IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.1530 of 2017
Date of Decision: September 13, 2017

Smt.Raksha Devi

...Petitioner

Versus

Union of India, Ministry of Communication and Information Technology, New Delhi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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Present: Mr.Madan Mohan, Advocate,
for the petitioner.

Mr.Namit Kumar, Advocate,
for respondent Nos.1 to 4.

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AMIT RAWAL, J.

1. Petitioner has approached this Court under Articles 226/227 of the Constitution of India by challenging the order of the Central Administrative Tribunal, Chandigarh Bench (for short “CAT”) dated 25.10.2016 (Annexure P-4) dismissing the O.A.No.060/001156/2015, wherein quashing of orders dated 1.10.2015 (Annexure A-1) and 7.10.2015 (Annexure A-2) was sought.

2. Mr.Madan Mohan, learned counsel appearing on behalf of the petitioner submitted that the husband of the petitioner, namely, Tarsem Lal Postman (since deceased), while on official duty, suffered a fatal injury and ultimately died on 13.8.1990. Family pension was sanctioned in favour of the applicant-petitioner under the Central Civil Services (Pension) Rules, 1972 (for short “1972 Rules”) w.e.f. 14.8.1990. On 25.2.1992, the

petitioner was given appointment on compassionate ground. She retired on 31.8.2009 and is drawing the regular pension, besides the family pension. A representation dated 18.3.2015 for re-fixation of the pension as per the CCS (Extra Ordinary Pension), Rules (for short "EOP Rules") was submitted, which has been rejected vide impugned orders dated 1.10.2015 (Annexure A-1) and 7.10.2015 (Annexure A-2). By referring to the aforementioned facts, the learned counsel has raised the following legal submissions:-

i) The order of the CAT is not sustainable in the eyes of law as delay cannot be considered to be fatal for the purpose of determining the claim of pension or re-fixation. In support of his submission, reliance was placed upon the judgments rendered in **Asger Ibrahim Amin Versus Life Insurance Corporation of India; 2016 (1) RSJ 652; S.K.Mastan Bee Versus General Manager, South Central Railway and another, 2003 Supreme Court Cases (L&S) 93 and Saroj Kumari Versus State of Punjab, 1998 (3) SCT 664 (Full Bench)** to contend that where the claim involved is with regard to fixation of pay according to the rules and instructions, it being a recurring cause of action for an employee arising every month and, therefore, the petition should not have been dismissed as per the provisions of Section 21 of the Administrative Tribunals Act;

ii) The Government of India in 1965, had issued instructions for awarding of pension under EOP Rules only in cases covered under both the pension Rules;

iii) Where there is an error and mistake apparent on the part of the Government, it can always undo a wrong at any time and the delay would be irrelevant;

iv) The petitioner did not know her legal rights that the family pension was available under CCS (EOP) Rules to the exclusion of the CCS (Pension) Rules, 1972. In fact, it was obligatory on the part of the respondents to compute the family pension under the applicable rules. Thus, denial amounts to violation of the right guaranteed under Article 21 of the Constitution of India;

v) Delay in filing the Original Application was neither intentional but due to ignorance, lack of assistance and lack of resources in view of the family, domestic and other social rituals.

It was, thus, urged for setting-aside the order under challenge.

3. Per contra, Mr.Namit Kumar, learned counsel representing respondent Nos.1 to 4, at the outset, submitted that the family pension of petitioner's husband was sanctioned vide order dated 23.9.1990 @ Rs.555/- per month w.e.f. 1.11.1990, i.e., 50% of the pay last drawn by the deceased under 1972 Rules by the Director of Accounts (Postal), Kapurthala. The petitioner enjoyed 50% of the last pay drawn for a period of seven years as per 1972 Rules. It was further submitted that after the expiry of seven years of the death, the family pension admissible is at par with the ordinary family pension which the retiree/deceased would have availed under the 1972 Rules. The family pension would then be calculated at uniform rate of 30% of basic pay in all cases subject to minimum of ₹3500/- per month w.e.f. 1.1.2006. Petitioner-applicant did not point out or raise the grouse after the

demise of her husband or during the period when she was given compassionate employment regarding less family pension paid to her. Even the representation was made after six years of her retirement. Thus, there is delay of 25 years, which has gone unexplained. Despite that, the case of the petitioner-applicant was referred to the Director of Accounts (Postal), Kapurthala and on consideration of the matter, vide impugned orders, the claim of the petitioner-applicant under the EOP Rules was found not applicable to the family pensioners being paid and settled in the light of 1972 Rules. The case was reconsidered by the Postmaster General, Punjab West Region, Chandigarh and, thus, prayed for dismissal of the petition by upholding the orders under challenge.

5. We have heard the learned counsel for the parties, appraised the paper book, the judgments (supra) and are of the view that there is no force and merit in the submissions of Mr.Madan Mohan.

6. The undisputed facts are that petitioner's husband died on 13.8.1990 while in harness and the family pension was accorded on 23.9.1990. She was given compassionate appointment on 25.2.1992 and retired on 31.8.2009. For all these years, she remained silent while claiming the benefit under the 1972 Rules. No explanation has come forth for a period of six years after her superannuation in making the representation for the first time on 18.3.2015. The pith and substance of the claim of the petitioner was basically for re-fixation of the family pension and in essence it tantamounts to applying a different formula and not miscalculation.

7. The provisions of Section 21 of the Administrative Tribunals Act,1985 provide the limitation of one year and sub-section (3) thereof envisages a situation to condone the delay in case the relief sought is

beyond one year accompanied by an application explaining delay in approaching the Tribunal within time. In the absence of such an application, original claim preferred by the petitioner has rightly been dismissed on the ground of delay and laches. Where the claim is with regard to fixation of pay, it is recurring cause of action for an employee arising every month. This principle does not apply for adoption of different formula.

8. Examining the judgments relied upon by the learned counsel for the petitioner, suffice to notice that all the judgments cited (supra) pertained to a case where the family pension was not accorded as there was a miscalculation. However, by applying on a different yardstick and formula, a person cannot present or stake the claim as per own will. In **Asger Ibrahim Amin's case (supra),** the employee was not given pension on the ground that he resigned from the job, though the resignation was submitted after serving for a period of twenty years. The Hon'ble Supreme Court had an occasion to deal with the doctrine akin to delay and laches by holding that in case of a continuance or successive wrong, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, did not have any adverse repercussions on the settled third-party rights and had confined the arrears of pension limited to three years, but in view of the facts, as indicated above, no benefit can be derived by the petitioner therefrom.

9. In **Saroj Kumari's case (supra),** the Full Bench, while dealing with the fixation of pay according to the rules and the instructions as to whether the adhoc employee could be given benefit of law identically equivalent to regular employees or not, opined that such claim cannot be dismissed on the ground of delay and laches as it did not affect the rights of

any third party.

10. **S.K.Mastan Bee's case (supra),** was a case where on demise of the railway employee, the widow, who was unaware of her rights, could not enforce the right within a reasonable period, but laid a claim on account of the arrears of family pension which was restricted upto certain periods.

11. Each and every case has to be examined as per the facts and none of the facts as emanated from the judgment apply to the facts and circumstances of the present case. Thus, the opinion expressed by the CAT cannot be faulted.

For the reasons stated above, we do not find any illegality or perversity in the order under challenge. No case for interference is made out. The writ petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

September 13, 2017
ramesh

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**