

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

...

WP (C) No. 899/2024

Reserved on: 06.12.2024

Pronounced on: 12.12.2024

Ram Lal, age 59 years son of Sh. Chaffa Ram
resident of village Jakhani, District Udhampur

.....Petitioner(s)

Through: Mr. Gagan Basotra, Sr. Advocate with
Mr. Mohinder Kumar, Advocate.

Vs.

1. Union of India through Secretary Ministry of Defence
Government of India, New Delhi 11
2. Director General of Ordnance Service Master General of
Sustenance Branch IHQ of MoD (Army) Room No. 407 B
Wing, Sena Bhawan, New Delhi 110005
3. Officer Commanding (Record), Government of Defence,
Secunderabad 54
4. Capt/Records Officer 3 Adv Vet Hospital, Pin No. 90273
care of 56 APO
5. Commandant 1Field Ordnance Depot PIN 909901 care of 56
APO
6. HQ Northern Command (Ord) Udhampur Pin 908545
care of 56 APO

.....Respondent(s)

Through: Mr. Vishal Sharma, DSGI.

**CORAM: HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE.**

JUDGEMENT

Sanjeev Kumar, J

1. This petition by the petitioner-Ram Lal filed under Article 226 of the
Constitution of India is directed against an order and judgment dated 20-03-

2024 passed by the Central Administrative Tribunal, Jammu, [‘the Tribunal’] in OA No. 61/121/2022 titled Ram Lal v. Union of India.

2. The Tribunal has rejected the OA filed by the petitioner primarily on the ground of delay and laches. The Tribunal has taken note of the fact that, as per own showing of the petitioner, he was appointed as Saddler in the year 1992 but was erroneously placed in the pay scale of Mazdoor i.e. Rs. 750-940. The petitioner was thereafter given due upgradations under MACP from time to time. The petitioner accepted the position and woke up from the slumber only in the year 2022 when he approached the Tribunal by way of OA No. 61/121/2022. The Tribunal thus concluded that there was unexplained delay of about 22 years in approaching the Court and, therefore, the OA was highly belated and hit by delay and laches.

3. The impugned judgment of the Tribunal is assailed by the petitioner on the ground that the Tribunal has failed to appreciate that in the case before the Tribunal there was continuing cause of action, in that, so long as the petitioner is in service, fresh cause of action would arise every month when the petitioner is paid his salary on the basis of wrong pay scale given to him contrary to the Rules. In such situation, contends Mr. Gagan Basotra, learned Senior counsel, the question of limitation would be relevant only for recovery of arrears for the past and the petitioner cannot even be denied that part of the arrears accrued to him as have not become time barred. To buttress his contention, Mr. Basotra relies upon a recent judgment of Hon’ble the Supreme Court in **Rushibhai Jagdishchandra Pathak v. Bhavnagar Municipal Corporation, 2022 (16) SCR 1014.**

4. *Per contra*, Mr. Vishal Sharma, learned DSGI, would submit that the petitioner having remained silent for almost 20 years and having accepted the pay scale granted to him including the benefit of MACP, shall be deemed to have acquiesced and, therefore, cannot be permitted to agitate the issue at such a belated stage. He would submit that, if the limitation is ignored on the asking of a litigant, there would be unending uncertainty as to the rights and obligations of the parties.

5. Having heard learned counsel for the parties and perused the material on record, it is not in dispute that in the year 1992 the petitioner was appointed as Civil Saddler, which post, at the relevant point of time, carried the pay scale of Rs. 950-1500. For some reasons and probably on account of a mistake of fact, the petitioner was instead placed in the pay scale of Rs. 750-940, the pay scale applicable to the post of Mazdoor. On the basis of his pay scale of Rs. 750-940, the petitioner was granted first financial up-gradation under MACP scheme in the pay Band-I (Rs. 5200-20200 plus Grade Pay of Rs. 1900) with effect from September, 2008 and was similarly granted second financial up gradation in the scale of Rs. 5200-20200 plus Grade Pay of Rs. 2000 with effect from 2012 on completion of 20 years regular service.

6. Be that as it may, the dispute raised by the petitioner is not that he has not been given the financial up-gradations in time or that his pay scale has not been appropriately revised in terms of 6th and 7th Pay Commission, but his grievance is that he was initially given the lesser pay scale of Rs. 750-940, a grade attached to the post of Mazdoor, whereas he was entitled to be placed in the pay scale of Rs. 950-1500, the pay scale attached to the post of

Civil Saddler. The grievance of the petitioner, in a nut shell, is that because of this error of fact committed by the respondents, the petitioner's pay scale came to be revised and up-graded accordingly. Therefore, the short grievance projected by the petitioner is that he is entitled to be placed in the pay scale of Rs. 950-1500 with effect from 01-01-1992 and is entitled to the up-gradations under MACP scheme and revision of pay scale as per the pay revisions from time to time accordingly.

7. The respondents, in their counter affidavit filed before this Court, have not refuted this factual position. The appointment of the petitioner as Saddler, which post carries the pay scale of Rs. 950-1500 is not disputed. The first MACP, the second MACP as also the promotion as Boot Repairer, are admitted to have been granted having regard to the appointment of the petitioner in the pay scale of Rs. 750-940. It is submitted by the respondents that, though the petitioner was appointed as Civil Saddler in the pay scale of Rs. 950-1500 but he was granted the lesser pay scale of Rs. 750-940 and posted to I-FOD by IHQ of Ministry of Defence (Army) on surplus basis against the vacancy of Mazdoor. Apart from this there is no explanation coming forth from the respondents as to why the petitioner was not granted the pay scale of Civil Saddler and placed in the lesser pay scale of Mazdoor. This error, which was committed by the respondents way back in the year 1992, has been carried forward by the respondents while granting the petitioner the First and 2nd up-gradation under MACP as also the regular promotion as Boot Repairer. This has obviously caused serious prejudice and immense loss to the petitioner in terms of his salary and other emoluments.

8. True it is that there is a huge delay of 20 years in filing the OA before the Tribunal, however, we cannot lose sight of the fact that the petitioner was an employee appointed in the lowest rungs of the respondents. The payment of salary as per the pay scale attached to the post to which the petitioner was appointed was purely within the domain and under the control of the respondents. As is rightly contended by Mr. Basotra, the petitioner, being a Class IV employee, was not even aware as to his entitlement to the pay scale and the salary which he ought to have received as Civil Saddler. Otherwise also, it is well settled that in such cases where the employee is paid lesser salary due to an error of computation or for some other reason not attributable to such an employee, there is recurring/continuing cause of action. The cause of action would accrue to such an employee every month when he receives salary less than what is due to him.

9. The delay and laches in such a case, where there is recurring cause of action, would not arise nor an aggrieved person/employee is disentitled to approach a competent forum for redressal of his grievance. The delay can be put up as a defence by the employer only to deny him the arrears which have become time barred. The limitation prescribed for recovery of the arrears of salary is only three years and, therefore, the petitioner cannot be denied the arrears of salary for the period of three years before the date of institution of the OA by him. The settled legal position is reiterated by Hon'ble the Supreme Court in **Rushibhai** (supra) relied upon by Mr. Gagan Basotra, learned senior counsel appearing for the petitioner.

10. Indisputably, the wrong done to the petitioner i.e. giving him lesser pay scale and paying him lesser salary accordingly, is a continuing injury

giving rise to recurring cause of action. The effect of the injury i.e. reduction of salary of the petitioner happens every month he receives salary from the respondents. As already taken note of, the wrong which was committed by the respondents in the year 1992 has been carried forward while granting the petitioner financial up-gradations and promotion. The petitioner continues to suffer because of the aforesaid injury. In such a situation, as held by Hon'ble the Supreme Court in **Rushibhai** (supra), the limitation cannot come in the way of the petitioner to seek redressal of his grievance by seeking a direction to the respondents to carry out necessary correction in the pay scale granted to him.

11. Without delving much into the legal position canvassed by both the sides, suffice it to say that the legal position that was succinctly settled in the case of **Union of India and ors v. Tarsem Singh, (2008) 8 SCC 648** has now been firmly reiterated by Hon'ble the Supreme Court in **Rushibhai** (supra), which leaves no scope for us to elaborate further.

12. For the foregoing reasons, we hold the OA filed by the petitioner not hit by any delay and laches except that the petitioner would be entitled to arrears of salary for a period of three years prior to the filing of the OA before the Tribunal.

13. The writ petition is, accordingly, allowed. The order impugned passed by the Tribunal is set aside and a direction is issued to the respondents to treat the petitioner as having been appointed as Civil Saddler in the pay scale of Rs. 950-1500 and, accordingly, make necessary corrections in the future up-gradations/promotions granted to the petitioner from time to time. The respondents shall, accordingly, revise his salary as would be payable to him

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upon such correction and release in his favour the arrears from three years prior to the date of filing of the OA before the Tribunal. Let the needful be done within a period of four months from today.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

JAMMU:

12.12.2024

Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes

