

(2024) 01 CAT CK 0013

In the Central Administrative Tribunal

Case No : Original Application No. 1136 Of 2023

Haresh Chand Agarwal & Ors.

APPELLANT

Vs

Union Of India Through The General Manager, North Central
Railway, Subedarganj, Prayagraj. & Others.

RESPONDENT

Date of Decision : 05-01-2024

Acts Referred:

Citation : (2024) 01 CAT CK 0013

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : Jaswant Singh, Chakrapani Vatsyayan

Final Decision : Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. Shri Jaswant Singh, learned counsel for the applicants and Shri Chakrapani Vatsyayan, learned counsel for the respondents, are present.

2. Although the matter has been listed under the head of 'Fresh Admission' the same is heard and decided today itself with the consent of learned counsels appearing for both the parties.

3. The compendium of the facts narrated in the instant original application is that the applicants are seeking one notional increment with all consequential benefits with effect from 1st July of the year in which they retired from Government Service. The applicants got retired on 30th June in different years. The applicants also seek a direction to the respondents to release their entire arrears of pension and other emoluments payable to them as a consequence of the above said notional increment from the due date along with interest.

4. I have heard learned counsel appearing for the parties and gone through the documents on record.

5. Submission of learned counsel for the applicants is that the applicants got

retired on the last day of June in different years but notional increment falling due on the very next date i.e., 01st of July was not granted to them. Learned counsel further submits that the instant controversy stands well settled in light of numerous judgments passed by various judicial forums across the country including that by the Apex Court. Learned counsel also submits that the applicants are liable to be granted the benefit of one notional increment thereby adjusting their retiral benefits accordingly and thus prayer was made that this application be allowed at this stage itself.

6. Learned counsel for the respondents opposed the prayer made by learned counsel for the applicants and argued that the applicants retired on the last day of June in their respective cases which implies that they were not in government service on the succeeding date i.e, 1st of July and therefore, notional increment cannot be allowed to them.

7. I have considered the rival contentions advanced by the learned counsel appearing for the parties.

8. As the brief of the facts of the case have already been stated above, the same is not reiterated for the sake of brevity. Issue regarding grant of one notional increment to the employees who retired on 30th June of the year was considered by the Hon'ble Supreme Court of India in judgment dated 11.04.2023 passed in case Civil Appeal No. 2471 of 2023 titled The Director (Admn. And HR) KPTCL & ORs.Versus C.P. Mundinamani & Ors. wherein the Apex Court has approved and upheld the view taken by different High Courts regarding granting of one annual increment earned by the employees on the last day of their service for rendering their services preceding one year from the date of retirement with good behavior and efficiently. Thus, there is no scope to take a contrary view with the view taken by the Apex Court in the aforesaid case.

9. However, as is evident from the perusal of records, all the applicants have retired in different years i.e., 2017, 2015 and 2014 which implies that they all stood retired at least six years before the instant original application was actually filed. This further implies that there has been a considerable delay since the cause of action arose and the original application was preferred. And since a specific prayer for grant of arrears that shall accrue consequent to the issuance of notional increment has also been made on the part of the applicants, it would be in the fitness of things to meticulously examine the delay and latches prevailing herein before pondering over the decision as to how much arrear payment is liable to be made in favour of the applicants. For the said purpose, it would be significant to straightway rely upon the law laid down by the Apex Court in its judgment dated 13.08.2008 passed in Civil Appeal No. 5151-5152 of 2008 titled Union of India & Ors vs. Tarsem Singh wherein the Hon'ble Court has dealt with the issue of delay and latches / limitation while conferring the relief sought by the aggrieved party. For the sake of clarity, the operative portion of the aforementioned judgment is quoted herein below:

"5. 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 re-opening 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 re-fixation 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. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 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.

7. In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored."

10. Thus, this Tribunal is of the considered opinion that the issue of delay and laches / limitation and continuous wrong as defined by the Apex Court in the aforementioned judgment passed in the case of Tarsem Singh (supra) case also finds a place in the instant original application and accordingly, arrear payment of only three years preceding to the date on which the instant original application was filed is liable to be granted in favour of the applicant. Accordingly, in view of the above quoted deliberations, the instant OA is allowed at the admission stage itself. Respondents are hereby directed to issue one notional increment to the applicants and further issue revised PPO(s) in this regard. However, arrear payment of only three years preceding to the date of filing of this original application shall be made to the applicants @ 6% simple interest per annum. The said exercise be completed within a period of three months from the date of this order without fail.

11. All associated MAs stand disposed of accordingly.

12. There shall be no order as to costs.