

(2024) 04 CAT CK 0043

In the Central Administrative Tribunal

Case No : Original Application Bearing Diary No. 2702 Of 2024

Sunil Kumar Agrawal & Others

APPELLANT

Vs

Union Of India Through General Manager, North Central
Railway, G.M. Office, Subedarganj, Allahabad & Others

RESPONDENT

Date of Decision : 26-04-2024

Acts Referred:

Citation : (2024) 04 CAT CK 0043

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : Akshay Mishra, Chakrapani Vatsyayan

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri Akshay Mishra, learned counsel for the applicants and Shri Chakrapani Vatsyayan, learned counsel for the respondents, are present.

2. Although the matter has been listed under the head of 'fresh Admission' the same is being heard and decided finally today itself with the consent of learned counsels appearing for both the parties.

3. The compendium of the facts narrated in the instant original application is that the applicant is seeking one notional increment with all consequential benefits with effect from 1st July and 1st January, whichever applicable, of the year in which they retired from Government Service.

Sr. No.

Name of Applicant

Date of Retirement

1

Sunil Kumar Agrawal

30.06.2021

2

Prem Nath Soni

30.06.2016

3

Fayaz Ahmad Khan

30.06.2021

4

Amlesh Kumar Gupta

30.06.2014

5

Zeeshan Ali Siddiqui

30.06.2021

6

Kripa Nath Tiwari

31.12.2013

7

Vishan Swaroop

30.06.2014

They also seek a direction to the respondents to release their entire arrears of pension and other emoluments payable to them as a consequence of the above said notional increment from the due date along with interest.

4. I have heard learned counsel appearing for the parties and gone through the documents on record.

5. Submission of learned counsel for the applicants is that the all the applicants except applicant no. 6 got retired on the last day of June in respective years and applicant no. 6 got retired on the last date of December but notional increment falling due on the very next date i.e., 01st of July and 1st of January respectively was not granted to them. Learned counsel further submits that the instant controversy stands well settled in light of numerous judgments passed by various judicial forums across the country including that by the Apex Court. Learned counsel also submits that the applicants are liable to be granted the benefit of

one notional increment thereby adjusting their retiral benefits accordingly and thus prayer was made that this application be allowed at this stage itself.

6. Learned counsel for the respondents opposed the prayer made by learned counsel for the applicants and argued that all the applicants except applicant no. 6 got retired on the last day of June in respective years and applicant no. 6 got retired on the last date of December which implies that they were not in government service on the succeeding date i.e, 1st of July and 1st of January respectively and therefore, notional increment cannot be allowed to them.

7. I have considered the rival contentions advanced by the learned counsel appearing for the parties.

8. As the brief of the facts of the case have already been stated above, the same is not reiterated for the sake of brevity. Issue regarding grant of one notional increment to the employees who retired on 30th June of the year was considered by the Hon'ble Supreme Court of India in judgment dated 11.04.2023 passed in case Civil Appeal No. 2471 of 2023 titled The Director (Admn. And HR) KPTCL & ORs. Versus C.P. Mundinamani & Ors. wherein the Apex Court has approved and upheld the view taken by different High Courts regarding grant of one annual increment earned by the employees on the last day of their service for rendering their services preceding one year from the date of retirement with good behavior and efficiently. Thus, there is no scope to take a contrary view with the view taken by the Apex Court in the aforesaid case.

9. Furthermore, it would be in the fitness of things to quote the operative portion of the judgment dated 17.12.2021 passed by the Allahabad Bench of the Central Administrative Tribunal in OA No. 1070 of 2021 titled Dina Nath Singh Vs Union of India and others. The same is reproduced below:

"11. For the forgoing reasons, the OA is allowed, directing that:

a) For such of the employees, who retired on 30th June of any particular year, increment payable on 1st July shall be extended. Their pensions shall also be revised, subject to their fulfilling other conditions which are applicable. The arrears that become due shall be paid without interest;

b) Similarly for employees, who retired on 31st December of a particular year, the increment payable on the 1st January of the next year shall be extended and pension revised, subject to same conditions in the same manner;

c) While extending such benefits, a clause shall be incorporated to the effect that in case the Hon'ble Supreme Court takes a different view in the Civil Appeal arising out of SLP No. 4722/2019, they shall be under obligation to refund the entire benefit without any demur."

Thus, the case of the applicant no. 6 who retired on 31.12.2013 is also liable to be allowed in view of the observations recorded in the above judgment.

10. However, as is evident from the perusal of records, all the applicants except

applicant no. 6 got retired on the last day of June in respective years and applicant no. 6 got retired on the last date of December and the instant OA has been filed in the year 2024 which implies that they stood retired for years before the instant original application was actually filed. This further implies that there has been a considerable delay since the cause of action arose and the original application was preferred. And since a specific prayer for grant of arrears that shall accrue consequent to the issuance of notional increment has also been made on the part of the applicants, it would be in the fitness of things to meticulously examine the delay and laches prevailing herein before pondering over the decision as to how much arrear payment is liable to be made in favour of the applicants. For the said purpose, it would be significant to straightway rely upon the law laid down by the Apex Court in its judgment dated 13.08.2008 passed in Civil Appeal No. 5151-5152 of 2008 titled Union of India & Ors vs. Tarsem Singh wherein the Hon'ble Court has dealt with the issue of delay and laches / limitation while conferring the relief sought by the aggrieved party. For the sake of clarity, the operative portion of the aforementioned judgment is quoted herein below:

"5. 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 re-opening 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. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

7. In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored.”

11. Thus, this Tribunal is of the considered opinion that the issue of delay and laches / limitation and continuous wrong as defined by the Apex Court in the aforementioned judgment passed in the case of Tarsem Singh (supra) case also finds a place in the instant original application and accordingly, arrear payment of only three years preceding to the date on which the instant original application was filed is liable to be granted in favour of the applicants. Accordingly, in view of the above quoted deliberations, the instant OA is allowed at the admission stage itself. Respondents are hereby directed to issue one notional increment to the applicants and further issue revised PPO(s) in this regard. However, arrear payment of only three years preceding to the date of filing of this original application shall be made to the applicants @ 6% simple interest per annum. The said exercise must be completed within a period of five months from the date of this order without fail.

12. All associated MAs stand disposed of accordingly.

13. There shall be no order as to costs.