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

+ **W.P.(C) 9167/2016**

B.B. BHASIN

..... Petitioner

Through Mr. Nikhil Singhvi & Ms. Nikita Pandey,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Manik Dogra & Mr. Nitya Sharma,
Advocates for respondent Nos. 1 and 2.

Mr. Satyabrata Panda & Mr. Hemantha Wahi,
Advocates for respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

05.10.2016

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CM No. 37113/2016

Exemption application is allowed, subject to all just exceptions.

W.P.(C) No. 9167/2016

A limited issue arises for consideration in the present writ petition and with the consent of the learned counsels for the parties, the petition itself is taken up for hearing and disposal. Counsel for the respondents waives the

right to file a reply.

2. The petitioner-B.B. Bhasin, aged about 76 years, is a retired Gujarat IPS Officer, 1964 batch. The petitioner had filed Original Application No. 2991/2012, challenging the letter dated 27th January, 2012 and praying that his pension should be restored to the extent of 1/3rd of the commuted portion after fifteen years of commutation.

3. The Central Administrative Tribunal, Principal Bench, New Delhi, (Tribunal, for short), vide order dated 15th July, 2016, dismissed the said OA for non prosecution recording that none had appeared for the petitioner for last three dates. The petitioner thereafter filed an application for restoration, M.A No. 2554/2016 on 14th August, 2016, i.e., within a period of thirty days from the order of dismissal. The said application has been dismissed by the impugned order of the Tribunal dated 24th August, 2016.

4. This order dated 24th August, 2016 records that none had appeared on behalf of the petitioner before the Tribunal on 9th February, 2016, 19th April, 2016 and 11th May, 2016 (wrongly noted as 11th April, 2016) and, therefore, the order dated 15th July, 2016 was justified. The impugned order records the submission that the petitioner was not residing in Delhi and had engaged a new counsel as his earlier counsel had not taken interest in the matter. The

Tribunal observed that the said excuse was not genuine for there was non-appearance on four successive dates.

5. Having heard learned counsel for the parties, we are inclined to allow the present writ petition.

6. The petitioner is more than 76 years old and is based and residing in Jaipur. The OA was filed in Delhi as the cause of action had arisen in Delhi and the respondents are based in Delhi. It was difficult and impracticable for the petitioner to be present and appear before the Tribunal on all dates of hearing. Perforce, owing to his age and place of residence, he would rely on the advocate engaged by him. The petitioner had stated that there was a lapse and default on the part of the earlier counsel and he had changed his counsel and appointed a new counsel. The application for restoration was filed immediately after the dismissal order. The prayer made is for enhanced pension by restoring a portion of the commuted pension. The question raised should be decided on merits and is a matter of grave importance for the petitioner.

7. In view of the aforesaid, we set aside the order dated 15th July, 2016. The MA No. 2554/2016 for restoration will be treated as allowed. The OA No. 2991/2012 is restored to its original position.

8. Parties will appear before the Tribunal on 27th October, 2016, when a date of hearing will be fixed.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

**OCTOBER 05, 2016
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