



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

% Date of decision: November 17, 2023

+ W.P.(C) 7175/2023, CM APPL. 27954/2023

(3) UNION OF INDIA

..... Petitioner

Through: Mr. Shoumendu Mukherji, Sr. Panel
Counsel with Ms. Megha Sharma and
Ms. Akanksha Gupta, Advs.

versus

LAKSHMAN DASS GANOTRA

..... Respondent

Through: Mr. Puneet Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner Union of India challenging the order of the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) dated April 28, 2022 in the Original Application being OA 4591/2015 ('OA', short) whereby the Tribunal has allowed OA by stating in paragraph 18 as under:

"18. In view of the aforesaid, the OA is allowed with the following orders:-

(i) the impugned order dated 16.3.2015 is set aside;

(ii) The respondents are directed to consider and grant the benefits of NFSG in JAG as applicable to the post of Executive Engineer working in CPWD to the applicant with all consequential benefits, including arrears of difference of pay and allowances, revision of his pension and revised



pensionary benefits within a period of twelve weeks of receipt of a copy of this Order.”

2. The OA was filed by the respondent challenging the order dated March 16, 2015 whereby the petitioner herein had rejected the request of the respondent for grant of pay-scale of ₹12,000 - ₹ 16,500/- (non-functional) in Junior Administrative Grade at par with Executive Engineer working in CPWD on the ground that though the request of the respondent was recommended by the Ministry of Urban Development and Land and Development Officer ('L&DO', for short), but the same was turned down by the Ministry of Finance on the ground that Engineering Officer in L&DO does not belong to Organized Group-A Engineering Service.

3. The facts as noted from the record are that the respondent joined the engineering service of L&DO Office on March 14, 1963. He was promoted as Engineering Officer under the Office of L&DO from the Grade of Assistant Engineer w.e.f July 16, 1986 in the pay-scale of ₹1,100 – ₹1,600/- per month. His pay was fixed in the pay-scale of ₹3,000 - ₹4,500/- per month in view of the recommendations of the 4th Central Pay Commission ('CPC', for short) and further revised to ₹10,000 - ₹15,200/- under the 5th CPC w.e.f January 1, 1996. Both the pay-scales are identical / same as that of the Executive Engineer of CPWD under the Ministry of Urban Development, Govt. of India, under which L&DO function.

4. It may be stated here as per CCS (Revised Pay) Rules, 1997, the post of Executive Engineer also had pay-scale of ₹12,000-375-



₹16,500/- as non-functional JAG. On April 4, 2000, the Office of L&DO was upgraded as an attached Office of Ministry of Urban Development, Government of India from a subordinate Office and decided to encadre the post of Engineer Officer under the L&DO Office under the Directorate General of Works, CPWD.

5. There is no dispute that the respondent attained the eligibility of non-functional grade in Junior Administrative Grade in the pay-scale of ₹12,000 - ₹16,500/-. A proposal for grant of same pay scale was sent on May 27, 2002 much before the retirement of the respondent on December 31, 2002.

6. As stated above, the proposal was rejected by Ministry of Finance. In paragraphs 15 and 16, the Tribunal has held as under:

*“15. In the present case, it is not in dispute that the claim of the applicant involves only grant of the benefits of NFSG in JAG to the applicant and denial thereof by the respondents has caused recurring loss to the applicant. Besides, the applicant has only been recommended by the respondents afresh on his representation to the respondent no.3 afresh by the respondent nos.1 and 2 but the same has also been considered and rejected afresh vide the impugned order. No third-party interest is also likely to be disturbed on grant of the claim to the applicant. Accordingly, in view of such facts and circumstances, and the judgments referred and relied by the applicant and noted in para 11 (A) to (C) hereinabove, we find that the present case is not barred by limitation, delay and laches. Our such view is further strengthen by the law laid down by the Hon’ble Apex Court in **Union of India vs. Tarsem Singh**, reported in (2008) 8 SCC 648, para 7 whereof reads as under:-*

“7. To summarise, 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.”

16. On merit, we find that the claim of the applicant is squarely covered by the judgment of Hon'ble Supreme Court in the case of State of Mizoram vs. Mizoram Engineering Service (supra) and other judgments of the Hon'ble High Court and this Tribunal, referred to in para 11 (i) hereinabove.”

7. The only submission made by the learned counsel for the petitioner is primarily a reiteration of the stand taken by the petitioner before the Tribunal. The plea of limitation was rejected by the Tribunal by referring to the judgment of the Supreme Court in the case of **Union of India v. Tarsem Singh, 2008 (8) SCC 648**. In so far as the merit is



concerned, the Tribunal has relied upon the judgment of the Supreme Court in the case of ***State of Mizoram v. Mizoram Engineering Service Association and Anr., 2014 (6) SCC 218***, paragraph 6 thereof reads as under:

“6.....The main reason for dubbing Engineering Service as an unorganized service in the State is absence of recruitment rules for the service.....For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of organized service, the engineers cannot be made to suffer. Apart from the reason of absence of recruitment rules for Engineering Service, we see hardly any difference in organized and unorganized service so far as Government Service is concerned In Government service such a distinction does not appear to have any relevance.”

8. The Supreme Court in the said judgment has rejected the identical plea taken therein for denying the higher pay-scale of ₹5,900 - ₹6,700/- on the ground that the service being not an organized service. The Supreme Court held that failure of the State Government to frame recruitment rules and bring Engineering service within the framework of organized service, Engineers cannot be made to suffer. It is clear that the Tribunal has rightly relied upon the judgment in the case of ***State of Mizoram (supra)***

9. One of the submissions of Mr. Mukherji is with regard to the entitlement of the respondent for the NFSG in Junior Administrative Grade from July 1, 2001 and not from January 1, 2001. Since such issue was not raised before the Tribunal, there was no occasion for the Tribunal to decide the said issue. In fact, the only ground on which the OA was opposed is on the basis that the pay scale of ₹12,000 -



₹16,500/- is not available to the respondent as he was not part of the organized service which plea was rejected. Hence, we are of the view that this plea of Mr. Mukherji is also unsustainable and the same is rejected.

10. It is a fact that the post has been en-cadred under the Directorate General of Works, CPWD. If that be so, there is no reason for the petitioner to deny the said scale to the respondent. We do not see any merit in the petition. The same is dismissed.

CM APPL. 27954/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 17, 2023/jg