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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 23.04.2024***+ W.P.(C) 1892/2021
D N GANDHI

..... Petitioner

Through: Mr. Atul Kumar with Mr. Harish
Kumar Sharma, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Arnav Kumar, CGSC with Mr.
Gurdas Khurana and Mr. Mudit
Gupta, Advocates**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)**

1. The present petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 02.03.2020 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 4192/2015 only to the extent it does not grant the petitioner any arrears of upgradation of his pay at par with his juniors, which upgradation has been allowed by the said order.

2. Learned counsel for the petitioner submits that the impugned order insofar as it rejects the petitioner's prayers for arrears of upgraded pay is based on an erroneous presumption by the Tribunal that he had superannuated many years ago whereas, the petitioner had filed the OA while he was still in service. Furthermore, the learned Tribunal has failed to appreciate that the cause for the petitioner to seek upgradation of his pay arose only pursuant to the circular dated 23.03.2012 issued by the respondents, whereunder all railway employees who were due to get their



increment between February to June 2006 were to be granted one increment w.e.f. 01.01.2006 in the pre-revised pay scale alongwith the next increment in the revised payscale w.e.f., 01.07.2006.

3. In terms of this circular, on implementation of 6th CPC, persons junior to the petitioner received an additional increment on 01.07.2013 which was denied to the petitioner, compelling him to submit a representation dated 02.08.2013 to the respondents. Upon this representation for stepping up and upgradation of his pay at par with his juniors, being rejected by the respondents on 09.05.2014, the petitioner approached the Tribunal without any delay. He therefore prays that the impugned order be modified by directing the respondents to grant all arrears of pay as a consequence of stepping up and upgradation directed under the impugned order.

4. On the other hand, learned counsel for the respondents supports the impugned order and prays that the writ petition be dismissed. After some arguments, he does not deny that the petitioner was still in service when he approached the Tribunal. Further, while admitting that the additional increment was granted to the petitioner's juniors only pursuant to the circular dated 23.03.2012, he contends that the petitioner instead of approaching the Tribunal in 2012 itself filed the OA in 2015 and, therefore, the Tribunal was justified in not granting him any arrears of the upgraded pay.

5. Having considered the submissions of the parties and perused the impugned order, we may at the outset note that the parties are *ad idem* that the petitioner was in service when he approached the Tribunal by way of the aforesaid OA. It is therefore evident that the Tribunal has committed an error while holding that the petitioner has retired many years ago and



therefore could not be granted any arrears. Further, what emerges is that the parties are also *ad idem* that the claim of the petitioner is based on the respondent board's circular dated 23.03.2012 when the respondents decided to grant an additional increment to railway employees, which increment was extended to his juniors only in July 2013. Learned counsel for the respondent has however urged that the petitioner ought to have approached the Tribunal in 2012 itself and therefore filing of the OA in 2015 was belated.

6. We are, however, of the considered view that taking into account the undisputed position that the petitioner had moved a representation before the respondent on 02.08.2013, which representation came to be rejected only on 09.05.2014, it cannot be said that there was any inordinate delay on the part of the petitioner in approaching the Tribunal in November 2015. There was therefore, no reason for the Tribunal to deny him the benefit of the stepping up of his pay based on the increment granted to his juniors.

7. For the aforesaid reasons, we allow the writ petition by modifying the impugned order and directing that the petitioner will be entitled to all arrears of pay qua the stepping up of pay granted under the impugned order. Consequently, the respondents will release in favour of the petitioner within 8 weeks, all consequential benefits arising out of the stepping up of the pay as directed by the learned Tribunal.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

APRIL 23, 2024/akr

W.P.(C) 1892/2021

Page 3 of 3