

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
M.A. No.872 of 2015
OA No. 596 of 2015**

**Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Sri Kanda Kamaraju, aged about 66 years, S/o Late Kanda Karlaya, Retd. SPM, S.C.S. College S.O., Puri, At- Balinolia Sahi Ratnakar Road, Po./Dist.- Puri-752001.

.....Applicant

VERSUS

1. Union of India represented through it's Secretary-cum-Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751001.
3. Director of Postal Services (HQRs) O/o. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751001.
4. Sr. Superintendent of Post Offices, Puri Division, At.-Po./Dist.-Puri-752001.
5. Director of accounts (Postal), At.-Mahanadi Vihar, Po.-Naya Bazar, Cuttack-753004.

For the applicant : Mr. N.R. Routray, Counsel

For the respondents: Mr. A. Pradhan, Counsel

Heard & reserved on : 04.02.2020

Order on :17.03.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A) :-

The applicant has filed the M.A. No.872/15 (along with OA) to condone the delay in filing the O.A. No.596/15 under Section 21 of the Administrative Tribunals Act, 1985. The applicant claims the benefit of the decision of this Tribunal passed under similar circumstances which has been implemented by the respondents as per their order dated 04.02.2015 (Annexure-A/2 of the O.A) The applicant submitted a representation dated 18.03.2015 (Annexure-A/3) to the respondents citing the orders of this Tribunal in O.A. Nos.1195/2004 and 1213 to 1221/2004, which were upheld by Hon'ble High Court. The representation dated 18.03.2015 (Annexure-A/3) has been rejected by the respondents vide order dated 10/13.04.2015 (Annexure-A/4), which has been impugned in this O.A. by the applicant claiming parity with other similarly placed employees who were allowed the benefit of the above decision of the Tribunal vide the respondents' order dated 04.02.2015 (Annexure-A/2) of the O.A)

2. In the M.A., the applicant avers that his claim in the OA is to be considered as a continuing cause of action in terms of the judgment of Hon'ble Apex Court in the case of M.R. Gupta Vs. Union of India & Ors Civil Appeal No.7510/1995, 1995 (2) U.J. (S.C) 689, since his claim pertains to higher pay as against the less pay being recovered by him.

3. We have heard learned counsel for the applicant and respondents on the MA No.872/2015. Learned counsel for the applicant submitted that the judgment in the case of M.R. Gupta (supra) is squarely applicable to this case, for which the delay is required to be condoned in the interest of justice. Learned counsel for the respondents submits that such claim has been rejected by the Hon'ble High Court vide its judgment dated 24.07.2018 in W.P. (C) No.7015, 7018, 7020, 7022 & 7023 of 2017. He further submitted that the Tribunal has dismissed two batches of the OA vide judgments dated 27.03.2019 and dated 26.07.2019 and that all these judgments are squarely applicable to this OA for which the MA as well as the OA are liable to be dismissed.

4. We have considered the submissions and perused the judgments cited by both the sides. A relevant point for deciding the MA No.872/15 is whether the judgment in the case of M.R. Gupta (supra) is applicable to the present applicant treating his claim to be a continuing cause of action.

5. The petitioner in the case of M.R. Gupta (supra) claimed that fixation of his pay on joining service under railways in 1978 was wrong and not as per the rules. The OA filed before the Tribunal, was dismissed on the ground of delay/limitation. It was held by Hon'ble Apex Court that the applicant's claim gave rise to a continuing cause of action relating to fixation of his pay, which is received every month, for which the limitation will not be applicable. It was also held that the limitation will, however, apply for the claim of arrear salary from date of his joining in 1978. It was also held that if the cause of action is termination of service, then delay/limitation will be applicable as it is to be considered as one time action.

6. In this OA, the applicant has claimed the benefit of promotion to the HSG-II & HSG-I cadre as per the order of Tribunal dated 23.07.2008 passed in OA No.1196/2004 at par with the benefits allowed to similarly situated employees as per order dated 04.02.2015. Claim for promotion is not same as wrong fixation of pay, which was the issue in M.R. Gupta case. Promotion requires

consideration of the suitability of the employees with reference to their service records as per the rules. If promotion is allowed, then the benefit of higher pay is allowed as per the rules. Hence, claim for promotion is not same as the claim for higher pay due to wrong pay fixation. Hence, the judgment in the case of M.R. Gupta (supra) is inapplicable to the present case since the claim of promotion cannot be considered to be a continuing cause of action.

7. In view of the above, the ground of continuing cause of action advanced in the MA is not tenable. The applicant seeking the benefit of the Tribunal's order dated 23.07.2008 passed in OA No.1196/2004 should have explained the reasons for delay in raising his claim for same benefit till submission of his representation on 18.03.2015, which was rejected vide the impugned order at Annexure-A/4 of the OA. No such explanation or reasons for delay have been furnished by the applicant, who retired on 31.10.2009 (as stated in his representation at Annexure-A/3) and did not raise his claim for similar benefit within the time stipulated under law after the order dated 23.07.2008 was passed by the Tribunal in OA No.1196/2004. The MA No.872/2015 accordingly lacks merit and is liable to be dismissed.

8. Since the MA for condoning delay in filing the OA has been dismissed, the OA is barred by limitation. Applying the judgment of Hon'ble Apex Court in the case of State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and others reported (2015) 1 SCC (L&S) 191, referred by Hon'ble High Court in the judgment dated 24.07.2018 in W.P (C) No.7015, 7018, 7020, 7022 & 7023 of 2017 (Annexure-R/1 of the objection to the MA No.872/15 filed by respondents' counsel) delay will not be applicable in case the judgment on which the applicant is relying is a judgment in rem, vide Para 22.3 of the judgment in the case of Arvind Kumar Srivastava (supra).

9. This issue has also been considered in the order dated 27.03.2019 of this Tribunal in OA No.505/2018 and other OAs (Muralidhar Rout Vs UOI & Others) enclosed by respondents' counsel at Annexure-R/2 of his objection to the MA, Vide paragraph 18 of the order dated 27.03.2019, it was held as under:-

“ 18. It was submitted on behalf of the applicant that the case of the applicant in the present OA comes within the exception stated in the judgment in Arvind Kumar Srivastava's case. The exceptional case mentioned in the above judgment for which the question of delay will not be raised is applicable when the judgment against which the applicant seeks parity, is the

judgment in rem. The applicant claims parity based on the order dated 23.07.2008 of the Tribunal in O.A. No.1196 of 2004, which is projected by the applicant's counsel to be a judgment in rem. We are unable to agree with such averments for the reason that the same judgment dated 23.07.2008 has not been held as a judgment in rem by Hon'ble High Court in the judgment dated 24.07.2018 (Annexure-R/1). Further, the applicant has not been able to furnish strong grounds to prove that the order dated 23.07.2008 in OA No.1196/2004 which is based on earlier order of madras Bench in OA No.679/2003 a judgment in rem. The order dated 23.07.2008 discussed about a Full Bench decision of the Tribunal in OA No.329/2000 holding a different view in the matter. Hence, the argument that the order dated 23.07.2008 is a judgment in rem is not tenable."

10. Similarly, in the order dated 26.07.2019 of this Tribunal (Annexure-R/3 of the objection to the MA filed by the respondents), it was observed in Paragraph 23 of the said order as under:-

"23. It is clear from the order dated 24.07.2018 of Hon'ble High Court that the claims of the applicants in the OAs in question were barred by limitation as they were treated as fence-sitters in the light of the principles laid down in para 22.2 of the judgment of Hon'ble Apex Court in the case of Arvind Kumar Srivastava (Supra). The para 22.3 of the said judgment holds that when a judgment is the judgment in rem, then it will be exception to the principles in para 22.2. Since Hon'ble High Court in judgment dated 24.07.2018 has decided the matter in accordance with the para 22.2 of Arvind Kumar Srivastava judgment, it implies that para 22.3 is not applicable to the facts of the case. In the judgment dated 24.07.2018 although there was no specific finding that the order dated 23.07.2008 was a judgment in rem or personam, but since para 22.2 of Arvind Kumar Srivastava judgment was applied, it implied that the order dated 23.07.2008 was not considered by Hon'ble High Court as a judgment in rem, otherwise para 22.3 of Arvind Kumar Srivastava judgment would have been followed."

11. It is clear from the above discussions that the order dated 23.07.2008 of this Tribunal in OA No.1196/2004, on which the applicant has claimed the benefits (vide para 7 of the OA) is not a judgment in rem. Hence, delay/limitation will be a factor relevant for the applicant's claim in this OA.

12. In the circumstances as discussed above, the MA No.872/2015, lacking merit, is dismissed and OA, being barred by limitation, is also dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

