensionary dues. In these circumstances, it is only appropriate that the petitioners to pay interest at the rate of 12 % per annum to the respondent on the arrears of pensionary benefits. Accordingly, the petitioners are directed to clear the arrears as directed

by the CAT within a period of four weeks from today together with interest thereon at the rate of 12% per annum.

8]           With the aforesaid directions, this petition is dismissed. There shall however, be no order as to costs.

9]           All concerned to act on the basis of authenticated copy of this order.

[M. S. SONAK, J.]

[V. M. KANADE, J.]