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

+ W.P. (C) 1193/2021, CM APPLs. 3354-55/2021

NASEEM AHMAD

.....Petitioner

Through: Mr. A.K. Bhardwaj, Advocate.

Versus

THE MINISTRY OF DEFENCE AND ORS

.....Respondents

Through: Mr. Avnish Singh , Advocate
for UOI.

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Date of Decision: 01st February, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the order dated 03rd November, 2020 passed by the Principal Bench of the Central Administrative Tribunal in O.A. No. 1709/2020. Petitioner also seeks a direction to the respondents to grant the terminal benefits such as monthly pension, gratuity and leave encashment payable to the petitioner on pro-rata basis with the arrears thereof along with interest.

3. Learned Counsel for the petitioner submits that the Tribunal passed the impugned order rejecting the O.A. of the petitioner as barred by limitation stating that the Tribunal had noted that the petitioner ought to have pursued the matter as soon as the pension became due. The relevant portion of the impugned order is reproduced herein below:-

4. We are aware of the fact that the right to receive pension by an employee constitute a continuous cause of action. At the same time, the claim presented 35 years after the applicant left the organisation cannot at all be entertained, whatever be the latitude shown by the Courts towards a retired employee.

5. In case the applicant was entitled to receive pension from the MoD, he ought to have pursued the matter as soon as it became due. He was in service of GAIL for about ten years. Even during that time, the issue was required to be settled. He retired from service in 1996. 25 years thereafter, he started claiming pension from the MoD. Viewed from any angle, the claim cannot be considered at this stage. The only reason furnished by the applicant for condonation of such a long delay is that he was posted outside Delhi. Even if that is true, nothing prevented him from pursuing the remedy over the past 35 years.

4. Learned counsel for the petitioner submits that the Tribunal should have appreciated that the pension becomes due to a retiree every month and the petitioner had taken up the matter with the authorities immediately.

5. Learned counsel for the petitioner states that the petitioner is a senior citizen, who is suffering from health issues and is in dire need of funds for his sustenance.

6. He further submits that the order of the Tribunal is contrary to the view taken by the Supreme Court in **S.R. Bhanrale Vs. Union of India &**

Ors. (1996) 10 SCC 172 wherein it has been held that it is improper to plead the bar of limitation against such claims of the employees when the Union itself had defaulted in making the payments promptly when the same fell due.

7. Issue notice.

8. Mr. Avnish Singh, learned counsel for the respondents accepts notice. He states that the petitioner was not a regular employee of the Ministry of Defence. He submits that if the petitioner has to claim any relief, it should be from All India Radio and not from Ministry of Defence.

9. Having heard the counsel for the parties, this Court is of the view that the right to receive pension by an employee constitutes a continuous cause of action.

10. It is settled law that 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. However, in such a case the consequential relief of recovery of arrears, the Courts/Tribunals will restrict the same for a period of three years prior to the filing of a petition. (See: **Union of India & Ors. v. Tarsem Singh, (2008) 8 SCC 648**)

11. Since the petition has been dismissed on the sole ground of limitation and laches, the impugned order is set aside and the matter is remanded back to the Tribunal for fresh consideration in accordance with the aforesaid judgment of the Supreme Court.

12. Accordingly, the present writ petition along with pending applications stand disposed of.

13. This Court clarifies that it has not expressed any opinion on the merits of the controversy. All the rights and contentions of the parties are left open.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

FEBRUARY 01, 2021
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