

(2016) 04 KAR CK 0052

In the Karnataka High Court

Case No : Writ Petition Nos. 28639-28693 of 2014 (S-CAT)

Dr. K.S. Chandrakant

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2016) 3 AirKarR 820 : (2016) ILRKarnataka 2712 : (2016) 3 KCCR 2800

Hon'ble Judges : Jayant Patel and Mrs. B.V. Nagarathna, JJ.

Bench : Division Bench

Advocate : Sri Ranganatha S. Jois, Advocate, for the Petitioners; Sri M. Vasudeva Rao, CGSC, for the Respondent No. 1; Sri N.S. Prasad, Advocate, for the Respondent No. 2; Sri Ranganatha S. Jois, Advocate, for the Petitioners; Sri M. Vasudeva Rao, CGSC, for the Resp

Final Decision : Allowed

Judgement

Jayant Patel, J.—In all these petitions as common questions arise for consideration they are being considered simultaneously. All petitions are directed against the common order passed by the Central Administrative Tribunal ("Tribunal" for short) dated 23.04.2014. The Tribunal for the reasons recorded in the order has dismissed all the applications on the ground of delay in preferring the applications by the respective applicants.

2. The brief facts of the case are that on 09.11.1998, Government of India had implemented 5th Central Pay Commission regarding introduction of Flexile Complimenting Scheme ("FCS" for short) applicable to the scientific staff working in S & T Organization and research institutes whose work is scientific in nature. But, the benefits were extended to the applicants before the Tribunal only with effect from 30.08.2006. However, some of the staff represented to the Government and to the Board to extend the benefit with effect from the year 2001. According to the original applicants, certain other employees who were

similarly situated namely one Mr. ZMS Khan and others for getting the benefit with effect from the year 2001 onwards approached the Tribunal at Patna, by preferring OA No. 75/2008. In the said OA, the Tribunal found that the applicants therein were entitled to the benefit with effect from the year 2001 and therefore passed an order on 13.01.2009. The aforesaid order of the Tribunal at Patna Bench was carried by the respondents therein before the High Court of Jharkhand in W.P.(S). No. 2503/2009 but the said High Court did not interfere with the order passed by the Tribunal and dis-missed the petition vide order dated 27.03.2012. The matter was further carried to the Apex Court by preferring SLP (Civil) No. 11219/2012, but the Apex Court did not also interfere with the order passed by the Tribunal or by the High Court and vide order dated 10.04.2013, SLP(Civil)No. 11219/2012 was dismissed.

3. On 12.06.2013, the applicants herein submitted representations individually to the concerned Authority contending that the benefit as conferred by the Patna Bench may also be extended to them. On 27.09.2013, respondent No. 2 issued circular stating that all pending representations of the employees of the Board in respect of the claim of FCS benefits on the basis of the judgment of Tribunal at Patna Bench shall be made available to those applicants who were before the Tribunal at Patna Bench only. The petitioners under these circumstances approached the Tribunal by preferring OA Nos. 1109-1173/2013 and the Tribunal passed the impugned order dated 23.04.2014. Under these circumstances, the present petitions before this Court. It may also be recorded that some other similarly situated petitioners had also preferred respective OAs before the Tribunal for grant of similar benefits. The Tribunal followed its earlier order passed in OA Nos. 1109-1173/2013 dated 23.04.2014 and dismissed those applications also. Against which, separate petitions are preferred by those applicants-petitioners which are also simultaneously considered by this Court in this common order.

4. We have heard Sri. Ranganatha S. Jois, learned Senior Counsel, Sri. Shantakumar K.C., Sri. V. Srinivas and Sri. Kiran Kumar, learned Counsel for the petitioners respectively and Sri. M. Vasudeva Rao, learned Standing Central Government Counsel for Union of India, Mrs. Birdy Aiyappa, ASG for Union of India and Sri. N.S. Prasad, learned Counsel for Central Silk Board.

5. The undisputed position is that, the Tribunal upto paragraph No. 21 in the impugned order dated 23.04.2014 has considered the submissions made by both sides. However, in paragraph Nos. 22 and 23, the reasons are recorded which read as under: -

"22. After careful consideration of the above mentioned Supreme Court judgments relied upon by the learned Counsel for either side, we are of the view that the applicants admittedly have not filed M.A. for condonation of delay. The demand of the applicants is made only on 7.6.2013, the cause of action arose for them as per their relief on 30.07.2001. Applicants failed to establish that there is no delay in filing the O.As. We tire of the view, the applicants in present O.As.

are eligible for the benefit of FCS from the date of their respective demand but not from 30.07.2001.

23. For the foregoing reasons in the facts and circumstances of this case, we are of the considered view the applicants failed to establish for grant of reliefs and the judgment of the CAT, Patna Bench in OA 75/2008 is applicable to their case. Respondents have justified that the OA is barred by limitation and the applicants have not explained the delay in demanding the relief for applicability of FCS and the judgment of the CAT, Patna Bench in OA 75/2008. Accordingly, OAs are liable to be dismissed."

6. The aforesaid reasoning shows that the Tribunal has not in detail examined the aspect of delay in preferring the applications before the Tribunal. Only aspect which has weighed with the Tribunal is that an application for condonation of delay was not filed. Further, the Tribunal was guided by the fact that cause of action for the relief had accrued on 30.07.2001 but the demand was made only on 07.06.2013 and therefore there is delay in filing OAs and hence, the OAs were dismissed. Therefore, if the reasons are considered, more particularly, as recorded at paragraph No. 22 referred to herein above, the Tribunal found that there is delay in preferring the applications and therefore applicants have failed to establish the case. Further, in the reasons recorded at paragraph No. 23 referred to herein above, the Tribunal concluded that the respondents were justified in contending that OA was barred by limitation and the applicants had not explained the delay in demanding the relief for applicability of FCS and the judgment of the CAT, Patna Bench in OA No. 75/2008.

7. As per the provision of Section 21 of the Administrative Tribunals Act, 1985 (herein after referred to as "the Act"), it is true that the period of limitation has been provided as that of one year or further six months as the case may be, but sub-section (3) of Section 21 of the Act provides that, notwithstanding anything contained in sub-Section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause(b) of sub-section (1), or as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that there was sufficient cause for not making an application within such period. Section 21(3) of the Act for ready reference can be reproduced as under:

"21. Limitation. - (1) A Tribunal shall not admit an application, -

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

8. Under this circumstance, one can say that there is no outer limit or period of time provided for condonation of delay as a control on the powers of the Tribunal by statutory provisions of the Act, except that one has to satisfy the Tribunal

explaining sufficient cause for not making any application within the prescribed period.

9. Once the power to condone the delay is not controlled by any statutory provision, such power has to be exercised judicially. But judicial discretion is to be exercised by examining the aspect as to whether there was sufficient cause for condonation of delay or not. Hence, the Tribunal is vested with power for exercise of judicial discretion may be or as are available to the Courts or any statutory forum to deal with delay, for the purpose of condonation of delay or otherwise.

10. Examination of the facts of the present case further shows that the litigation was preferred by or initiated by certain co-employees before the Tribunal at Patna Bench in OA No. 75/2008. In the year 2009, thereafter, further consideration was by the High Court of Jharkhand in W.P.(S). No. 2503/2009 and thereafter in the proceedings in SLP (Civil) No. 11219/2012. Accordingly the aforesaid period was from 2008 till 10.04.2013 and only on 10.04.2013 the final confirmation of the order was made by the Apex Court. It is true that as per the decision of the High Court in W.P.(S). No. 2503/2009, the decision to confer the benefits was to apply to all employees whereas, the Apex Court restricted to the applicants before the Tribunal in OA No. 75/2008, but at the same time, the Tribunal ought to have considered the aspect of delay with further scrutiny by examining the present case as stated by us hereinafter.

11. Whenever any party is confronted with delay, more particularly, when the right of the parties in similar situation is crystallized until the highest Court, the Court or the Tribunal would undertake a wider approach and further examine the delay, objectively keeping in view two aspects: one, is that real cause for the litigation should not be frustrated, but at the same time, one who has slept over the right should not be allowed to earn any undue benefit for the period during which delay has been caused. There are various ways of examining delay keeping in view equitable considerations. Second is that, if the Tribunal is satisfied that there is entitlement as concluded by the highest Court, the Tribunal may further examine as to whether grant of benefit can be considered by excluding the period during which delay has occurred on account of no appropriate action taken by the applicants before the Tribunal. Further, the Tribunal may also consider the aspect as to whether delay should result into throwing away the real cause or not. The Tribunal while balancing both aspects, may exercise judicial discretion by moulding the relief and if required may also award appropriate cost for the respondents by way of compensation for the delay. It is true that by operation of the law of limitation, the right is not taken away, but limitation only bars the remedy. But at the same time, the real cause which otherwise is entitled for relief, should not be allowed to be frustrated and the relief has to be granted, by appropriate moulding of the relief by taking care of interest of both sides.

12. In a given case, the Tribunal may find that the right of the parties are

substantially altered or that the period of delay has resulted in an reversible situation and it may not be possible for the Tribunal to grant relief, then the Tribunal may decline the application for condonation of delay.

13. In our view the aforesaid are some of the facets for dealing with delay, when the Tribunal has to consider the matter of the genuine cause for entitlement which is upheld until the highest Court. We leave it at that.

14. If the facts of the present case are further examined in the light of the above, it appears that the Tribunal had just touched upon and considered the ground of delay, since as per the Tribunal there were no application for condonation of delay. But the Tribunal did not undertake a further scrutiny on the aspect of delay, as to whether circumstances which transpired from record were sufficient cause in not preferring the applications before the Tribunal, or not. Further, the Tribunal has not touched upon the real cause as to whether the applicants would be entitled to the same benefit, excluding the aspect of delay or not. Under these circumstances, we find it would be appropriate to remit the matter to the Tribunal for reconsideration in light of the observations made by this Court.

15. It has been stated on behalf of some of the petitioners that some of the original applicants had filed application for condonation of delay. The applicants-petitioners herein, if desirous may file an appropriate formal applications for condonation of the delay, by showing sufficient cause, if it is not filed before the Tribunal. The Tribunal needs to examine the same, where applications for condonation of the delay were already or as may be filed.

16. We have neither expressed any final opinion on condonation of the delay or otherwise nor our order be interpreted to mean that any observations made by this Court regarding confirmation of the benefit to the employees-applicants. Suffice it to say that it will be for the Tribunal to examine various facets and then to exercise discretion for condonation of delay and to pass appropriate orders in accordance with law, after giving an opportunity of hearing to both the parties.

17. In view of the aforesaid observations and discussions, the common impugned order dated 23.04.2014 passed by the Tribunal is set aside with a further direction that the respective OAs shall stand restored on the file of the Tribunal. The Tribunal shall examine the matter in light of the observation made in the present order and in accordance with law, after giving an opportunity of hearing to both the sides and shall make an attempt to decide the aforesaid applications as early as possible preferably within a period of six months from the date of receipt of a certified copy of this order.

18. All the petitions tire allowed to the aforesaid extent. Considering the facts and circumstances, there is no order as to costs. Petition allowed.