

29.07.2024

Sl. No. 31

Ct. No. 23

Srimanta

WPA/25373/2023

Khyama Sundar Gayan

-Vs.-

Union of India & Ors.

Mr. Ajay Ray,
Mr. Biplab Majumdar,
Mr. Sujoy Ash,
Ms. Sanjana Rawat

...for the petitioner.

Mr. Debasish Chowdhury,
Ms. Garima Raijada

...for the Union of India.

Exception filed on behalf of the petitioner to the report of the respondents is taken on record.

The petitioner was a constable in the Central Reserve Police Force (in short, CRPF). The petitioner was thereafter promoted and on 25th September, 1986 and became Lance Naik. The petitioner retired from the services as Head Constable on 28th February, 2017. The petitioner was invalidated out of the service with effect from 6th June, 1996. This order was challenged by the petitioner by filing a writ petition being WP No. 1825 (W) of 1999. The said writ petition was disposed of by an order dated 22nd December, 2005. The petitioner was reinstated on 25th January, 2008. Prior to the reinstatement the respondents had filed an appeal challenging the order dated 22nd December, 2005. The said appeal was

disposed of by an order dated 20th March, 2008 directing the respondent authorities to conduct a fresh medical examination by constituting a Review Medical Board. The petitioner was medically examined on 16th May, 2008 and thereafter on 25th July, 2008. The petitioner alleges that in the first medical checkup the petitioner was found completely fit, however, in the second medical checkup the petitioner was shown to be unfit. The petitioner was, therefore, again invalidated on 13th July, 2009. The petitioner challenged this order by filing a second writ petition being WP No. 11226 (W) of 2010 which was disposed of by an order dated 2nd May, 2016 directing the respondents to examine the petitioner by a Review Medical Board. The petitioner was again reinstated on 13 January, 2017 and retired from services on 28th February, 2017 on attaining the age of superannuation. After elapse of more than six years from superannuation the petitioner has filed this writ petition alleging that the petitioner was invalidated due to erroneous action of the respondents and as such the period between 7th June, 1996 to 24th January, 2008 and between 14th July, 2009 to 12th January, 2017 should be treated to be in continuous service rendered by the petitioner and he should be paid all benefits on the basis thereof. The petitioner

has also claimed the payment of his retiral benefits by treating the petitioner to be in the appropriate pay scale during the entire tenure of his service keeping parity with his colleagues. The claim of the petitioner is a service related claim. Belated service related claims as held in ***Union of India & Anr. -Vs.- Tarsem Singh*** reported in ***(2008) 8 SCC 648*** as followed in ***Asger Ibrahim Amin -Vs.- Life Insurance Corporation of India*** reported in ***(2016) 13 SCC 797*** and in ***Rushibhai Jagdishbhai Pathak -Vs.- Bhavnagar Municipal Corporation*** reported in ***2022 SCC Online SC 641*** directs rejection of the same on the ground of delay and laches if claimed by filing a writ petition and on the ground of limitation of three years if filed before the Tribunal subject to only one exception, i.e., continuous wrong. Continuous wrong has been also explained in the said judgments quoting the judgment of the Hon'ble Supreme Court reported in ***AIR 1959 SC 798 (Balakrishna Savalram Pujari Waghmare & Ors. -Vs.- Shree Dnyaneshwar Maharaj Sansthan & Ors.)***.

The period of invalidation between 6th June, 1996 to 24th January, 2008 is admittedly a belated claim. This invalidation was before the Single Bench as also before the Division Bench. Neither the Single

Bench nor the Division Bench had declared the invalidation to be illegal even though the petitioner had prayed for the same. In fact, the appeal was heard after the petitioner had been reinstated. This claim, therefore, is deemed to have been considered and not granted. The same, therefore, cannot be agitated in 2023. So far as the invalidation between the period 13th July, 2009 and 12th January, 2017 is concerned the same was before the Writ Court when the order dated 2nd May, 2016 was passed in the petitioner's second writ petition. Even while disposing of the second writ petition the learned Single Judge did not interfere with the invalidation. The petitioner on attaining the age of superannuation retired on 28th February, 2017 and was paid his retiral benefits. The retiral benefits were computed taking into the period of invalidation in the two stages as aforesaid as also on the basis of last paid salary. The petitioner's cause to seek the cancellation of invalidation even if is considered to have been alive till he got his retiral benefits upon superannuation the same cannot be held to be a continuous wrong in view of the ratio laid down in ***Balakrishna Savalram Pujari Waghmare & Ors.***(supra) as followed in ***Tarsem Singh*** (supra). Assuming without admitting that the employer subjected the petitioner to wrongful acts than also

the injury, in the instant case, was complete on the petitioner being paid the retiral benefits taking into consideration the invalidation and his last paid salary as the wrongful act, if any, had ceased on that date. The injury, therefore, was complete and there was no continuing wrong even though the damage resulting from the wrongful act, if any, may have continued. Subsequent thereto, the petitioner alleges that no settlement of dues were made before payment. Even if for the sake of argument we hold such submission to be correct then there ought to have been a spontaneous protest from the petitioner immediately after receiving the reduced retiral benefits. The earliest protest letter as available on record is dated 24th March, 2023 wherein again the pay scale issue has not been stated.

In the light of the discussion as above, the writ petition is found to be unmeritorious and is dismissed, however, without any order as to cost.

(Arindam Mukherjee, J.)