

---

**(2012) 06 CHH CK 0043**  
**In the Chhattisgarh High Court**  
**Case No : W.P.S. NO. 5216 of 2011**

R.R. Dhruw

APPELLANT

Vs

Union of India and others

RESPONDENT

---

**Date of Decision :** 19-06-2012

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 21  
Constitution of India, 1950 — Article 14, 226

**Citation :** (2012) 06 CHH CK 0043

**Hon'ble Judges :** Gulam Minhajuddin, J;Abhay Manohar Sapre, J

**Bench :** Full Bench

**Advocate :** V.G. Tamaskar, for the Appellant; Fouzia Mirza Asstt Solicitor General, for the Respondent

**Final Decision :** Allowed

---

## Judgement

Hon"ble Mr. Abhay Manohar Sapre, J.—This is a writ petition filed by applicant/petitioner of O.A. No. 341/2009 under Article 226 of the Constitution of India against the order dated 3rd May, 2011 passed by the Central Administrative Tribunal, Jabalpur Bench (for short hereinafter called as "the Tribunal") in the aforesaid original application. By the impugned order, the Tribunal dismissed the original application of the writ petitioner essentially on the ground that it is barred by limitation.

2. Since the original application was dismissed as being barred by limitation, therefore the Tribunal did not consider it necessary to examine the case of the writ petitioner on merits.

3. So the short question which arises for consideration in this writ petition is whether the Tribunal was justified in dismissing the original application of the writ petitioner as being barred by limitation.

4. Facts of the case lie in a narrow compass:-

5. Petitioner is working as P.M.A. Grade-III in the office of Chief Post Master

General, Chhattisgarh Circle, Raipur. He raised a dispute with regard to his pay fixation before the respondents (employer). He submitted his representation to the authorities concerned praying therein that his pay should be fixed in the manner in which he wants and as set out in his representation. The respondents by order dated 18/8/2005 rejected his representation. It is this rejection which led to filing of original application by the writ petitioner, out of which this appeal arises in the year 2009. The respondents on being noticed raised an objection that the original application filed by the writ petitioner is barred by limitation prescribed u/s 21 of the Administrative Tribunal Act. It was contended that the application should have been filed within one year from the date on which his representation was rejected. It was contended that since admittedly the application was made beyond the period of one year from 18/5/2005 and hence, the application was liable to be dismissed as being barred by limitation u/s 21 *ibid*.

6. This objection found favour to the Tribunal the application was dismissed by the Tribunal as being barred by limitation.

7. It is apposite to reproduce the finding recorded by the Tribunal in Para-7 of the impugned order *infra* which led to dismissal of application.

7. The basic question in issue is the legality and correctness of the order passed by the respondents on 18/8/2005 rejecting the applicant's two representations as mentioned therein. This cannot be viewed by any stretch of reasons and logic as a continuing cause of action. If the decision on the applicant's representation by the respondents is bad, the applicant ought to have challenged the same within the prescribed period of limitation. In the said application, namely, M.A. 300/2009, the applicant has not shown any cause, albeit sufficient cause that might have prevented him from filing the application in time. If the applicant could have filed earlier O.A. 468/2005, which was disposed of by directing the respondents to consider and decide the applicant's representation, there was no reason why the applicant could not challenge the respondents' order rejecting his representation as aforesaid within the prescribed period of limitation.

8. Mr. V.G. Tamaskar, Advocate appearing for the petitioner rightly brought to our notice a decision of the Supreme Court in a case of M.R. Gupta Vs. Union of India and others, ] and contended that issue involved in this case remains no longer *res integra* and stand decided by the decision of Supreme Court. It was his submission that the tribunal erred in ignoring the law laid down by the Supreme Court in the aforesaid decision. It was further his submission that the question involved in this case was whether issue relating to pay fixation is a continuing cause of action or not and it was held by Supreme Court that it was a continuous cause of action and hence the original application could not have been dismissed as barred by limitation.

9. Learned counsel further contended that this very question was decided by the Supreme Court in favour of the petitioner wherein their Lordship have laid down

that when an appellant raises a dispute with regard to his pay fixation before his employer and if it is decided against him then it gives him a continuance cause of action to challenge such action before the Tribunal.

10. Though, learned counsel appearing for the respondents made attempt to support the impugned order but we are constrained to allow this writ petition, set- aside the impugned order and remand the case to the Tribunal for deciding the application made by the petitioner on its own merits.

11. At the outset, we are constrained to observe that the Tribunal should have taken note of law laid down by the Supreme Court while deciding the original application. Article 14 of the Constitution mandates that law laid down by the Supreme Court is binding on all Courts/Tribunals in the Country. In fact, the Tribunal should have made efforts to find out as to whether the issue before them is already decided by the Supreme Court or High Court. Instead of doing that, the Tribunal observed that by no stretch of imagination this application can be allowed.

12. With respect, we cannot concur with such approach of the Tribunal and are constrained to observe that by no stretch of imagination, we can concur with the view of Tribunal which is against the law laid down by the Supreme Court.

13. Their Lordships of Supreme Court speaking through Justice J.S. Verma (as His Lordship then was and then became C.J.I.). made following observation in Para-2:-

2. The only question for decision is: Whether the impugned judgment of the Tribunal dismissing as time barred the application made by the appellant for proper fixation of his pay is contrary to law? Only a few facts are material for deciding this point.

14. In Para-5 their Lordships then laid down the law holding that a grievance with regard to the pay fixation is essential in the nature of continuous cause of action and therefore, a plea of limitation as contained in Section 21 of the Act would not come in the way of the applicant in raising his grievance before the Tribunal.

15. Para 5 reads as follows:-

5. 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 this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

16. Keeping in view the law laid down by the Supreme Court in M.R. Gupta (Supra) case and applying the same to the facts of this case, we have no hesitation in setting aside of the order passed by Tribunal because the grievance raised by the petitioner in this case was rejected by the respondents in the year 2005 yet the petitioner was well within his right to approach the Tribunal even in the year 2009 because the grievance was in relation to his pay fixation and was in nature of continuing cause of action. We thus hold that the application made by petitioner before the Tribunal was well within the period of limitation and had to be decided on its own merits. Accordingly, and in the light of forgoing discussions, the writ petition succeeds and is hereby allowed. Impugned order is set-aside. The Tribunal is now directed to decide the application made by the petitioner on its own merits preferably within a period of six months from the date of this order.

No cost.