

(2019) 02 CAT CK 0170

In the Central Administrative Tribunal

Case No : Original Application No. 3609 Of 2014

A K Gupta

APPELLANT

Vs

Union Of India Through Secretary

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0170

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : Vinay Sabharwal, Ashok Kuma

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. This O.A. is filed with the prayer to direct the respondents to correctly fix the pension of the applicants in accordance with Higher Administrative Grade (HAG) (pre-revised pay scale of `22400-525-24500) by placing the applicants in the said scale of pay, in respect of 1st applicant w.e.f. 05.02.2004 and that of applicant No.2 w.e.f. 12.02.2004. They have also prayed for other consequential benefits.

2. The applicants joined the Engineering Wing of the Department of Telecommunications. Later on, their services were absorbed in the Bharat Sanchar Nigam Limited (BSNL). Omitting other details, suffice it to mention that they have been regularly promoted to the post of Superintending Engineer (Civil) on 21.07.1992, and in the year 2001, they were kept on ?charge holding basis? for the post of Chief Engineer (Civil). They were also put in the Senior Administrative Grade (SAG). On 20.06.2003, the 1st applicant was kept on ? looking after basis? for the post of Senior DDG (BW) with extra remuneration. Similarly, on 25.02.2003, the 2nd respondent was put on additional charge of the post of Principal Chief Engineer (Arbitration) and thereafter on an independent charge of the same post, w.e.f. 09.08.2006. Both these posts are in HAG. While

the 1st applicant retired from service on 30.11.2007, the 2nd applicant retired on 31.03.2007.

3. The applicants and another similarly situated employee, by name Mr. A K Nagar, filed O.A. No.1226/2010 before this Tribunal with a prayer to promote them to HAG on regular basis. The O.A. was dismissed by the Tribunal through an order dated 15.04.2010. R.A. No.183/2010 filed by them was also dismissed on 10.02.2012. Thereupon, the applicants and A K Nagar filed W.P. (C) No.3027/2012 before the Hon'ble Delhi High Court. Through an order dated 21.05.2012, the Delhi High Court dismissed the W.P., insofar as it relates to the applicants herein, but remanded the matter to this Tribunal, as regards Mr. Nagar. A direction was issued to the effect that in case it is found that his claim is found to be within limitation, it shall be addressed on merits.

4. The applicants contend that once they held the post of HAG for quite sometime till they retired, they are entitled to be granted the pay scale attached to that post and their pension is also required to be determined accordingly. Reliance is placed upon the judgments of Hon'ble Supreme Court in Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma & others, (1998) 5 SCC 87 and Selvaraj v. Lt. Governor of Island, Port Blair, AIR 1999 SC 838; as well as an order passed by this Tribunal, in O.A. No.1226/2010, in respect of A K Nagar.

5. The respondents filed detailed counter affidavit opposing the O.A. A serious objection is raised as to the maintainability of the O.A. It is stated that the very relief, that is claimed in this O.A., was rejected by this Tribunal, as regards applicants herein, in O.A. No.1226/2010, and they cannot claim the same relief once again by filing a fresh O.A. On merits also, the respondents have opposed the claim of the applicants.

6. We heard Mr. Vinay Sabharwal, learned counsel for applicants and Mr. Alakh Kumar and Mr. Ashok Kumar, learned counsel for respondents at length.

7. The gist of the prayer in the present O.A. is mentioned at the threshold of the order. To be precise, the prayer reads as under:-

"a. Pensions of the Petitioners may kindly be correctly fixed in accordance with HAG Pay-Scales (Pre-revised Scales of Rs.22400-525 -24500) by placing the petitioners in the said Scale of Pay in respect of Appellant No.1 w.e.f. 05.02.2004 and in respect of Appellant No.2 w.e.f. 12.02.2004.

b. Grant all other consequential benefits including arrears in accordance with law.

c. Such other and further relief, as is deemed fit, may also be accorded to the petitioners."

8. It is clear that the applicants want first to be placed in the HAG pay scale and as a result, refixation of their pension. To grant this relief, it must be established that they were entitled to be placed in the HAG scale, while in service or sometime thereafter and since they have been wrongfully denied that scale, the

respondents be required to extend the benefit in the context of fixing the pension. In case the applicants were wrongfully denied the benefit of HAG pay scale while in service or before the present O.A. is filed, the prayer can certainly be considered. However, as already mentioned above, the applicants were party to O.A. No.1226/2010 wherein the following reliefs were claimed:-

"a) (To) direct the respondents to grant regular promotion/ Pay scale in the Higher Administrative Grade (pre revised pay scale of Rs.22400-525-24500) with effect from the dates of their respective entitlement to the posts, more particularly mentioned under Para 4 (1) (a)-(c).

b) issue such other and further directions as this

Hon?ble Tribunal may deem fit and proper in the facts and circumstances of the case."

Except that, an additional prayer for fixation of pension is made in the present O.A. The relief claimed in both the O.As., i.e., placing in or promoting them to the HAG is common.

9. After hearing the parties at length, this Tribunal took the view that the claim of the applicants for promotion to the HAG is barred by limitation and laches. The R.A. filed in this behalf was rejected. All the three applicants filed W.P. (C) No.3027/2012, which was disposed of through an order dated 21.05.2012. The operative part of the order reads as under:-

"We, accordingly, dispose of this petition with the direction that insofar as the petitioner Nos.1 & 2 are concerned, the order passed by the Tribunal is affirmed and insofar as the petitioner No.3 is concerned, the matter is remitted to the Tribunal for consideration on the aspect of limitation and if the Tribunal feels that there is no bar of limitation, then, the Tribunal shall examine the mater on merits."

10. In case the applicants were aggrieved by the dismissal of the W.P., insofar as they are concerned, remedy was open to them to approach the Supreme Court. No such steps were taken by the applicants and the order of the High Court became final.

11. Once the claim of the applicants to be promoted to the HAG or to be placed therein was rejected by the Tribunal and the High Court, they cannot claim the same relief in another O.A. just by adding the one of refixation of pension. It is a matter of common knowledge that fixation of pension cannot be independent of the last drawn pay scale. The effort of the applicants to be put in the HAG did not fructify. Therefore, neither the same relief can be claimed now, nor pension can be refixed. The matter, which has assumed finality, cannot be reopened. The occasion to refer to the judgments of the Supreme Court would have arisen, in case the claim of the applicants was not dealt with earlier and rejected.

12. The plea of the applicants that the earlier adjudications cannot be treated as

res judicata, is equally unacceptable. The issue was addressed and it was found that the claim is barred by limitation. A claim, which is declared as barred by limitation, cannot be resurrected through another channel. Rejection of a claim as barred by limitation or laches cannot be treated as or equated to a dismissal of a case in limine. It is also fairly well established that what is not permitted to be done directly, cannot be permitted to be done indirectly.

13. We do not find any merits in the O.A. It is accordingly dismissed. There shall be no order as to costs.