$~

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

+ **Date of Decision: 14.01.2019**

% W.P.(C) 204/2019

GIR RAJ SINGH ..... Petitioner

Through: Mr. S.M. Dalal with Mr. Ajay Yadav, Advs.

versus

UNION OF INDIA & ORS ..... Respondent

Through: Mr. Parvinder Chauhan, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 07.09.2018 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 2807/2018. The petitioner had moved MA No. 3131/2018 to seek condonation of delay of 3473 days in filing the Original Application. The Tribunal has rejected the said Miscellaneous Application and, consequently, dismissed the Original Application as barred by Limitation.

2. The case of the petitioner was that while he was serving as a Assistant Estate Officer (AEO) in the Slum Department (which stood transferred to

M.C.D. on 28.02.1974), he was assigned the responsibility of Lease Administration Cell vide a letter dated 02.08.1978. The petitioner claims that he continued to discharge higher responsibilities between 07.08.1978 and 17.08.1987. He claimed that he was entitled to the pay prescribed for the higher post, since he was discharging higher responsibility. He claimed that on account of him not being paid the salary attached to the higher post, his pay fixation remained improper and had an impact on his pension when he superannuated on 31.03.1995.

3. The submission of the petitioner before the Tribunal, which is also raised before us, is that since the said illegality has impacted his pension – which is payable month to month, the petitioner is entitled to assail the denial of higher pay to him during the period 07.08.1978 and 17.08.1987 even at this stage. The right to receive pension is a monthly right and, therefore, cause of action on account of wrong fixation of pension is a continuing on, as it arises every month.

4. It is a matter of record that even if the claim of the petitioner were to be accepted – he officiated in the higher post lastly up to 17.08.1987, and thereafter he retired on 31.03.1995, it is clear that the petitioner raised his grievance only in the year 2011 by making representations, and he approached the Tribunal only in the year 2018.

5. The Law of Limitation is premised, inter alia, on the policy that the opposite party, with the passage of time, may become handicapped and; may not even be in a position to define a stale claim. Obviously, the petitioners superiors who were dealing with him during the period 1978 to 1987, and

even thereafter, would too have retired and were not available to answer the petitioners claim, when it was raised in 2018. Even the complete and relevant old records would most likely not be available. To impact the respondents to now answer the petitioner's claim after 3 decades would be most unfair and would greatly prejudice them. On the other hand, the said delay would give the petitioner an undue and unfair advantage. The petitioner cannot create a situation by his acts/ omissions and seek to take such undue advantage of it.

6. That being the position, in our view, the petitioner could not have woken up now after 23 years of superannuation, and even after 10 years of fixation of his pension (on account of certain disciplinary proceedings being pending against him prior to that).

7. Reliance placed by the petitioner on ***State of Punjab v. Dharam Pal***, (2017) 9 SCC 395 is misplaced. That was a case where the respondent had officiated in the higher post up to 26.05.2007, he had raised his claim on that basis which the High Court had allowed vide order dated 20.08.2008. The respondent in that case had superannuated on 31.03.2008. That being the position, there was, in fact, no delay on the part of the respondent in that case in approaching the High Court to seek redressal of his grievance. Reliance is also placed on ***State of Madhya Pradesh v. Yogendra Shrivastava***, (2010) 12 SCC 538 and, in particular, paragraph 18 of this decision, which reads as follows:

> ***"18.*** *We cannot agree. Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit*

occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application. (See M.R. Gupta v. Union of India [(1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186] and Union of India v. Tarsem Singh [(2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] .)"

8. In our view, this decision is also not attracted in the facts of the present case. Since the petitioner is raising a grievance pertaining to the period 07.08.1978 to 17.08.1987, which is three decades old, the respondents cannot be expected to answer the petitioner's claim, and cannot be expected to offer a justification for what transpired 3 decades ago at this stage.

9. We find no merit in this petition.

10. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 14, 2019
N.Khanna