

(2021) 01 DEL CK 0124

In the Delhi High Court

Case No : Civil Writ Petition No. 373 Of 2021

Ram Swarup & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 13-01-2021

Acts Referred:

Citation : (2021) 01 DEL CK 0124

Hon'ble Judges : Manmohan, J;Asha Menon , J

Bench : Division Bench

Advocate : Vikas Sethi, Jagjit Singh

Final Decision : Dismissed

Judgement

Manmohan, J

CM APPL.994/2021

Allowed, subject to just exceptions.

W.P. (C) 373/2021

1. Present writ petition has been filed challenging the order dated 28th November, 2018, passed by the Central Administrative Tribunal in the OA no.

2821/2013 to the extent that it has not granted the consequential benefits of arrears of salary and allowances from the date on which the petitioners

had been granted retrospective promotion.

2. Learned Counsel for the Petitioner submits that the Tribunal vide Impugned Order granted retrospective promotion to the Petitioners to the post of

Shunting Master, Northern Railway from the date on which their juniors were promoted i.e., 14th February 2002 without granting consequential

benefits of arrears of salary and allowances.

3. He further submits that as the impugned action was a continuing wrong, petitioners are entitled to arrears of salary and allowances right from the date they were entitled to promotion i.e. from the year 2000. In support of his submission, he relies upon the judgment of the Supreme Court in Union of India and Ors. Vs. Tarsem Singh, (2008) 8 SCC 648 wherein it has been held as under:-

7. 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 reopening 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. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the 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.

4. A perusal of the paper book reveals that the petitioners had challenged the promotion of their juniors in 2000 only in the year 2010, by filing O.A. 3847/2010 and that too after the petitioners had retired. Further, the CAT in the impugned order has given cogent reasons for not granting benefits of arrears of salary and allowances from the date on which the petitioners had been granted retrospective promotion in accordance with the mandate of

Union of India and Ors. Vs. Tarsem Singh (supra). The relevant portion of the impugned order is reproduced hereinbelow:-

8. It is true that there is an inordinate delay in pursuit of the remedies. At the same time, the grievance of the applicants that their

seniors were promoted in the year 2000, whereas they have been promoted in the year 2006, cannot be ignored. The delay can, at the most,

result in denial of past benefit of them. It is represented that all the applicants have since retired from service.

9. We, therefore, allow the OA in part, directing that the promotion of the applicants to the post of Shunting Master Grade-II shall be

treated w.e.f. 14.02.2000, the date on which their seniors were promoted, but this shall be for the limited purpose of determination of

pension and shall not be entitled to arrears on that count. However, the benefit shall be extended to them from January, 2019 onwards.

There shall be no order as to costs.

5. In the opinion of this Court, the CAT in the impugned order has balanced the equities and passed a balanced order and directed grant of benefit

from January, 2019 onwards.

6. Consequently, the impugned order calls for no interference in writ jurisdiction. Accordingly, the writ petition is dismissed.