
(2015) 04 RAJ CK 0188
In the Rajasthan High Court
Case No : Civil Writ Petition No. 807 of 2008

Narendra Kumar Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Limitation Act, 1963 — Section 5

Citation : (2015) 04 RAJ CK 0188

Hon'ble Judges : Ajay Rastogi, J; J.K. Ranka, J

Bench : Division Bench

Advocate : S.K. Jain, for the Appellant; P.C. Sharma and Shailesh Prakash Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Instant petition is directed against order of the Ld. Tribunal dt. 23/03/2004.
2. Brief facts of the case which are relevant for purpose of disposal of instant writ petition are that present petitioner initially joined service as Trains Clerk on 15/06/1981 and was promoted on the post of Sr. Trains Clerk in 1985, pursuant thereto his pay was fixed in the pay scale of Rs. 1200-2040. In May, 1988 he was further promoted to the post of Goods Guard in the pay scale of Rs. 1400-2300. While he was working as Goods Guard, squint developed in his left eye and on account of which he was declared medically unfit and being decategorised was posted as Sr. TTE in August, 1994 and after having been absorbed on the post of Sr. TTE was fixed in the pay scale of Rs. 1200-2040 and after fixation was made he was allowed to work for a sufficient long time and much after a decade made representation to the authority and prayed that he may not be fixed on being absorbed after medically unfit and decategorised and appointed as Sr. TTE in the pay scale 1400-2300 and also claimed that certain allowance which is attached and permissible in terms of circular issued by the Railway Establishment from time to time, has also not been added to the salary/pay scale to which he was

entitled for in terms of revised pay scale rules framed/issued from time to time. It would be appropriate to take note and quote the prayer which he made by filing OA before the Tribunal:--

"1) By an appropriate order or direction, the respondents be directed to fix the applicant in the pay scale of Rs. 1400-2300 from the date of joining on the post of Goods Guard i.e. 12/05/1988.

ii) An appropriate order or direction be issued to the respondents to make the correct fixation of the applicant particularly in the light of Para 1308 of Irem (Vol. I) from the date of absorption and the difference of Basic Pay, DA, CCA and HRA, arrears be also awarded to the applicant alongwith the interest @ 18% per annum from the date on which the arrear has become due till the date of payment including the difference of Travelling Allowance.

iii) By an appropriate order the ancillary benefits which admissible to him and were attached with the post of respondents be directed to restore all Goods Guard as per para 1309 of item, Vol. I.

iv) By and appropriate order or direction, the respondents be directed to award the pay scale of Rs. 5000-8000 as per the decisions of the Railway Board dated 01/10/1999 in the light of the orders issued.

v) By an appropriate order or direction, the respondents be directed not to call the applicant for Screening Test time and again as he has already faced Screening Test and also further cleared the examination on dated 21.03.1988 and further the letters issued calling upon the applicant to appear before the Screening Committee be quashed and set aside.

vi) By an appropriate order or direction, the respondents be directed to assign the correct seniority to the applicant on the basis of length of service as Goods Guard in the category of Sr. TTE as per para 1310 of IREM, Vol. I."

3. The respondents filed their reply and objection was raised that the original application has been filed after inordinate delay and barred by limitation Act u/S. 21 of the Administrative Tribunal Act 1985 and no such application seeking condonation of delay has been filed u/S. 5 of the Limitation Act and the OA being incompetent deserves dismissal, at the same time on merits the respondents are justified in their action regarding the pay scale of 1200-2040 in which he was fixed on being absorbed on the post of Sr. TTE in August, 1994.

4. The Ld. Tribunal after taking note of the material which came on record, was convinced that the preliminary objection raised by the respondents is valid and deserves acceptance and arrived to a conclusion that the OA has been filed after inordinate delay is barred by Limitation in view of Sec.21 of the Act, 1985 and failed to justify sufficient cause to entertain by the Ld. Tribunal and after taking note of the submissions on merits to some extent but without expressing opinion dismissed the OA holding it to be barred by limitation under order impugned dt. 23/03/2004.

5. The main thrust of submissions of counsel for the petitioner is that he has not been fixed in the pay scale of the post of Sr. TTE to which he is entitled for under law and getting less salary each month that certainly gives a recurring cause of action and the finding which has been recorded by the Tribunal holding the OA being barred by limitation, is against the settled principles of law and in support of submission placed reliance upon the judgment of the Hon'ble Supreme Court in M.R. Gupta Vs. Union of India and others, AIR 1996 SC 669 : AIR 1995 SC 669 : (1995) 71 FLR 886 : (1996) LabIC 399 : (1995) 5 SCALE 29 : (1995) 5 SCC 628 : (1995) 2 SCR 852 Supp : (1995) 2 UJ 689 and further submits that apart from the pay scale to which is entitled for being fixed on absorption on the post of Sr. TTE, certain allowance is attached to the post held by him but that too has also not been released and even if he not was entitled for the pay scale of Rs. 1400-2300 prayed by him but at least the allowance which is attached to the post held by him if has not been released to him that also give a recurring cause of action since the ultimate take on salary at the end of the month and in absence of allowance is less than what he was entitled for under law that also gives recurring cause of action and the original application filed after 11 years of his claim is within limitation provided u/S. 21 and there was no occasion available for him to file application u/S. 5 of the Limitation Act seeking condonation of delay and further submits that the matter deserves at least consideration to examine on merits when the Ld. Tribunal failed to consider despite being noticed to indicate about entitlement of the allowance to which he was entitled for in terms of circular issued by the Railway Establishment from time to time and under these changed circumstances submits that at least while upholding the view that there exists recurring cause of action, the present matter deserves to be remitted back to the Ld. Tribunal to examine grievance of the petitioner on merit.

6. Mr. Shailesh Prakash Sharma appearing for respondent on the other hand submits that the petitioner was fixed after being decategorised on medical ground as Sr. TTE in August, 1994 and was rightly fixed in the pay scale of 1200-2040 which is the pay scale available of the post held by him and what was prayed by the petitioner claiming pay scale of 1400-2300 was of the post of Goods Guard and there was no error in the fixation made and the cause of action was accrued to him in 1994 if allowance as prayed, if entitled was paid and the OA filed after inordinate delay in 2002 indisputably was barred by limitation and under these circumstances, Ld. Tribunal has not committed any error in passing order which is impugned in the instant proceedings and that apart further submits that even on merits, what is being claimed by the petitioner, there is no substance for the reason that the allowance is always remain co-terminus and attached to the post held as such there was nothing to add in respect of the pay scale in which the employee is fixed and submits that the plea of recurring cause of action as prayed for may not be to his rescue in the facts and circumstances of the case and his claim for fixation as prayed in the pay scale of 1400-2300 being not sustainable after his decategorisation and indisputably the post of Sr. TTE is

in the pay scale of 1200-2040 in which he was fixed and further submits that it is not a case of wrong fixation of pay scale as prayed for and under these circumstances, even the theory of recurring cause of action as prayed for and claimed by the petitioner at least may not support his claim and sustainable and further submits that in totality remitting the matter back to the Ld. Tribunal to examine on merit may not serve any fruitful purpose as prayed for.

7. We have heard counsel for the parties and with their assistance examined the material on record, As regards, the preliminary objection raised on which the Ld. Tribunal passed order holding that the plea raised after 11 years on account of wrong fixation is barred by Limitation and is not a recurring cause of action. We find that what is being urged by counsel for petitioner is supported with the judgment of Apex Court reported in 1995 Vol. 5 SLR (SC) Page 221 that if the fixation has been made in the wrong pay scale and take on salary every month be less being a recurring cause of action, certainly he can raise grievance at a later point of time and the delay in itself may not defeat his right of entitlement and to what extent his claim of arrears be independently examined but the question regarding his entitlement to entertain the application being recurring cause of action was valid and justify para five of the judgment referred to ad-infra:--

Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to his limited extent of proper pay fixation the application. cannot be treated as time barred since it is based on a recurring cause of action."

8. The submissions made by counsel for respondent in this regard does not hold good for the reason that as regards the question of pay scale is concerned, request employee makes a request that he has been wrongly fixed in the pay

scale and apparently if it appears to be erroneous decision that being a recurring cause of action, if raised at a later point of time his legitimate grievance could not be uprooted on the ground that it is barred by limitation, however, sec.21 of the Act also provides a proviso to condone the delay, if the explanation furnished is satisfactorily explained and filing separate application may not be that relevant if the pleading in original application gives justified explanation and can be considered to examine the matter as to whether what is being prayed for deserves indulgence on merit or it can be denied invoking sec.21 of Act 1985.

9. Indisputably the Ld. Tribunal has not examined the issue on merits and We would have remitted the matter back to the Tribunal but after we have heard on merits and find that the very submission made by the petitioner before the Tribunal regarding his fixation in the pay scale of 1400-2300 is itself erroneous and we find from the record that after being decategorised and posted as Sr. TTE in the pay scale 1200-2040, it was the only pay scale available and admissible to the employee working as Sr. TTE as the higher pay scale prayed for by the petitioner indisputably is of the post of Goods Guard and the theory propounded and urged before this Court that wrong fixation has been made and that being a recurring cause of action, even if the application has not been filed seeking condonation u/S. 21 of the Act, 1985, in our considered view, may not be of any assistance to the petitioner in the facts and circumstances of the instant case and even counsel for petitioner after taking note of the pay scale rules which are on record also admits that the pay scale which was prayed for of Rs. 1400-2300 was not admissible to him after being decategorised and posted as Sr. TTE, however, grievance of the petitioner is that the allowances attached to the post held by him has not been paid and that gives a recurring cause of action.

10. After hearing counsel for the parties on the issue we find that allowances are always attach to the post held and it remains co-terminus, however, it is not the case where there is any wrong fixation of the pay scale as prayed for and if allowance was not paid to him certainly grievance if any has supposed to be raised within reasonable time and indisputably the petitioner failed to justify while filing original application before the authority or before the Ld. Tribunal.

11. However, request is made to this Court that the matter may be remitted back to the Tribunal to examine the issue raised on merits but being convinced that the fixation in the pay scale of 1200-2040 was rightly made to remit back to consider rightly made to remit be on merit may not serve any purpose and the question in respect of additional allowance attached to the post is concerned, we have already expressed our view that is always co-terminus with the post held and may not be claimed independently for all times to come and as a matter of fact allowances if due and not paid to him he was supposed to raise his grievance within a reasonable time before the Tribunal and we find substance in what the Tribunal of all observed at least for grant of allowance as prayed for.

12. Consequently, in totality of the matter after being considered, we do not find any substance in the instant petition.

13. Consequently, the petition is devoid of merit and accordingly stands dismissed.