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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 9573 of 2019**

- Abdul Salim Khan S/o. Late Shri Nazir Khan Aged About 65 Years By Post-Ex. Points Man-'A' R/o- Near House of Rizvi Advocate, Ansar Gali No. 02, Moudhapara, Raipur, District Raipur, (C.G.) 492001, Mobile Nos- 8305126510,

---- Petitioner**Versus**

1. Union of India Through The General Manager (G.M.), At Garden Reach, Calcutta, Now, The General Manager (G.M.) S.E.C.R. Zonal Office Building, Bilaspur Chhattisgarh 495004
2. Divisional Railway Manager S.E.C.R. Office at Divisional Railway Manager, (D.R.M. Office) Bilaspur Chhattisgarh 495004
3. Sr. Divisional Personal Officer S.E.C.R., Office at Divisional Railway, Personal-Branch Bilaspur Chhattisgarh 495004
4. Sr. Divisional Personal Officer S.E.C.R. Office at Divisional Railway, Personal-Branch Raipur Chhattisgarh 492001

---- Respondents

For Petitioner	:	Shri Jameel Akhtar Lohani, Advocate.
For Respondents	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Order on Board

Per P. R. Ramachandra Menon, Chief Justice**17.12.2019**

1. Interference declined by the Central Administrative Tribunal, Bilaspur (for short, 'Tribunal') with regard to the claim projected by the Petitioner herein for fixing his pay correctly in the scale of pay, payable to the Points Man 'A' in respect of the period from 30.06.1989 to 27.11.1990, holding that it was highly belated having been raised virtually after 29 years of arising the cause of action, is put to challenge in this writ petition.

2. Heard Shri Jameel Akhtar Lohani, the learned counsel for the Petitioner as well as Shri Abhishek Sinha, the learned standing counsel for the Respondents at length.
3. The learned counsel appearing for the Petitioner submits that, the Petitioner had entered service as a 'Peon' on 02.04.1974 and was subsequently promoted to the post of Point Man 'A' on 01.08.1982. It is the case of the Petitioner that he retired from the service as a Point Man 'A', availing the benefit of voluntary retirement on 19.07.2000. But later, he came to know that his pay was not correctly fixed and the service benefits were given to him only in the grade of Point Man 'B', by virtue of alleged reversion from the post of Point Man 'A' on 30.06.1989. This was sought to be corrected and interference of the Tribunal was sought for by filing OA with the following prayers:

“8.1 That this Hon'ble Tribunal may kindly be pleased to call upon the entire record pertaining to the case of the applicant leading to passing of impugned-reply/Letter 21.02.2014 & 30.01.2014 by respondents, (Annexure A/1), for the kind perusal of this Hon'ble Tribunal.

8.2 That this Hon'ble Tribunal may kindly allow this application by passing suitable direction/order to the respondents that the applicant is entitle for pay scale of Rs. 1030 instead of Rs. 934/- for the period of 1989 to 1990, and further his pension-protection similar to his juniors are getting, in the interest of justice.

8.3 Any other relief's or appropriate directions/order to the respondents as deemed fit proper suitable, may also be kindly be granted by this Hon'ble Tribunal to the applicant for suitable payment dues, along with cost of this application.”

4. The claim was resisted by the Department pointing out that, the applicant had not succeeded in the suitability test within the given time and hence he came to be reverted to the post of Points Man 'B'. It was sought to be indirectly set aside by filing the OA; that too decades after the arising of the cause of action. The submission made on behalf of the Respondents in the OA was accepted also with reference to the specific provision under Section 21(1) (a) of the

Administrative Tribunal Act, 1985 and held that it was hopelessly barred by limitation. It was accordingly, that the application for condonation of delay was dismissed and as a natural consequence, the OA as well.

5. The learned counsel for the Petitioner points out that it is an instance of 'continuing cause of action' and as such, the so-called delay ought not to have placed any hurdle with regard to the claim mooted by the Petitioner, where the Tribunal has gone wrong. The Petitioner seeks to place reliance on a verdict passed by Division Bench of this Court in ***R.R. Dhruw vs. Union of India & Others*** reported in **2012 CJ (Chh.) 20** contending that, under similar circumstances, interference has been made by this Court and the Petitioner seeks for similar benefit, as it pertains to pay fixation. We find it difficult to agree with the said proposition. The case considered by this Court was with regard to the claim (in respect of pay fixation wrongly effected by the Department) by a person working as the Chief Post Master General in the Chhattisgarh Circle, Raipur. It is revealed from the paragraph 6 of the said verdict that the Petitioner was still working as an employee of the Department and reliance was placed on the verdict passed by the Apex Court in ***M.R. Gupta vs. Union of India and Others*** reported in **(1995) 5 SCC 628** with regard to the 'continuing cause of action'. The present case stands entirely on a different pedestal, insofar as the Petitioner concedes that he had retired from the service on 19.07.2000, pursuant to the voluntary retirement availed by him. The cause of action had come to an end, which could not have been revived after nearly two decades of voluntary retirement by filing the OA.
6. The law has been made clear by the Apex Court, with reference to the instance of voluntary retirement, as per the decision rendered in ***A.K. Bindal and another v. Union of India and others***; (2003) 5 SCC 163 to the effect that, once the employee consciously seeks for voluntary retirement and the

employer-employee relationship is cut off, all claims, if at all any with regard to the service rendered prior to the voluntary retirement would come to an end and no interference is possible.

7. In the above circumstance, we find that there is absolutely no merit in the writ petition. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge