



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

Writ Petition No.6213 of 2024

[Prakash S/o Shankarrao Kursal **VERSUS** South East Central Railway,
Bilaspur Zonal Headquarter, through its General Manager and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's order
Registrar's orders.

Shri N.S. Warulkar, Counsel for Petitioner.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : OCTOBER 16, 2024

P. C. :

1. The petitioner approached the Central Administrative Tribunal with the following reliefs :

“a. Allow the present application by quashing and setting aside the impugned transfer cum reversion order dated 08.06.2006 and the impugned corrigendum dated 09.06.2006 (Annexure-IV) to the extent where the applicant was demoted and made junior to all Junior Accounts Assistant in South East Central Railway, Nagpur division and his pay was lowered from scale of Rs.5500-9000/- to Rs.4500-7000/- on account of own request transfer by declaring it arbitrary and bad in eyes of law in the interest of justice;

b. Further be pleased to hold and declare that the applicant is entitled for arrears of salary as per pay scale of Rs.5500-9000/- for the period 15.06.2006 to 29.06.2009 and further be pleased to declare that the applicant is entitled for appropriate 6th pay and 7th pay scale for releasing the difference in salary till date along with interest at the market rate and all consequential benefits arising therefrom in the interest of justice;

c. Issue necessary directions to the respondents for releasing arrears of salary as per pay scale of Rs.5500-9000/- for the period 15.06.2006 to 29.06.2009 as well as arrears of 6th and 7th pay commission till date with interest at the market rate within a stipulated period in the interest of justice;

d. Any other relief this Hon'ble Tribunal deems fit in the interest of justice and propriety."

2. The Central Administrative Tribunal passed the impugned order thereby holding that the Original Application is barred by limitation, as the petitioner has brought the cause before the Tribunal, delayed by 16 years.

3. The learned counsel for the petitioner submits that the petitioner moved a request transfer from Raipur to Nagpur, which resulted in change of Division of South East Central Railway. As a sequel of above, the request of the petitioner was considered, however he lost his seniority on the post he was holding.

4. The petitioner, subsequent to the transfer order, joined at Nagpur, whereby honouring the conditions of transfer and never resisted his claim for more than 16 years before filing the Original Application.

5. Drawing support from the judgment of the Apex Court in the matter of **M.R. Gupta Versus Union of India and others**, reported in **AIR 1996 SC 669**, the contention of the learned counsel for the petitioner is that the transfer of the petitioner and the consequential loss of his seniority is causing recurring financial loss to him, as every month he is being paid less salary than the one to which he was entitled on the date of transfer at Raipur. As such, it is claimed that the Tribunal has committed an error in holding that the claim of the petitioner is barred by limitation.

6. The learned counsel for the petitioner has relied upon the following observations of the Apex Court in the matter of **M.R. Gupta**, cited supra :

“Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant’s grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant’s claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant’s claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.”

7. Drawing support from the above observations of the Apex Court, it is claimed that all that the petitioner seeking is restoration of his pay, as he was getting less salary, which amounts to granting lower pay-scale.

8. We have appreciated the submissions made by the learned counsel for the petitioner in the light of the law laid down by the Apex Court in the matter of **M.R. Gupta**, cited supra.

9. The fact remains that the petitioner requested for transfer way back in 2006 and the same was honoured by his employer. Pursuant to the transfer order and the conditions incorporated therein, the petitioner joined at Nagpur and accepted the condition of being lost his seniority, as he was placed at the bottom of the seniority list of the said cadre.

10. The petitioner continued to work on the said post by drawing salary as was offering to him at Nagpur without any demur. It is only after a lapse of 16 years he realized that he is getting less salary than the one he was drawing at Raipur in the capacity of Accounts Assistant.

11. The claim of the counsel for the petitioner that the petitioner is seeking fixation of his pay cannot be accepted, as the net result is that in case the Original Application of the petitioner is allowed, the same will result into setting aside the transfer-cum-reversion order dated June 08, 2006 and the corrigendum dated June 09, 2006.

12. As such, the claim putforth by the petitioner that he is entitled for pay fixation by virtue of the reliefs claimed before the Central Administrative Tribunal cannot be accepted, particularly having regard to the specific prayer of quashing and setting aside of the transfer order.

13. The Central Administrative Tribunal, in our opinion, is right in holding that the Original Application of the petitioner was barred by limitation, as the same was preferred after a lapse of 16 years.

14. The judgment of the Apex Court in the matter of **M.R. Gupta**, cited supra, relied upon by the counsel for the petitioner cannot be said to be supporting the cause of the petitioner.

15. That being so, there is no substance in the petition and the same stands dismissed. No costs.

(VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

LANJEWAR