



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1850 OF 2019

(Smt. Rajendra B. Gaigole vs. Union of India and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. Akshay Sudame, Advocate for the petitioner.
Mr. Pankaj Navlani, Advocate for respondents.

CORAM : AVINASH G. GHAROTE & ABHAY J. MANTRI, JJ.

DATE : NOVEMBER 22, 2024

- 1) Heard Mr.Sudame, learned Counsel for the petitioner.
- 2) The petition questions the order dated 01/01/2018 passed by the Central Administrative Tribunal (page 23) whereby the delay of one year and eight months as claimed in the application for approaching the Central Administrative Tribunal by way of O.A.No.2086/2015 has been refused to be condoned.
- 3) Mr.Sudame, learned Counsel for the petitioner submits that it is only when the similarly situated employees, who were granted officiating pay for having officiated as goods driver, by the sanction dated 28/03/2006 that the cause of action accrued for the petitioner for approaching the Tribunal for a similar relief as the petitioner had also officiated as a goods driver for the duration w.e.f. 16/04/1997 to 15/01/1999. He therefore submits, that since the representation of the petitioner dated 10/09/2009 and the legal notice dated 14/09/2010 (page 47) were not addressed, the petitioner was constrained to approach the Central Administrative Tribunal by way of O.A. No.2074/2011 in which by an order dated 04/07/2011, the learned Central Administrative Tribunal had directed the

respondents to consider and pass appropriate orders on the legal notice aforesaid within a period of three months (page 54).

4) Since the claim of the petitioner was again rejected on the ground of delay, by the communication dated 28/03/2012 (page 24), the petitioner again approached the Central Administrative Tribunal by way of O.A.No.2086/2015 in which an application for condonation of delay M.A.No.2171/2015 came to be filed which has been rejected by the impugned order dated 01/01/2018 (page 23) refusing to condone the delay.

5) Mr.Akshay Sudame, learned Counsel for the petitioner submits that the rejection of the claim of the petitioner for grant of officiating pay gave a continuous cause of action to the petitioner on account of which it cannot be said that there was any delay in the first place. He further submits that it was for the first time on 23/08/2006 when the claim of the similarly situated employees was allowed that cause of action also arose in favour of the petitioner. Cause of action also arose according to him in 2009 and 2010, when the representation and legal notice was issued and therefore according to him, it is a continuous cause of action.

6) He further contends that the fact that the petitioner had approached the Central Administrative Tribunal in 2011 by way of O.A.No.2074/2011 in which the Central Administrative Tribunal had by the order dated 04/07/2011 directed the respondents to decide the representation also gave a cause of action to the petitioner and therefore, on this ground the refusal to condone the delay, if any, by the impugned order is clearly not justified. Learned Counsel relies upon the decision of Hon'ble Supreme Court in the case of **M.R.Gupta vs. Union of**

India and others (1995) 5 SCC 628 in support of his contention.

7) Mr.Navlani learned Counsel for the respondents while opposing the contention submit that there is no continuous cause of action and all that can be said is that the cause of action arose on 16/01/1999. The petitioner according to him, had not even applied for grant of officiating pay and it is only for the first time in 2009 that the representation in that regard was made, which even otherwise is also beyond the date of 28/03/2006 when the claim of the other employees was considered, he therefore justifies the impugned judgment of the Central Administrative Tribunal which according to him does not call for any interference.

8) It is not in dispute that what is being claimed by the petitioner in the original O.A., is officiating pay for the duration w.e.f. 16/04/1997 to 15/01/1999. It is also an admitted position that the petitioner consequent to 15/01/1999 never applied for the same, at any point of time and for the first time a representation was made on 10/09/2009 (page 43) in this regard. Even thereafter, the petitioner had approached the Central Administrative Tribunal only in the year 2011 in which the direction was issued on 04/07/2011 directing the respondents to consider the representation. The principle of continuous cause of action in **M.R.Gupta** (supra) indicates that the claim therein was for payment of correct salary computed on the basis of proper pay fixation, which would be a continuous cause of action. In the instant case, there is no question of any pay fixation, but all that has been claimed is the grant of officiating pay for the aforesaid duration. The communication dated 28/03/2006(page 36) which sanctions officiating pay to

persons, who are similarly situated employees, categorically states that the sanction of grant of officiating pay to employees for having officiated as goods driver was as a purely temporary measure and did not confer upon them any right for regularization with earlier date of seniority, confirmation etc. and they would only be entitled to monitory benefit for the period they were utilized as goods driver. This would indicate that the claim for officiating pay was a one time measure and had nothing to do with any other incidence of service for a regular employee, only a claim for which can be said to be a continuous cause of action for an employee as held in **M.R.Gupta** (supra).

9) A perusal of the application M.A.No.2171/2015 would indicate, that except for the representation of 2009 and the legal notice of 2010, which are based upon the sanctioned order dated 28/03/2006, no other explanation is forthcoming from the petitioner, explaining the delay which has occasioned from 1999 till 2010.

10) It is also necessary to note that what the petitioner has prayed in O.A.No.2086/2015 is not only a claim for officiating pay, but also for re-fixing his salary on the basis of officiating pay, which in fact is totally contrary to the sanction dated 28/03/2006 (page 36) which indicates that it is a special temporary measure sans anything else. We therefore, do not see any reason to interfere in the impugned judgment. The petition is dismissed. No order as to costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)