

(2018) 03 CAT CK 0044

In the Central Administrative Tribunal

Case No : Original Application No. 2798 Of 2013

K.S. Yadav

APPELLANT

Vs

Govt. Of N.C.T.D And Ors

RESPONDENT

Date of Decision : 13-03-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 21
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 10(6), 10(7)

Citation : (2018) 03 CAT CK 0044

Hon'ble Judges : Jasmine Ahmed, J; Uday Kumar Varma, Member (A)

Bench : Division Bench

Advocate : Sachin Chauhan, Vijay Pandita

Final Decision : Disposed Of

Judgement

Jasmine Ahmed, J

1. The issue involved in this case revolves around the aspect of limitation. If the applicant swims across the river of limitation, he succeeds in his case; otherwise, not.

2. Facts not being in dispute, obviate debate.

3. The applicant, functioning as Assistant Sales Tax Officer in the Respondent's organization, was kept under suspension sometimes in March 2005 and the same was extended till early September, 2006 (but not strictly in accordance with Rule 10(6) and (7) of the CCS(CC&A) Rules, 1965) followed by dismissal order on 08-09-2006 and later, the applicant was reinstated back in service but kept as a suspended employee. During the entire currency of suspension, the subsistence allowance of the applicant remained static without any addition on account of annual increment or the revision of the Pay Scale in the wake of acceptance of the recommendations of the Sixth Pay Commission.

4. It is the case of the applicant that in an identical situation, one Shri D.J.

Gupta, who was also suspended along with the applicant for the same alleged misconduct had approached the Tribunal vide OA No. 2014/2012 and this Hon'ble Tribunal has granted the benefit of full pay and allowances for the period of suspension and the benefit of the revision of pay scale vide order dated 05-10-2012. It is on the strength of the above order of this Tribunal that the applicant prays for grant of full pay and allowances w.e.f. 07-06-2005 for the period of suspension by quashing and setting aside two orders 09-03-2005 and 24-08-2005 coupled with (i) revision of pay scale at Rs 8000 - 13500 as per order dated 10-10-2007, (ii) grant of annual increment from 2005, (iii) benefit of the Sixth Pay Commission and (v) interest @ 18% per annum on the delayed payment.

5. The application is accompanied by a Misc. Application for condonation of delay as an abundant caution, as according to the applicant benefit in terms of pay and allowances is a "recurring cause of action" and also based on the decision of the Tribunal vide order dated 06-03-2006 in OA No. 1943/2005 and order dated 05-10-2012 in OA No. 2014 of 2006. As regards following the earlier decisions, the applicant has relied upon various judgments and in addition, vide ground No 3 of the OA, to hammer home the point that during suspension also, increment is admissible, a few decisions have been cited. According to the applicant it is settled law that once the judicial forum has decided an issue then the benefit of the same judgment needs to be extended to all the persons who are similarly placed so in order to avoid multiplicity of litigation. In support of his claim the applicant has annexed copies of orders of this Tribunal and judgment of the High Court vide Annexure MA-8, MA-9, MA-10, MA-11, MA-12 and MA-13.

6. The OA has been stoutly contested by the respondents raising the preliminary objection of limitation and on the vice of seeking plural remedies; also on merits. In support of their case, the respondents have relied upon a catena of judgments on the question of limitation as contained in paragraphs 01 to 03 of the counter supplemented by some other judgments referred to in para 3 under parawise reply. In addition, as to extension of the benefit of a judgment by similarly situated persons, the respondents have relied upon a few decisions as contained in reply to paragraphs 4.27 to 4.29 of the reply.

7. Arguments were advanced on the basis of the pleadings in addition to citing a few more cases in favour of the respective parties.

8. Arguments were heard and documents perused.

9. At the outset, it is to be mentioned that the decision of this Tribunal in OA No. 2014/2012 vide order dated 05-10-2012 has not dealt with the aspect of limitation, presumably the same has not been raised by the respondents in that case. In contra distinction to the same, the respondents herein has resisted the OA mainly on the aspect of limitation.

10. Thus, it becomes imperative to have a look at the decisions relating to limitation.

11. 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) and in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights as settled and held in the case of State of H.P. Vs. Rajesh Chander Sood, (2016) 10 SCC 77 & Union of India vs. Tarsem Singh (2008) SCC 648.

12. In so far as Administrative Act 1985 which governs the case of the applicant herein, S.21 of the Act specifies limitation period.

The scope and purport of the same has been explained in the case of State of Karnataka vs. S.M. Kotrayya, (1996) 6 SCC 267 and also S. S. Rathore Vs. State of M.P. (1989) 4 SCC 582, wherein the Apex Court has held as under:-

"6 Section 21 reads as under:

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

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(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 they had sufficient cause for not making the application within such period."

(emphasis supplied)

7. A reading of the said section would indicate that sub-section (1) of Section 21 provides for limitation for redressal of the grievances in clauses (a) and (b) and specifies the period of one year. Sub-section

(2) amplifies the limitation of one year in respect of grievances covered under clauses (a) and (b) and an outer limit of six months in respect of grievances covered by sub-section (2) is provided. Sub-section (3) postulates that notwithstanding anything contained in sub-section (1) or sub-section (2), if the applicants satisfy the Tribunal that they had sufficient cause for not making the applications within such period enumerated in sub-sections (1) and (2) from the date of application, the Tribunal has been given power to condone the delay, on satisfying itself that the applicants have satisfactorily explained the delay in filing the applications for redressal of their grievances. When sub-section (2) has given power (sic right) for making applications within one year of the grievances covered under clauses (a) and (b) of sub-section (1) and within the outer limit of six months in respect of the grievances covered under sub-section (2), there is no need for the applicant to give any explanation to the delay having occurred during that period. They are entitled, as a matter of right, to invoke the jurisdiction of the court for redressal of their grievances. If the applications come to be filed beyond that period, then the need to give satisfactory explanation for the delay caused till date of filing of the application must be given and then the question of satisfaction of the Tribunal in that behalf would arise. Sub-section (3) starts with a non obstante clause which rubs out the effect of sub-section (2) of Section 21 and the need thereby arises to give satisfactory explanation for the delay which occasioned after the expiry of the period prescribed in sub-sections (1) and (2) thereof.

13. The period of limitation reckons from the date of arising of cause of action and such cause of action could either be an "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action or a recurring/successive wrong. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules as held in the case of *M. R. Gupta Vs. Union of India*, (1995) 5 SCC 628. To elucidate further, the principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action as held by Hon'ble Apex Court in *Union of India Vs. Tarsem Singh* (2008) 8 SCC 648. Even where there is recurring cause of action, when it comes to the question of claim for arrears, the same is clamped with a constriction. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the

relief which could be granted to a reasonable period of about three years which is already settled preposition of law by plethora of judgments of the Hon'ble Apex Court in M. R. Gupta (supra), Jai Dev Gupta Vs. State of H.P. (1997) 11 SCC 13, Tarsem Singh (supra), Shiv Dass Vs. Union of India (2007) 8 SCC 274; State of M.P. Vs. Yogendra Shrivastava, (2010) 12 SCC 538, State of H.P. Vs. Rajesh Chander Sood, (2016) 10 SCC 77.

14. In the instant case, the claims of the applicant are -

- (i) Full pay and allowance for the period of suspension;
- (ii) Increment during the period of suspension;
- (iii) Replacement of the scale to Rs 8000 - 13500 as per order dated 10-10-2007
- (iv) Benefit of the Sixth Pay Commission Recommendations;
- (v) Interest on the arrears arising out of the above.

15. All the claims are interdigitated relating to the same action of suspension, since, all these would have been available to the applicant had he not been kept under suspension during the period in question. Thus, the claims or relief sought cannot be held to be plural remedies. However, these claims are to be segregated from the limitation point of view, viz., where the law of limitation applies and where not. Claims falling in the category of "one time action" warrant application for condonation of delay and on the basis of the facts and circumstances and the use of judicious discretion, delay has to be either condoned or application for condonation refused. And claims falling under "recurring cause of action" may not attract limitation.

16. As regards (i) above, entitlement to full pay and allowance for the entire period of suspension is a "one time action", as the period of suspension is for a limited period and the claim for full pay and allowance is again correspondingly for a limited period. The claim belonging to 2005-06 vintage, obviously, it is beyond one year time scheduled under Section 21 of the A.T. Act, 1985. Limitation thus is attracted for this claim. Again, since the period of the claim relates to a period more than three years anterior to the application, on the strength of the judgment of M.R. Gupta (supra), Jaidev Gupta (supra), Tarsem Singh (supra) and State of M.P. v. Yogendra Shrivastava, (2010) 12 SCC 538 the claim is barred by limitation. The applicant's contention is that since in an identical case of D.J Gupta, vide order dated 05-10-2012 in OA No. 2014/2012, the payment of full pay and allowance from June 2005 till June, 2011 had been ordered to be paid, he is also entitled to the same benefit. There is not much of time lag between the application preferred by the said Shri D. J. Gupta (2012) and that filed by the applicant (2013). Thus it is to be seen whether the decision in the case of Shri D.J Gupta could be taken as the basis for allowing this claim. The applicant relies upon the decision by the Apex Court in the case of Amrit Lal Berry vs CCE, (1975) 4 SCC 714 wherein it has been held as under:-

We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

17. Counsel for the respondents, however has relied upon the decision of the Apex Court in the case of D.C.S. Negi vs Union of India (CA No. 7956/2011) dated 07-03-2011, wherein it has been held as under:-

"In the present case, the Tribunal entertained and decided the application without even advertng to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non applicant is not at all relevant. "

18. This Tribunal relied upon the above judgment of the Apex Court in a number of cases and applied the ratio in such decisions. One such case is OA No. 3338/2014 decided on 18-09-2014 (Shankar Lal vs Union of India and others) wherein it has been held as under:-

2. The period of limitation prescribed for filing an Original Application before the Tribunal is one year. In the case of D.C.S. Negi v. Union of India & others (Civil Appeal No.7956 of 2011) decided on 7.3.2011, the Apex Court viewed that the Tribunal should give due regard to Section 21 of Administrative Tribunals Act, 1985. Relevant portion of said judgment reads thus:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the Applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21.

Since Section 21 (1) IS COUCHED IN NEGATIVE FORM, IT IS THE DUTY OF THE Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under section 21 (3)"

On the ground of limitation the above OA was dismissed.

19. Thus, the decision in the case of D.J. Gupta which has not taken into consideration the aspect of limitation, is not in tandem with the decision of the Apex Court in the case of D.C.S. Negi, nor has it been in symphony with the decisions of this Tribunal in the above case and also in certain other cases.

20. We are in respectful agreement with the views taken by this Tribunal in the

above case of Shankar Lal, which has the decision of the Apex Court as its primary foundation. Thus, relief sought for vide (i) in paragraph 13 above cannot be granted to the applicant.

21. As regards Increment during the period of suspension the applicant bases his claim on a precedent of Balwant Rai Rati Lal Patel vs State of Maharashtra (AIR 1968 SC 800 and U. Gangaraju vs DRM SCR Vijayawada & Ors (1992) 3 AISLJ CAT 215 and two other cases as contained in ground 5.3 of the O.A. However, the latest decision of the Apex Court in the case of State of Punjab vs Jaswant Singh Kanwar (2014) 13 SCC 622 lays down the law wherein the Apex Court has held as under:-

10. The only issue which arises for consideration is whether an official placed under suspension by the disciplinary authority is entitled for grant of increments during the period of suspension.

11. To analyse the above proposition, the dictionary meaning of suspension is required to be set out. The term "suspend" would mean "to debar usually, for a time, from any privilege, the execution of an office or from the enjoyment of an income". It is temporary deprivation of office or privilege. By reason of suspension, the powers, functions and privileges remain in abeyance but one continues to be subjected to the same discipline and penalties and to the same authorities. The above definition makes it clear that during the period of suspension, all the privileges and benefits attached to the office are temporarily suspended unless the period of suspension is considered as the period spent on duty.

12. In the instant case, the High Court has concurred with the finding of the disciplinary authority and has come to the conclusion that the period of suspension is not the period spent on duty.

13. "Increment" has a definite concept in service law jurisprudence. It is an increase or addition on a fixed scale; it is a regular increase in salary on such a scale. An increment is when in a timescale of pay an employee advances from the lower point of scale to the higher by periodic additions. In other words, it is addition in the same scale and not to a higher scale. An increment is an incidence of employment and an employee gets an increment by working the full year and drawing full salary. During the period of suspension, the contract of service remains suspended. The order of suspension by the departmental enquiry has the effect of temporarily suspending the relations between the master and servant with the consequence that the servant is not bound to render service and, therefore, the petitioner as an employee is not entitled to increments during this period which is taken as period not spent on duty.

Thus, the relief sought for, for grant of increment during the period of suspension is also not allowed.

22. In so far as the extension of the pay scale of Rs 8300 -13500 and the benefit

of the Sixth Pay Commission Recommendations are concerned, during the period of suspension, the recommendations of the Sixty Pay Commission were accepted by the Government and the applicant claims that he should be afforded the benefit of the revised pay scale. Here again, the decision of the Apex Court lays down the law in the case of Union of India vs R.K. Chopra, wherein the Apex Court has held as under:-

17. The proviso to Rule 53(1)(ii)(a) says that where the period of suspension exceeds three months, the authority is competent to vary the amount subject to some restrictions. We may in this connection refer to a Government of India Order GOMs No. F-2(36)-Ests/-III/58 dated 27-8-1958 given in Swamy's Compilation of Fundamental and Supplementary Rules, which deals with the revision of scale of pay while a government servant is under suspension. The two categories of cases have been dealt with in that office memorandum. One refers to cases in which the revised scale of pay takes effect from a date prior to the date of suspension and other cases in which the revised scales of pay takes effect from a date falling within the period of suspension.

18. The Office Memorandum reads as follows:

"(2) Revision of scale of pay while under suspension.-A question having arisen as to whether a government servant under suspension might be given an option to elect any revised scales of pay which might be introduced in respect of the post held by him immediately prior to suspension is revised, the Government of India has decided as follows:

(1) Cases in which the revised scale of pay takes effect from a date prior to the date of suspension.

In such cases the government servant should be allowed to exercise the option under FR 23 even if the period during which he exercises the option falls within the period of suspension. He will be entitled to the benefit of increase in pay, if any, in respect of the duty period before suspension, and also in the subsistence allowance, for the period of suspension, as a result of such option.

2) Cases in which the revised scale of pay takes effect from a date falling within the period of suspension.

(a) Under suspension a government servant retains a lien on his substantive post. As the expression 'holder of a post' occurring in FR 23 includes also a person who holds a lien or a suspended lien on the post even though he may not be actually holding the post, such a government servant should be allowed the option under FR 23 even while under suspension. The benefit of option will, however, practically accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not.

(b) xxxxxx."

(emphasis supplied)

19. The abovementioned Rules as well as the memorandum makes it clear that if there is a revision of scale of pay in respect of a post held by a government servant, prior to the suspension period, he is permitted to exercise option under FR 23, even if the period during which he is to exercise the option falls within the period of suspension and then, he will be entitled to the benefit of increase in pay and also in subsistence allowance for the period of suspension, as a result of such option. But if the revised scale of pay takes effect from a date falling within the period of suspension then, the benefit of option, for revised scale of pay will accrue to him in respect of the period of suspension only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not.

(underlining supplied)

23. From the records it is seen that though the applicant had been reinstated, there is no reference as to the decision of the authority to treat the period of suspension as duty or not. Thus, the Respondents shall follow the above rule position with reference to affording the benefit of the revision of pay scale to the applicant as and when the decision to treat the period of suspension as on duty or otherwise takes place. If it has already taken place, then action be based on the said rule and the applicant be informed accordingly.

24. In view of the above, the following reliefs claimed by the applicant are rejected:-

(i) in respect of full pay and allowances for the period of suspension, (ii) Increment during the period of suspension;

(iii) Interest on the arrears

25. As regards the benefit of fixation of pay scale of 8000 -13500 vide order dated 10-10-2007 and the benefit of the revised pay scale as per the VI Pay Commission, the same is contingent upon the manner in which the respondents treat the period of suspension. Respondents are directed to intimate the applicant of the decision as and when taken (if not so far taken) and if already taken, then act accordingly keeping in view the law laid down by the Apex Court in the case of Union of India vs R.K. Chopra (supra).

26. The OA is disposed of on the above lines. No costs.