
(2014) 02 DEL CK 0278
In the Delhi High Court
Case No : Writ Petition (C) No. 763/2014

Subhash Chandra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2014) 2 ILR 1442

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J.

Bench : Division Bench

Advocate : Anil Shankar Prasad and Sanjay Kumar Bharti, for the Appellant;
Hashmat Nabi, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.?The writ petition has assailed the order dated 30th April, 2013 passed by the Central Administrative Tribunal, Principle" Bench, New Delhi dismissing the O.A. No. 1659/2012 filed by the petitioner on the ground that the same was barred by limitation. The petitioner had sought the following prayers by way of the O.A. No. 1659/2012 before the Tribunal:

"(i) Quash/Set aside the impugned order dated 17.7.2006 passed by the Respondent No. 1, whereby the appeal was disposed against the appellants.

(ii) Quash/Set aside the order dated 25.8.2003 passed by the Respondent No. 3, whereby the penalty of censure was imposed against the appellants.

(iii) Direct the Respondents to grant first ACP under the financial upgradation scheme w.e.f. 9.8.1999 with arrears and further grant second ACP w.e.f. 1.1.2002 from the date of entitlement.

(iv) Further direct the Respondents to grant promotion w.e.f. 16.7.2001 instead of 29.1.2004 and count his 3 years seniority towards the financial benefits accruing to the applicant as per the existing rules.

(v) Direct the Respondents to fix the pension and retirement benefits of the applicant in terms of the reliefs sought for in the aforementioned paras and pay the arrears thereof immediately.

(vi) Cost of the application be allowed in favour of the applicant.

(vii) Any other relief (s), which this Hon''ble Tribunal deems fit and proper in the facts and circumstances of this case."

2. Along with the impugned application, the petitioner had filed an application seeking condonation of delay in raising the challenge pleading sickness to justify the delay in making the claim.

3. Before us it is contended on behalf of the petitioner that he is aggrieved by the violation of Rules by the respondents to fix his pension correctly keeping in view his entitlement based on denial of financial benefits under the first Assured Career Progression Scheme with effect from 9th August, 1999 as well as financial benefits under second ACP Scheme with effect from 1st January, 2002.

4. It is not disputed before us that the petitioner did not make any grievance either by way of representations or by way of an application filed within the period specified under Section 21 of the Administrative Tribunal Act, 1985. The relief in respect of the same was hopelessly barred by limitation on 1st May, 2012 when the petitioner had filed the petition before the Tribunal and sought the above reliefs. Learned counsel for the petitioner before us has today submitted that the petitioner today does not seek those financial benefits to which he was entitled. He restricts the challenge to the denial of the benefits under the ACPs only so far as they effect fixation of his pension. It is further submitted that the above prayer No. (v) which has been set out above before the Tribunal was directly relating to this claim.

5. It is further contended that so far as fixation of pension and denial of the correct amount of pension is concerned, there is no prohibition to consideration and grant of relief qua person by application of law of limitation. In support of this submission reliance is placed on pronouncement of the Supreme Court reported in Union of India (UOI) and Others Vs. Tarsem Singh, .

6. The applicable Principle so far as a belated claim is concerned, was laid down in para 7 of this pronouncement which reads as follows:

"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 refixation 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."

There are several other prior precedents to the same effect.

7. It is therefore trite that so far as claims involving issues of seniority or promotion which effects others are concerned, would be rendered stale and the doctrine of limitation would apply in case of such belated challenges. So far as the contention that the same have been wrongfully denied is concerned, the Supreme Court has held that the court would consider the same. However, the relief of arrears would be restricted to a period of three years prior to the date of invoking remedy before the court of tribunal.

8. The challenge of the petitioner and his prayers in the instant matter has to be considered in the light of these principles. It cannot be disputed that denial of the ACP benefits to the petitioner and wrongful fixation would result in erroneous fixation of all his emoluments and entitlements. In case, such emoluments were correctly fixed, upon superannuation the petitioner's pension may have also been appropriately fixed, perhaps at a figure which is more than the amount to which he has been found entitled by the respondents. The petitioner before us retired on 31st January, 2005.

9. On application of the principles laid down by the Supreme Court therefore, it would appear that though the prayers made by the petitioner at sl. Nos. (i) to (iv) are concerned, the same are admittedly barred by limitation. Learned counsel for the petitioner before us submits that the petitioner would not press these reliefs. The petitioner shall remain bound by this submission and will not be entitled to any relief so far as the prayers at sl. Nos. (i) to (iv) are concerned. However, the factual challenge on which these prayers were made, does survive and would require to be considered as the same is necessary to consider the prayer made at sl. No. (v). This consideration is also essential in order to appropriately mould the relief which the petitioner may be found entitled.

10. In view of the above, the order dated 30th April, 2013 passed by the Central Administrative Tribunal dismissing the O.A. No. 1659/2012 on the ground of limitation is hereby set aside and quashed. The matter shall be reconsidered by the Tribunal in the context of the above observations and to the extent detailed by us.

11. The challenge made by the petitioner with regard to the denial of the first and second ACP schemes shall be considered on merits even if the tribunal sustains the challenge by the petitioner, the petitioner shall not be entitled to grant of financial benefits.

12. So far as financial benefits are concerned, the consideration shall be confined to the issue of the correctness of the fixation of the petitioner's pension for a period of three years before the petitioner approached the Tribunal by way of the said application.

13. The parties shall appear before the Registrar, Central Administrative Tribunal on 26th February, 2014 for directions.

14. This writ petition is allowed in the above terms.

15. Dasti to parties.