

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No.914 of 2016

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

Damodar Bhoi, aged about 64 years, S/o Sri Harihar Bhoi, retired Dy. General Manager, BSNL, ETR, Ranchi and at present residing at Plot No. 9, New bank Colony, Bagudi Basti, Chhend, Rourkela-769015, Dist.-Sundergarh.

.....Applicant

VERSUS

1. Chairman cum Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Harish Chandra Mathur lane, Janpath, New Delhi – 110001.
2. The Chief General Manager, Bharat Sanchar Nigam Ltd., Eastern Telecom Region, Telephone Bhawan, 34 BBD Bag, Kolkata – 700001.

.....Respondents

For the applicant : Mr.A.K.Mohanty, counsel
Mr.D.K.Mohanty, counsel

For the respondents: Mr.S.B.Jena, counsel

Heard & reserved on : 4.2.2020

Order on : 16.3.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant joined as Junior Telecom Officer on 16.7.1975 and was working as DGM, BSNL w.e.f. 8.4.2010. He submitted a representation on 12.1.2011 (Annexure-A/2 series) for stepping up of his pay at par with Sri A.K.Singha Samanta, who, being his junior in service was drawing more salary than the applicant. Respondent No.2 rejected the representation vide order dated 18.2.2012 (Annexure-A/3) on the ground that second time stepping up of pay is not permissible. After retirement on 29.2.2012, the applicant submitted another representation on 16.10.2012 (Annexure-A/4) stating that the rule was wrongly interpreted in order dated 18.2.2012 which needs to be looked into. The matter was referred to the respondent No. 1 on 26.9.2013 (Annexure-A/5). When no decision was taken in the matter, the applicant filed the OA No. 591/2015 which was disposed of 14.9.2015 (Annexure-A/7) directing the respondent No.1 to dispose of the said representation of the applicant. Accordingly, the order dated 18.2.2016 (Annexure-A/8) has been issued rejecting the applicant's representation and being aggrieved, the

applicant has filed this OA impugning the order at Annexure-A/8 and seeking the following reliefs:-

“(A) to quash the letter No. 1-7/2015-16/legal/ETR/BSNL dated 18.2.2016 (as per Annexure A/8) of Respondent No.2 in rejecting the prayer of the applicant for stepping up of his pay in comparison to that of his junior Sri A.K.Singa Samanta.

AND

(B) to grant stepping up of the pay of the applicant from Rs.15200 to Rs.16950 w.e.f. 1.11.2002 in comparison to the pay of Sri A.K.Singa Samanta who is admittedly junior to the applicant in accordance with the provisions of GID 24 below FR-22 so as to remove anomaly of pay with all consequential benefits.

AND

(C) consequently to direct the Respondents to issue revised sanction for payment of retiral benefits viz: pension, Retirement Gratuity, leave encashment etc. to the applicant consequent on such stepping up of pay of the applicant.

AND

(D) to pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.

AND

(E) to order and direct that the cost of litigation be paid to the applicant by unnecessarily dragging the applicant to this litigation.”

2. The grounds advanced in the OA are that the applicant's first stepping up of pay was allowed on 1.1.1991 comparing his pay with his junior Sri N. Meher. After Sri N.Meher retired from service w.e.f. 28.2.2010, the applicant will be entitled for second stepping up of pay at par with another junior in accordance with the Government of India's Decisions listed at serial No. 24 after the FR-22, for which the impugned order is liable to be quashed. It is further stated that the reason mentioned in the impugned order that Sri A.K.Singha Samanta (referred as Sri Samanta) was drawing higher pay than the applicant in 2001, after he opted to switch over to the IDA pay scales from the date of his promotion as Sr. SDE i.e. 8.11.2001, is not sustainable. The applicant was directly promoted from the post of SDE to DET thereby by-passing the level of Sr. SDE in between. But Sri Samanta was first promoted to the post of Sr. SDE and then to the post of DET for which he could avail the benefit of pay fixation for two promotions, by which his pay was fixed higher than the applicant. Hence, it is averred that the pay anomaly between applicant and Sri Samanta was due to fixation of pay on promotion and the applicant is entitled for stepping up of pay after retirement of his junior Sri N. Meher on 28.2.2010.

3. The respondents opposed the OA in their Counter on the following grounds, while not disputing the basic facts of the case:-

(i) Delay in filing the OA which is liable to be dismissed on the ground of limitation.

(ii) Non-joinder of his junior (Sri Samanta) with whom he claims parity in this OA.

(iii) As per the GID serial No. 20 after FR-22, the second stepping up of pay is not admissible. The respondents are reviewing the cases where second stepping up was wrongly allowed.

(iv) The stepping up of pay is not admissible as per the clause 1(c) of the DOPT OM dated 4.11.1993.

(v) Sri Samanta was promoted from SDE to Sr. SDE (8.11.2001) and then to the post of DET (26.1.2002). The applicant was promoted from SDE directly to the post of DET on 21.3.1997 as there was no post of Sr. SDE at that time as per the executive promotion policy for the executives (in short EPP) and for pay anomaly created because of implementation of the EPP, no stepping up is permissible.

4. The applicant has filed the Rejoinder replying the points raised in the Counter. It is stated that since the reliefs prayed for in the OA will not affect Sri Samanta, it is not necessary to include him as a party as per the judgment in the case of **Kasturi vs. Iyyamperumal, AIR 2005 SC 2813**. It is also stated that the cause of action in this case pertains to the dispute relating to pay fixation, which is a continuing cause of action and hence, it will not be barred by limitation. It is further averred that as per the instructions of DG P&T at No. 10 after FR-22, copy of which is annexed at Annexure-A/9 of the Rejoinder, the claim of the applicant is permissible subject to other conditions as per the OM dated 4.11.1993 of the DOPT.

5. Learned counsel for the applicant and the respondents were heard and the pleadings were perused by us. Applicant's counsel has also submitted a short note summarizing his submissions. On the question of limitation, it is averred in Rejoinder that the applicant's claim relates to stepping up of pay at par with his junior Sri Samanta which is a continuing cause of action and the limitation will not apply in this case in terms of the judgment of Hon'ble Apex Court. We will therefore examine the issue of limitation before examining other issues/points raised by the parties in this case.

6. It is the settled position of law that the issue of limitation is applicable to the claims relating to service in accordance with the Section 21 of the Administrative Tribunals Act, 1985. It is held by Hon'ble Apex Court in the case of **M.R. Gupta vs. Union of India, 1995 (5) SCC 628**, the issue of limitation will not apply where the cause of action is a continuing one. What are the situations where such continuing cause of action can be invoked to ignore delay or limitation have been considered by Hon'ble Apex Court in the case of **Union of India & Anr. vs. Tarsem Singh in Civil Appeal Nos. 5151-5152 of 2008**, in which the employee concerned had claimed disability pension from the date of his disability before Hon'ble High Court by filing a writ

petition. The claim was allowed restricting the arrear claim to 38 months prior to the date of filing the writ petition. Being aggrieved, the employee filed a Letter of Appeal before the Division Bench of Hon'ble High Court, claiming full arrears from the date of eligibility, which was allowed. Challenging this order, the Union of India had filed the Civil Appeals. Hon'ble Apex Court held in that case as under:-

"4. The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in *Balakrishna S.P. Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan* - [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963) :

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

In *M.R. Gupta vs. Union of India* [1995 (5) SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held :

"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....."

In *Shiv Dass vs. Union of India*- 2007 (9) SCC 274, this Court held:

"The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked,

unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition..... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

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."

7. As laid down in the judgment in the case of Tarsem Singh (supra), even while considering the cases of continuing cause of action, delay/limitation will apply in case third party rights are affected by such claim. In the instant OA, the applicant claims stepping up of pay after comparing the pay of his junior Sri Samanta. If his claim is allowed, it will affect the rights of the applicant's seniors who could be getting less salary than the applicant after stepping up of his pay and clearly, these seniors of the applicant will be affected adversely in case the applicant's claim is allowed. Moreover, the claim of stepping up of pay compared to junior is not the same as wrong pay fixation as per rules irrespective of the question of seniority vis-à-vis another employee. In this OA, the reliefs claimed are linked to the applicant's seniority and hence, it is likely to affect third party interest. Hence, applying the ratio of the judgment in the case of Tarsem Singh (supra), it was necessary for the applicant to have raised his claim within the time as laid down under law. The applicant's claim that delay will not be applicable to this case as his cause of action is a continuing one, is not tenable.

8. It is seen from the averments in the OA as well as in the Rejoinder that the applicant's claim of stepping up of pay with his junior is to be considered after retirement of his junior Sri N. Meher on 28.2.2010 since his pay was stepped up first time at par with Sri N. Meher. The cause of action for the applicant arises after 28.2.2010 and he submitted his representation at

Annexure-A/2 first time on 12.1.2011 and had filed the OA No. 591/2015 in first round in the year 2015 which was after about 5 years from 28.2.2010. The OA No. 591/2015 was disposed of vide order dated 14.9.2015 (Annexure-A/7) at the admission stage itself without considering the merit of the claim. It is seen from the order dated 14.9.2015 that the issue of limitation or delay was not considered by the Tribunal while passing the said order.

9. In the case of **C. Jacob vs. Director of Geology & Mining & Anr.**, reported in AIR 2009 SC 264, the issue considered was whether submission of representation and its disposal as per direction of the Tribunal gives rise to fresh cause of action and it was held by Hon'ble Apex Court as under:-

“7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.”

10. Applying the ratio of the judgment in the case of C. Jacob (supra) to the present OA, it is clear that the disposal of the applicant's representation by the respondents vide order dated 18.2.2016 (Annexure-A/8) in pursuance to the direction of the order dated 14.9.2015 of the Tribunal, does not give rise to a fresh cause of action to the applicant since the claim was already delayed. It was therefore, necessary for the applicant to have approached the Tribunal within one and half years from 28.2.2010 to press for his claim of stepping up of his pay after retirement of Sri N. Meher. Alternatively he should have filed MA, explaining delay to condone the delay in filing the OA. The applicant continued to submit representations from 12.1.2011 till he filed the OA No. 591/2015 which was disposed of directing the respondents to dispose of the representation for a claim which itself was delayed. Then he filed this OA without any application for condoning the delay in filing the OA.

11. In view of the above discussions, we are not able to accept the submission of the applicant that his claim, being a continuing cause of action, will not be barred by limitation. We hold that the reliefs claimed by the applicant have a link with the applicant's seniority and it cannot be considered to be a continuing cause of action. The OA is accordingly barred by limitation

as submitted by the respondents and it is therefore, liable to be dismissed on that ground alone without considering its merits.

12. As a result, the OA, being barred by limitation, is dismissed. It is made clear that we have not considered other grounds raised by the parties while passing this order. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath