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

Judgment dated: 24th August, 2016

+ W.P.(C) 8783/2014

UNION OF INDIA & ANR.

..... Petitioners

Through

Mr. A. K. Gautam and Mr. Ranbir S.
Chhillar, Advocate

versus

MANOHAR SINGH CHANA

..... Respondent

Through

Respondent in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 20.02.2014 passed by the Central Administrative Tribunal (hereinafter referred to as "The Tribunal"). This court had issued a restricted notice in this writ petition on 12.12.2014 to the effect whether the entire arrears should be granted to the respondent in terms of the order of the Tribunal.

2. The necessary facts, which are required to be noticed for disposal of the present writ petition, are that the respondent had rendered service in the Indian Navy from 20.08.1960 to 27.01.1966 i.e. 5 years 4 months and 7 days. He was discharged from Indian Navy being not physically fit in the year 1966. After that the respondent joined the Intelligence Bureau (hereinafter referred as IB) as Junior Intelligence Officer (hereinafter referred as JIO), JIO-I (Tech) with effect from 01/03/1968. The respondent was confirmed in substantive capacity(confirmed) as JIO-I w.e.f 22/12/1973,

vide order NO.4/Estt/Conf/78(2) dated 20/12/1978. Thereafter, the respondent joined the services of NTPC in 27/01/1982 as a direct recruit through open exam and subsequently was permanently confirmed in NTPC w.e.f 01/04/1984. On 23/02/2000, the respondent requested IB for revision of pension by taking into consideration his military service for pension as per Rule 19 of CCS Pension Rules. As per the respondent, he had not exercised his option for counting of his past military service within the permissible time limit and his request for condonation of delay was not acceded to by the competent authority. Thereafter, the respondent had approached the Tribunal by filing an OA No.34/2009. The following reliefs were prayed for in the OA by the respondent:

“(a). Grant of ex-servicemen’s benefit by taking cognizance of military service of Ex-Sailor. Counting of defence service rendered before joining IB along with all consequential benefits including interest @ 18% on the arrears of above.

(b). Award interest @ 18% for 3 years on amounts of Rs. 34,751/- and Rs. 59,097 on account of delayed payments of retirement benefits and commuted pension.

(c). To rectify the mistakes in the PPO including supply of original pension calculation sheet.”

3. The OA No.34/2009 was decided vide order dated 1.3.2011 whereby the same was dismissed as barred by limitation. The respondent thereafter approached this Court vide W.P.(C) No. 4552/2011 wherein the aforesaid order of the Tribunal was set aside by this court vide its order dated 19.2.2013 on the basis of the decision of the Hon’ble Supreme Court in the matter of **Union of India vs. Tarsem Singh**, (2008)8 SCC 468, holding that the pensionary claims are a reckoning cause of action arising each month when pension becomes payable and cannot be blocked even if the petitioner

approaches belatedly for the benefit. Accordingly, the matter was remanded to Tribunal for adjudication on merits of the case. The order dated 01/03/2011 of this court reads as under:

“1. Heard learned counsel for the parties. Issue pertains to pension.

2. The petitioner had served the Indian Navy from August 28, 1962 till January 27, 1966 and thereafter from March, 1968 till January 27, 1982 in Intelligence Bureau. Petitioner claims to have proceeded to deputation under National Thermal Power Corporation on January 28, 1982 and claims to be permanently absorbed there on March 31, 1984. He superannuated while serving under National Thermal Power Corporation on August 31, 2003.

3. Respondent raised a dispute with reference to petitioner's assertion of proceeding on deputation to National Thermal Power Corporation, but we are not concerned with the same at the moment.

4. Issue pertains to payment of pension to the petitioner for services rendered while under the Indian Navy and Intelligence Bureau; grievance is that service rendered under Indian Navy is not being counted as pensionary service while computing the pension payable.

5. Vide impugned order dated March 01, 2011 the Tribunal has dismissed O.A.No.34/2009 holding the same to be barred by limitation, ignoring the law declared by the Supreme Court in the decision reported as 2008 (8) SCC 468 UOI v.Tarseem Singh as per which pensionary claims are recurring cause of action arising each month when pension is payable and that when somebody approaches a Fora belatedly the benefit, if found due, can be restricted keeping in view the law of limitation.

6. Under the circumstances, the writ petition is disposed of setting aside the impugned order dated March 01, 2011. O.A.No.34/2009 is restored for adjudication on merits by the Tribunal.

7. *Parties shall appear before the Registrar of the Tribunal on March 04, 2013 who shall list the Original Application before an appropriate Bench.*”

4. The OA No bearing No.34/2012 was allowed by the Tribunal vide order dated 20.2.2014. The said OA was allowed in the following terms:-

“(i).The applicant’s military service from 20.08.1960 to 27.01.1966 is to be reckoned for fixation of pension and notional initial pay fixation is to be done on joining the IB by allowing one increment for each year of military service for fixing the pension.

(ii).The amount of arrears will be calculated accordingly and interest will be paid thereon at the same rate which is applicable in the case of gratuity and no more.

(iii).Other payments if any, will be made as per rules.

(iv)There shall be no order as to costs.”

5. Aggrieved by the impugned order dated 20/02/2014 passed by the Tribunal, the present writ petition has been filed by the petitioners.

6. Mr. A. K. Gautam, learned counsel for the petitioners submits that the relief claimed by the petitioners in this writ petition is restricted to the aspect that the respondent would be entitled to arrears for three years of his approaching the Tribunal which was in the year 2009. Counsel for the petitioners further submits that arrears for three years prior to filing of the OA stood paid to the petitioner.

7. Learned counsel for the petitioner submits that the Tribunal has failed to take into consideration that the claim of the respondent seeking arrears of the pension for the year 1984 was hopelessly as barred by limitation. The Tribunal noted that the objections raised by the respondent before the Tribunal are time barred but the Tribunal did not give any finding on the ground that this Court in Writ Petition No.4552/2011 had rejected the order of the Tribunal by which the OA filed by the respondent herein was

dismissed being barred by limitation. The respondent who appears in person submits that respondent cannot be faulted for any action of the petitioners and the onus was on the petitioners to ensure that the pension was released after counting the past service in Indian Navy between 1960 to 1966 and not having done so, the petitioner cannot deprive the respondent for the arrears of the pension.

8. We have heard learned counsel for the petitioner and respondent in person.

9. We have noted that the respondent was discharged from the Indian Navy being not physically fit in the year 1966, he joined the Intelligence Bureau on direct recruitment. He was relieved from IB for joining NTPC in the year 1982 for the Post of Supervisor, Grade-II. The respondent joined the NTPC as Supervisor, Grade-II in 1982. In 1988, he was paid pro-rata pension and gratuity on account of his service. For the first time the respondent in the year 2000 requested the Intelligence Bureau for revision of pension by taking into consideration his military service for pension as per Rule 19 of CCS (Pension) Rules.

10. The observation of the Tribunal made in para 22 of the impugned order is to be considered in the backdrop of the order of this Court dated 19.02.2013 which we have extracted herein above. Reading of the order would show that this Court only remanded the matter back after taking note of the decision rendered by the Supreme Court in the case of ***Tarsem Singh (supra)***. This Court did not reject the argument on the point of limitation of the petitioner herein. The Tribunal has failed to apply the law laid down in ***Tarsem Singh (supra)*** wherein the Apex Court has held that the pensionary claims are recurring cause of action arising each month when pension becomes payable and If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which

could be granted upto a reasonable period of about three years.

11. The Supreme Court in **Tarsem Singh (supra)** in para Nos.7 & 8 has held as under:-

“7. To summaries, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). 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, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

12. We find that there is no justification as to why the respondent did not approach the petitioners when he was relieved in the year 1982 or soon thereafter and waited upto the year 2009 to file the first OA. The tribunal ought to have restricted the arrears to only three years before the date of filing of the OA by the respondent.

13. The respondent, therefore, would not be entitled to the entire arrears of revised pension on account of delay in approaching the Tribunal. The arrears can only be limited to a period of three years.

14. The writ petition is allowed in part. The respondent has already been paid his dues as per the direction. However, the respondent submits that the entire dues have not been paid to him for which he would seek appropriate remedy whichever is available to him as per law.

15. The writ petition stands accordingly disposed of in above terms.

G.S.SISTANI, J

I.S.MEHTA, J

AUGUST 24, 2016