



2024:DHC:9858-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20.12.2024

+ **W.P.(C) 6815/2024 & CM APPL. 28408/2024**

UNION OF INDIA & ORS.

.....Petitioners

Through: **Mr. Piyush Beriwal, Mr. Sandip Munian & Ms. Jyotsna Vyas, Advs.**
Major Anish Muralidhar, Army.
Mr. Manoj Kumar Gupta, Adv.
for applicant.

versus

HAV D SRINIVASA RAO, RETD.

.....Respondent

Through: **Adv. (appearance not given)**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed challenging the Order dated 13.12.2022 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short, "Tribunal") in Original Application (in short, "OA") No.2568/2022 titled ***Ex HAV D Srinivasa Rao (Retd.) v. Union of India & Ors.,*** allowing the OA filed by the respondent herein with the following directions:

i. Calculate the pension of the applicant based on the last held rank by him before retirement i.e. Havildar, and in consonance with the principles of calculation that have



2024:DHC:9858-DB



been upheld in JWO Gopalakrishnan in this regard; and

ii. The applicant will be accordingly issued a fresh Corrigendum PPO in the last rank held by him within two months and the arrears paid accordingly, failing which, it shall carry interest @ 6% till actual payment.

2. The respondent had approached the learned Tribunal contending therein that he had joined the services on 02.11.1984, and was promoted to the post of Substantive Havildar on 01.08.2000. He was discharged from the service at the position of Havildar on 31.12.2000. The respondent was aggrieved by the fact that the petitioners determined his pension not taking into account his post of Havildar, on the plea that he had not completed 10 months of service in the said rank. The respondent, therefore, filed the OA before the learned Tribunal on 31.10.2022.

3. The learned Tribunal, as noted hereinabove, has allowed the OA inter alia holding therein that the respondent was entitled to the benefit of the last rank held by him even if it has been for a duration of less than 10 months. The petitioners were, therefore, directed to recalculate the pension of the respondent in the rank of Havildar.

4. Aggrieved by the above order, the present petition has been filed *inter alia* on two grounds: the first being that the respondent was not entitled to the benefit of his rank of Havildar as he had not completed 10 months of service in the said rank before his superannuation; the second being that the learned Tribunal has erred in directing the payment of the pension with effect from 01.01.2001 though the OA was filed by the respondent before the learned Tribunal



only on 31.10.2022.

5. This Court, as far as the first ground is concerned, rejected the same *vide* its Order dated 23.07.2024, observing as under:

“3. Insofar as the first plea of the petitioners is concerned, we find that the learned Tribunal has relied on the decision of its Regional Bench at Chennai in O.A. 62/2014 titled JWO Gopalakrishnan v. UOI & Ors. Having perused the said decision, which was unsuccessfully assailed before the Apex Court, we find no merit in this plea of the petitioners. However, we are prima facie inclined to accept the petitioners’ second plea that arrears of revised pension could not have been directed to be paid to the respondent w.e.f. 01.01.2001 and the same should have been restricted to a period of 3 years to the date of filing of the O.A.”

6. As far as the second ground is concerned, this Court issued notice of this petition to the respondent and stayed the said direction only insofar as it had directed the petitioners to pay the pension for the period prior to the filing of the petition.

7. The learned counsel for the petitioners submits that as the petition had been filed after a gap of almost 21 years, the learned Tribunal has erred in directing the payment of pension for the period prior to the filing of the application by the respondent.

8. On the other hand, the learned counsel for the respondent submits that the benefit of the pension, even when the personnel has held the post for less than 10 months, arises from the government circulars themselves, therefore, the benefit should have been extended by the petitioners on their own without forcing the respondent to approach the learned Tribunal. He submits that, therefore, the learned



Tribunal has rightly directed the revised pension to be paid to the respondent from the date of his discharge. In support, he places reliance on the Judgment of the Supreme Court in ***Davinder Singh v. Union of India & Ors.***, dated 20.09.2016 in Civil Appeal No.9946/2016 and the Judgment of the High Court of Punjab and Haryana in ***Amarjit Singh v. Union of India & Ors.***, dated 26.05.2014 in CWP No.20936/2012.

9. We have considered the submissions made by the learned counsels for the parties.

10. As it is noted hereinabove, the respondent was discharged from the service on 31.12.2000. He filed the OA before the learned Tribunal only on 31.10.2022. The learned Tribunal, placing reliance on the Judgment of the Supreme Court in ***Union of India & Ors. v. Tarsem Singh***, (2008) 8 SCC 648, condoned the delay of 8161 days in filing the OA. The same judgment also states the law as under:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim



will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

11. In ***Davinder Singh*** (supra), the Supreme Court was considering a case where the learned Tribunal had relied upon an earlier order passed by the learned Tribunal in a batch of Original Application, which order had been affirmed by the Supreme Court, and by which the relief had been granted not restricting it to a period of three years prior to the filing of the Original Applications. The Supreme Court, in those peculiar facts, held that the learned Tribunal had erred in restricting the relief to the petitioners therein. The said judgment was, therefore, in the facts of its own case and cannot come to the assistance of the respondent herein.



2024:DHC:9858-DB



12. In *Amarjit Singh* (supra), the Punjab and Haryana High Court has not considered the Judgment of the Supreme Court in *Tarsem Singh* (supra).

13. In view of the above, the learned Tribunal has clearly erred in directing the revised pension to be paid to the respondent right from the date of his discharge instead of confining the relief to the period commencing from three years prior to the date of his filing the OA.

14. We, therefore, partially allow this petition and modify the directions given by the learned Tribunal in its Impugned Order, by directing that the revised pension shall be paid by the petitioners to the respondent commencing from three years prior to the filing of the OA before the learned Tribunal and to be continued to be paid in future.

15. The petition along with pending application, if any, stands disposed of in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 20, 2024/ab/B/as

Click here to check corrigendum, if any