

(2014) 07 P&H CK 0515
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. Nos. 4233 and 6449 of 2014

Mange Ram

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 22, 22(1c)
Constitution Of India, 1950 — Article 226
Limitation Act, 1963 — Article 137

Citation : (2014) 4 SCT 559 : (2015) 1 SLJ 288

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Navdeep Singh and B.S. Sehgal, Advocate for the Appellant; B.S. Jolly and Onkar Singh Batalvi, Advocate for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—This order shall dispose of aforementioned two writ petitions i.e. CWP No. 6449 of 2014 and CWP No. 4233 of 2014. However, for facility of reference, the facts are being taken from CWP No. 6449 of 2014, wherein challenge is to an order passed by the Armed Forces Tribunal, Chandigarh Regional Bench at Chandimandir (for short "the Tribunal") on 12.02.2014, whereby the petitioner was found entitled to pension on the basis of revised pay scale w.e.f. 01.01.1996, but the payment of arrears was restricted to the period of six months prior to the invocation of jurisdiction of the Tribunal in view of Section 22 of the Armed Forces Tribunal Act, 2007 (for short "the Act"), which prescribes six months of limitation for invoking the jurisdiction of the Tribunal.

2. The petitioner is pre 01.01.1996 retiree. Consequent to the acceptance of 5th Central Pay Commission recommendations, the pay & allowances of Civil and Defence employees including the present petitioner were revised. The Government of India, Ministry of Defence, issued a circular on 07.06.1999 that pension of all Armed Forces pensioners irrespective of their date of retirement

shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.1996. However, anomalies arose during implementation of such recommendations, which were sought to be rectified vide circular dated 10.10.1997. The pay and allowances of the serving personnel, who were in service as on 10.10.1997 were revised, but the pension of the employees, who retired before 31.12.1995 was not revised. A writ petition bearing CWP No. 15400 of 2006 before this Court was filed by one Jai Narayan Jakhar claiming that anomaly was sought to be removed w.e.f. 10.10.1997, but once anomaly was to be removed, it shall be applicable to the petitioner, who has retired after 01.01.1996. The said writ petition was allowed on 14.01.2008, when it was observed as under:

Having heard the learned counsel for the parties, we are of the opinion that the stand of the respondents that the petitioner is not entitled to the benefit of removal of anomaly in the Pay Commission is wholly unjustified. It was during the implementation of 5th Pay Commission report, it was found by the respondents that there is anomaly in the Pay Scales. Once the anomaly in the Pay Scales is found and sought to be removed then it has to be removed from the implementation of the recommendation of the Pay Commission i.e. 01.01.1996. There is no explanation as to why the said anomaly is sought to be removed from 10.10.1997. In the absence of any explanation of removal of anomaly from 10.10.1997, we do not find the action of the respondents fixing such date as justified. Consequently, we hold that the petitioner is entitled to the revised pay scale of 5620-140-8140/- w.e.f. 01.01.1996. Thus the petitioner shall be entitled to the retiral benefits on the said pay scale.

3. The SLP against the said order was dismissed on 21.11.2008. The said judgment was followed by the Armed Forces Tribunal in many cases, wherein the benefit of recommendations of 5th Central Pay Commission was extended and arrears were ordered to be paid from 01.01.1996 itself.

4. Thereafter, the Ministry of Defence issued a letter on 03.08.2009 (Annexure P-11) conveying that the Government of India has accepted the proposal of Ministry of Defence to grant post 10.10.1997 pay scales to pre 10.10.1997 retirees, but its recommendations would be implemented prospectively with no arrears. On 08.03.2010, the Government of India again issued circular (Annexure P-12), whereby pre 10.10.1997 pensioners were brought at par with post 10.10.1997 pensioners, but the arrears were ordered to be paid effective from 01.07.2009.

5. The petitioner claims arrears of pension w.e.f. 01.01.1996 on the analogy of judgment of this Court in Jai Narayan Jakhar's case (supra). Learned Counsel for the petitioner has vehemently argued that the petitioner is entitled to revised pension w.e.f. 01.01.1996 and not from 01.07.2009 as decided by the Central Government.

6. We find that the anomaly was found and decided to be removed, but from

10.10.1997, which this Court found not sustainable. It was held in an earlier case, the said petitioner shall be entitled to arrears from 01.01.1996. The petitioner never claimed benefit consequent to report of the Committee to remove anomaly from 1.1.1996. The petitioner(s) slept over their rights from the year 1996 till 2013, when they invoked the jurisdiction of the Tribunal. The Tribunal relied upon Section 22 of the Tribunal Act, which prescribes a period of six months before the invocation of the jurisdiction of the Tribunal, but we find that the claim of the writ petitioner(s) is covered by Sub-Section 1(c) of the Section 22 of the Act, which reads as under:

22. Limitation-(1) The Tribunal shall not admit an application-

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(c) In a case where 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 jurisdiction, powers and authority of the Tribunal became exercisable under the Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.

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7. It is well settled that the one who sleeps over his rights is not entitled to the benefits. One has to be vigilant. In *Tarun Bharat Sangh, Alwar Vs. Union of India (UOI) and Others*, the benefits were disallowed in a case where the petitioner was sleeping over his rights. It was observed that the petitioner was not vigilant and has been sleeping over his rights, if any. The petitioner cannot say that it was not aware of all that was going on in this Court or that it was not aware of the proceedings of the committee.

8. In *Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another*, it has been observed as under:

6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years.....

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13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it

appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?

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16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the Court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the Court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others.

9. In *Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others*, it has been observed as under:

25. Although, framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari is not hedged with any condition or constraint, in last 61 years the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the Court after long lapse of time and there is no cogent explanation for the delay. We may hasten to add that no hard and fast

rule can be laid down and no straightjacket formula can be evolved for deciding the question of delay/laches and each case has to be decided on its own facts.

10. Recently, the issue with regard to the payment of arrears of disability pension has been examined by this Court in CWP No. 7277 of 2013 titled as titled as Ex. Naik Umed Singh Vs. Union of India and others, decided on 14.05.2014. It has been held to the following effect:

However, since a person has approached after delay, the claim of arrears would be restricted to a period of three years prior to initiation of lis, as any claim for money could be lodged only within three years from the date right to recovery arises in terms of Article 137 of the Limitation Act, 1963. Therefore, we find that the claim of disability pension cannot be declined for the reason that it was not raised within three years of discharge from the Army, but the payment of arrears would be restricted to a period of three years before the initiation of lis.

11. We find that the cause of action to claim revised pensionary benefits w.e.f. 01.01.1996 arose to the petitioners, when the Circular dated 10.10.1997 was issued. The petitioners slept over their rights and did not raise a little finger claiming revised pensionary benefits for all these years till 2012-13. Law helps only those, who are vigilant and not the persons, who sleep over their rights. The payment of arrears since 1996 to large number of similarly situated personnel shall cause financial indiscipline. That is the reason; the Central Government restricted the payment from 1.7.2009. We find that it is reasonable. The petitioners at best shall be entitled to claim arrears of revised pension for a period of three years prior to initiation of lis. But in the present case, the decision is to grant arrears from 01.07.2009 i.e. more than three years prior to the filing of an application before the Tribunal.

12. In view of the above discussion, we hold that the petitioners would be entitled to revised pensionary benefits from 01.07.2009. The order of the Tribunal restricting the benefit of arrears of revised pension should be payable only for a period of six months is, thus, set aside. It is held that irrespective of the initiation of proceedings before the Armed Forces Tribunal, the revised pensionary benefits would be payable w.e.f. 01.07.2009 or in a case where the proceedings have been initiated prior to 01.07.2009 then for a period of three years prior to the initiation of lis.

13. The needful, if any, be done within three months from the date of receipt of the copy of the order.