

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No.242/2015
With
M.A. No.216/2015
Dated this the 24th day of December 2020**

Date of Reserve:20.10.2020

Date of Pronouncement: 24.12.2020

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)
Hon'ble Sh. A.K. Dubey, Member (A)

Shri Hans Raj,
Son of Shri Charandas,
Retd.Dy.G.M.Telecom,
Residing at H/No.9, Block No.E/17,
Shivalik, Sector-61,
Noida- 201 301.

Applicant

(By Advocate Mr.M.S.Trivedi)

Vs.

1. The Chairman,
Telecom Commission,
Department of Telecom,
Sanchar Bhavan,
20,Ashoka Road,
New Delhi -110 001.
2. The Chief General Manager,
O/o CGM, Gujarat Telecom Circle,
Telecom Bhavan, C.G.Road,
Navrangpura, Ahmedabad – 380 009.
3. Accounts Officer (Pension)
O/o CCA, Ministry of Communication
& Information Technology,
Department of Telecom, 7th Floor,
P & T Admn. Building,
Gujarat Telecom Circle,
Khanpur, Ahmedabad- 380 001.

...Respondents

(By Advocates Mr.H.D.Shukla
& Mr.Joy Mathew)

O R D E R**Per:Jayesh V.Bhairavia, Member (J)**

1. The present Original Application has been filed by the applicant assailing the decision dated 12.11.2014 (Annex. A/1) passed by the respondent No.2 i.e., Accounts Officer (Pension), Office of the Controller of Communication Accounts, Department of Telecommunication, Ahmedabad. The impugned order declines to entertain and consideration of the claim of the applicant for re-fixation of his pay in the scale of Rs.14,300-400-18,300/- on the footing that the matter regarding fixation of pay in the selection grade of pay does not pertain to the said office. What the applicant has prayed by filling present OA is to quash and set aside the impugned order dtd. 12.11.2014 (Annex. A/1). It is further prayed to issue direction to the respondents to give benefit of upgraded pay scale of Rs.14,300/- 400-18,300/- upon completion of 13 years of service as Gr."A" officer in the lower scale or at least from the date the said pay scale was granted to Mr.M.C.Verma, who is stated to be similarly situated employee and junior to the applicant, along with arrears of revised pay with 12% interest and the cost. Consequential effect of revision of pay on the pension with arrear and interest has also been prayed for.
2. The OA accompanies with an MA No.216/2015 seeking condonation of delay of 3267 days in approaching this Tribunal. To explain the delay, it is sought to be contended that after the applicant came to know that the respondents had granted

upgraded pay scale to his junior and other similarly situated employees in due regard to the order dtd.10.10.2003 passed by this Tribunal in OA No.454/2000 and confirmed by the Hon'ble High Court in SCA No.11731/2004 on 29.03.2006 and further the SLP preferred by the respondents was dismissed by the Hon'ble Supreme Court, he had submitted various representations before the competent authority and requested to extend the benefit of upgraded pay scale as the applicant had completed 13 years service in Gr."A" on or before 01.01.1996. However, the claim of the applicant was not considered and the respondent No.3 vide impugned order dtd.12.11.2014 (Annex.A/1) informed the applicant that the claim raised by him did not pertain to its office.

2.1 It is submitted that the action on the part of the respondents in not extending the benefit of upgraded pay scale has adversely affected the pension of the applicant and the applicant is receiving less pension. As per the case of the applicant, the pension being continuous cause of action and the continuous wrong / injury, the cause of action also continues from months-to-months. Therefore, it is prayed that delay which has occasioned in preferring the present OA be condoned.

3. The brief facts as narrated in the OA and as highlighted by learned advocate during the course of argument are as under:-

3.1 The applicant while working as permanent officer of TES Gr. "B" under the Ministry of Communication (P&T) Board, he was promoted in the senior time scale of ITS Gr. "A" vide Memorandum dtd. 10.10.1984 (Annex. A/4).

- 3.2 Thereafter, on 18.05.1999, the applicant was promoted from ITS to JAG (ie., Junior Administrative Grade) Rs.12000-16,500/-.
- 3.3 It is further contended that the applicant while working as Deputy GM (Legal) in the office of the respondent retired on 15.09.1999.
- 3.4 It is stated that in the year 1997, on the recommendation of the 5th Pay Commission, the respondent No.1 issued Circular dated 27.10.1997 and thereby upgraded the pay scale of the Gr."A" officers, who had completed 13 years of service on or before 01.01.1996.
- 3.5 Since the respondents had denied to extend the said benefit to one Mr. M.C.Verma who was junior to the applicant, he approached this Tribunal by way of OA No.454/2000 and sought relief for direction to grant pay scale of Rs.14,300-18,300/- on completion of 13 years of service in ITS 'Group A'. The said OA was allowed by this Tribunal vide order dated 10.10.2003 wherein it was held that the Clause 3 of clarification dated 26.04.2001 issued by the respondent No.1 denying the benefit of upgraded pay scale to the Gr."A" officers, who retired on or before 06.06.2000 is ultra vires and accordingly, it was struck down. Further, directions were issued to respondents to take steps to grant upgraded pay scale to the said officer. Aggrieved by it, the respondent BSNL filed SCA No.11731/2004 which was dismissed with cost and SLP thereon was also dismissed (Annex.A/6). Thus, the order passed by this Tribunal attained finality.
- 3.6 Since the applicant was fulfilling all the conditions for grant of upgraded pay scale and since his junior and other similarly situated employees were granted the said benefit, he represented before

the respondent Nos.2 & 3 followed by reminder representation dtd.12.08.2014 & dtd.14.10.2014 (Annexs. A/2 & 3).

3.7 In response to the applicant's representation dtd.14.10.2014, the Respondent No.3 vide its letter/order dtd.12.11.2014 (Annex.A/1) denied his claim on the ground that the grievance/claim of the applicant does not pertain to their office. Thereafter, the applicant had submitted reminder representation dtd. 15.11.2014 (Annex. A/7) before the respondent No.2 wherein it was stated by the applicant that since he had served under the DoT for more than 13 years as Gr."A" Officer and since the department had granted the revised pay to his colleague and juniors as per the details provided in the said representation, he ought to have been treated equally with one Mr.K.K.Chaturvedi and the said Mr.M.C.Verma and the benefits of upgraded pay scale ought to have been accorded to him also. However, the respondents have not considered the same.

3.8 The specific case of the applicant is that he retired while he was working under the respondent Nos.1&3 i.e., DoT before the respondent No.2 BSNL came into existence. Therefore, the respondents DoT are competent authority as also under statutory obligation to refix his pay and the correct amount of pension at par with his junior. Further, he has not been treated equally by the respondent and thereby the impugned order is bad in law and in violation of Articles 14 and 16 of the Constitution of India.

4. Per contra, the respondent No.2 i.e., Office of Chief General Manager, Gujarat Telecom Circle, BSNL, Ahmedabad denied the claim of the applicant by filing his written

reply dtd. 06.01.2016. The said respondent mainly contended as under:-

- 4.1 The applicant herein, ex-employee of Department of Telecommunication had retired from service w.e.f. 30.09.1999, prior to the BSNL came in existence.
- 4.2 It is stated that DoT in consultation with the DoP&T had issued instructions vide letter dtd. 25.01.2007 to Gujarat Telecom Circle to implement the judgment passed in SCA No.11731/2004 & SCA No.14468/2004 by the Hon'ble Gujarat High Court in favour of the two ex-employees viz., Mr.M.C.Verma and Mr. K.K.Chaturvedi as a policy matter regarding pay fixation of DoT employees.
- 4.3 The claim of the applicant also relates to retired DoT employees. The BSNL cannot conduct any review DPC since the applicant was an employee of DoT and even after holding the review DPC and applicant's case is accepted by the DPC, financial benefits if any, are to be released by DoT. BSNL has no role to play and is not competent to grant or not to grant the benefits claimed by the applicant.
- 4.4 The respondent No.2 has also filed their separate reply to MA No.216/2015 and opposed the prayer of the applicant for condonation of delay mainly on the ground that the applicant has filed the present OA after more than 9 years. It is stated that according to the applicant, his right to claim selection grade and benefit of pay scale accrued in the year 1997. If this is treated to be correct, the applicant should have approached this Tribunal latest by year 1998.

5. On behalf of respondent No.3 i.e, Office of Controller of Communication, Accounts, Gujarat Circle, the Joint Controller of Communication Accounts – II has also filed the written reply and denied the claim of the applicant. In the said reply, it has been contended as under:-

5.1 The applicant was posted in Gujarat Circle. With regard to grant of upgrade pay scale under OM of year 1997, the clarification dtd. 26.04.2001 was issued by PAT Section of DoT HQ in consultation with Ministry of Finance and according to it, the upgraded scale of Rs.14,300-18,300/-shall not be admissible to those group of Officers who retired on or before 6th June, 2000 (Annex. R/1). Though the said clarification dated 26.04.2001 more particularly, Clause 3 of it, was quashed and set aside by this Tribunal and upheld by the Hon'ble High Court in the matter of Mr. M.C.Verma and subsequently in the case of Mr.K.K.Chaturvedi, the said judgment will not help the applicant since he retired on 15.09.1999/30.09.1999 i.e., before 26.04.2001. As such he was not eligible to claim the upgraded scale at par with his junior.

5.2 It is further submitted that so far as grant of upgraded scale of Rs.14,300- 18,300/- to one Mr. M.C.Verma and Mr.K.K.Chaturvedi is concerned, it was decided by the competent authority vide its letter dtd. 25th January 2007 (Annex.R/2) to implement the directions issued by Hon'ble High Court which was confirmed by the Hon'ble Apex Court only in favour of two employees viz., Mr. M.C.Varma and Mr. K.K.Chaturvedi. Therefore, the said decision of the respondents to grant upgraded pay scale to

aforesaid officers cannot be treated as precedent. Hence, the applicant is not entitled to claim the parity.

5.3 It is further submitted that the applicant has approached this Tribunal after gross delay of more than 17 years whereas Mr.Verma had approached this Tribunal in the year 2001. The order and judgment passed in the case of Mr. M.C.Verma was limited to the said petitioner and the applicant was not covered by the said judgment. Therefore, the applicant cannot claim any parity even otherwise the applicant is not entitled to claim the benefit as prayed for after the gross delay of more than 15/17 years.

6. We have heard the learned advocates for the respective parties and perused the material available on record.

6.1 Before we proceed to touch the merit aspects of this application, we deem it appropriate to first adjudicate the delay aspect. In the present OA, the applicant has mainly claimed that he is entitled to the benefit of pay scale of Rs.14,300-400-18,300/- on completion of 13 years of his service in the lower scale Gr."A" or at least from the date of his junior Mr. M.C.Verma was given the said benefits. It is noticed that the respondents granted benefit of upgraded pay scale to the similarly placed employees vide their decision dated 25.01.2007 (Annex.R/2) in compliance of judgment passed by the Hon'ble High Court of Gujarat in SCA No.11731/2004 (Annex.6) upholding the order of this Tribunal in OA No.454/2000 dtd.10.10.2003. The SLP preferred against the judgment of the Hon'ble High court also stood dismissed. It is further noticed that when the applicant came to know about the factum of grant of

upgraded pay scale to his junior and other similarly placed persons, he submitted representation before the competent authority requesting to grant him upgraded pay scale treating him at par with his junior and other similarly situated person who had been granted such benefits. But the request of the applicant was not entertained resulting into under fixation of his pension. Vide impugned letter / order dtd.12.11.2014 (Annex. A/1) the respondent No.3, i.e. Accounts Officer (Pension), DoT, Gujarat Telecom Circle, Ahmedabad, informed the applicant that the claim does not relate to its office. Thus, the claim of the applicant for re-fixation of his pay and revising his pension remained undecided and he continued to receive lessor pension for wrong fixation of his pay by the respondents. The wrong continued and same has resulted into continuous source of injury affecting his pension adversely.

6.2 The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes as propounded in catena of decisions by the Hon'ble Supreme Court. We may, at this stage, profitably refer to the judgment of the Hon'ble Supreme Court in the case of **Union of India & Ors. vs. Tarsem Singh [(2008) 8 SCC 648]**, the relevant part of which is reproduced herein below:-

“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 Dhyaneswar 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) :

"31....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."

5. 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 :

"5...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....."

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

"8....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.

10. 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."

7. 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.

8. 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.

9. 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." (emphasis supplied)

- 6.3 In the present case, there is no gainsaying that refusal to the upgraded pay scale and consequential revision of amount of pension to the applicant as prayed for in the present OA is a continuing wrong, and it has lowered the amount of pension being received by the applicant. The claim of the applicant for entitlement of upgraded pay and re-fixation of his pension does not affect the right of the third parties. The said fact has not been rebutted by the respondents except object the claim on the ground of delay.
- 6.4 Thus, looking from the angle of above referred decision of the Supreme court in **Tarsem Singh** (supra), the objection raised by the respondents not tenable and the delay deserves to be condoned to meet the ends of justice. Accordingly, MA No.216 of 2015 filed by the applicant for condonation of delay in the present OA stands allowed.
7. Now, adverting to the merit aspect of the present application, it is noticed that the applicant was promoted in STS Grade of ITS Group "A" on 24.09.1984. Thereafter, he was promoted as Junior Administrative Grade (JAG). The STS Group and JAG are Gr. "A" services. He retired as JAG on 15.09.1999. His pay and his pension was fixed in the scale of pay by Rs.12000/- to Rs.16500/-. Before his retirement, the Government of India, Ministry of Communication, Department of Telecommunication issued Circular No.1.1/97/PAT dtd. 27.10.1997, observing that the MOF has clarified that the upgraded scale of Rs.14300-400-18300/- would be given to all officers holding post of Superintendent Engineers and those holding analogous and equivalent post in all

Gr.“A” Engineering Services who have completed in all, total service of 13 years in Gr.“A”. Further the said upgraded scale would be given to all officers holding JAG level post belonging to the Gr. “A” of the Department of Telecommunication having completed total service of 13 years w.e.f. 01.01.1996. The said Circular further directs that pay fixation etc. of such officers may be done accordingly. It would be clear that benefit was to be extended to all such persons who have completed service of 13 years in JAG level post on or before 01.01.1996.

- 7.1 As noticed hereinabove, when the benefit of upgraded pay scale was not granted to the eligible employees, one of such aggrieved person and junior to the applicant, namely Shri M. C. Verma filed OA No.454/2000 before this Tribunal. This Tribunal, while disposing the said OA on 10.10.2003, struck down the clarification stated in Clause No.3 of Circular dtd. 26.04.2001, holding that the action of the respondent in denying the benefit of upgraded financial pay scale to Gr.“A” officers who retired prior to 06.06.2000, as being *ultra vires* of the mandate of the Constitution and further held that clarification published in the year February 1998 and April 2001 have to relate back to 01.01.1996 as far as upgradation of pay scale is concerned and accordingly the respondents were directed to take steps for upgradation of pay scale of the applicant. However, arrears of pay were restricted since the applicant therein had retired on 31.12.1997. The respondents were further directed to re-compute the terminal benefits.

7.2 The aforesaid order of this Tribunal was challenged by the respondent before the Hon'ble High Court. While upholding the view taken by this Tribunal and dismissing the SCA filed by the respondents, the Hon'ble High Court of Gujarat in SCA No. 11731 of 2004, held as under:

"7. After the matter was remanded to the Tribunal, the cases of Shri K.K. Chaturvedi and Shri M.C. Verma were heard together. **The Tribunal observed that clarification no.3 was creating a class into a class, which was violating the principle of equality and was ultra vires and as such, it was required to be quashed. It accordingly quashed the said clarification. It further observed that each of the petitioner before it would be entitled to the Grade of Rs.14300-18300 since after completion of 13 years.** While disposing of the matter, the matter of Shri K.K. Chaturvedi relating to his retiral benefits etc. was not disposed of in favour of the said petitioner, therefore, he has also filed Special Civil Application No. 2900 of 2004.

8. Ms. Pauromi B. Sheth, learned counsel for the department submits that the first circular of 27th October, 1997 did not confer any rights in favour of the person who had completed 13 years much after 1.1.96 and as such, the petitioner's case would be covered under the circular dated 9.2.98 and the clarification dated 26.4.2001. According to her, petitioner Shri M.C. Verma, though had completed 13 years of Gr.A service on 24.9.97, but as his case could not be considered before the next July, he would not be entitled to the additional grade. For Shri K.K.Chaturvedi, it is submitted that his case would not fall in the category in view of clarification no.3 as he had retired prior to 6th June, 2000. It is also submitted that the observations made in the case of Shri K.K.Chaturvedi would not help and assist the case of Shri M.C. Verma even if the department has not provided any reasons for fixing the cut off date as 6th June, 2000.

9. Mr. M.S. Trivedi, learned counsel for the respondent and for Shri K.K. Chaturvedi, however, submitted that the objections raised by the department are per se, misconceived and they deserve to be rejected outright. According to him, the right accrued in favour of each of the petitioner on completion of 13 years of service and the consideration thereof is deferred for some time, that would not adversely affect the rights of the incumbent. It is also submitted by him that if in case of Shri K.K. Chaturvedi, this Court had observed that the High Court failed to understand as to how DOP&T has clarified and on what basis, the upgraded scale was not made admissible to the officers retiring before 6th June, 2000 and on that count alone, the matter was remanded, then, the department was obliged to bring out a justifiable explanation giving a cause which persuaded it to fix the cut off date as 6th June, 2000. He further submitted that in these cases, each of the petitioner had completed 13 years' service in Gr.A services, therefore, on completion of such services, they would be entitled to the benefit of the Grade. Ms. Sheth, learned counsel for the petitioner, however, submitted that a person who is entitled to promotion on completion of qualifying services if cannot be

promoted because of non-availability of the vacancy, then the right to draw benefits from the promotional post would accrue in his favour from the date of the promotion and not from the date of completion of qualifying service. She submits that unless the entitlement is considered in July next on completion of 13 years, the incumbent would not be entitled to any benefit.

10. So far as last of the argument is concerned, we would take it first and would describe it as an argument of frustration. In a given case, when the vacancies are not available, a person entitled to be promoted cannot be promoted because of non-availability of the vacancy, but in a given case, where a vacancy is available and the person who is entitled to promotion is not promoted because of one reason or the other or because of pendency of some departmental inquiry, then, on clearing of departmental inquiry and in case of a clean chit in favour of such incumbent, the incumbent will have to be given all his promotional benefits attached to his promotional post from the date of his entitlement and not from the date of the conclusion of the inquiry.
11. In the present case, the right to get upgraded scale of Rs.14300-18300 accrued in favour of each of the petitioner on completion of 13 years of qualifying service. If for one or the other administrative reason, the department thought that cases of such persons are to be considered in July next, then, in the July next, the department only has to issue an order that such person would be entitled or not. In case, nothing adverse is found against such incumbent and he otherwise fulfills all the requirements, then, the department would be obliged to issue such order. In such a case, the entitlement would be from the date of completion of 13 years of qualifying service and not from the date when the department considers the case or issues an order. If the submission made by the learned counsel for the department is accepted, then, the department can frustrate the rights of all concerned by not considering their cases for long many years and in the meanwhile, allow everybody to retire. When the department is issuing a circular, then, it should be honest in interpreting the circular and should not become dishonest to its own stand. In the present case, undisputedly, the right to get upgraded scale accrued in favour of each of the petitioner much before their retirement and if that is the correct position of fact, then, their cases were to be considered in July next for necessary orders. When cases are considered in July next, the entitlement would be from the date of completion of 13 years. In the present case, it would not be possible for us to hold that the right would flow in favour of an employee/incumbent only in July next and if before that a man retires, he would not be entitled to any benefits under the circulars.
12. So far as the clarification no.3 is concerned, we must immediately observe that if in the matter of Mr.K.K.Chaturvedi, this Court had observed that the department was not coming out with a clarification, rather reasonable and justifiable clarification for fixing the cut off date and the Tribunal was obliged to inquire from the department, then, the department was obliged and duty-bound to give clarification for fixing the cut off date. **Even otherwise, the clarification cannot withdraw the rights which have already accrued in favour of a person. The second circular does not fix 6th June,**

2000 as cut off date nor does the circular say that the persons who had retired prior to 6th June, 2000 would not be entitled to the benefit of the earlier circulars and if that be so, by clarification, substantive circular conferring rights upon the incumbent could not have been interfered with nor rights accruing in his favour could be withdrawn. A clarification clarifies what is in existence, it cannot add or delete to or from the original text nor can make nugatory the provisions in existence. If the department wanted to fix a cut off date, then, it was obliged to issue a fresh circular in place of issuing a clarification.

13. Examining from every angle, we are of the opinion that there is no merit in Special Civil Application No. 11731 of 2004 and Special Civil Application No. 14468 of 2001. Each of the petition is dismissed with costs quantified to Rs.5,000/- in each case. Rule is discharged in each of the petition. Interim relief earlier granted, if any, is vacated.
14. So far as Special Civil Application No. 2900 of 2004 is concerned, in light of the findings recorded by us, we must observe that the petitioner Mr. K.K.Chaturvedi would be entitled to all the benefits of the upgraded scale on completion of 13 years' service and for the purposes of retiral benefits and pension this would be taken into consideration by the department. The petition Special Civil Application No. 2900 of 2004 filed by Mr. K.K.Chaturvedi is allowed to the extent indicated above. Rule is made absolute to the above extent."

7.3 It can be seen from the aforesaid observation of the Hon'ble High Court that the restrictions imposed by the respondents under the clarification dtd.26.04.2001 were not rational and it was class within the class. Accordingly, the Hon'ble High Court did not find merit in the SCA filed by the respondents and directions were issued to grant benefit of upgraded pay scale by recomputing the retirement benefits. However, the arrears were restricted.

It is also noticed that the SLP filed by the respondents against the judgment of the Hon'ble High Court also stood dismissed. Finally, the respondent had implemented the directions issued by this Tribunal and High Court as per the decision of the DoT dated 25.1.2007 (Annex. R/2) and granted the upgraded pay scale to the applicant of OA No.454/2000 and OA No.133/2000,i.e., Mr.M.C.Verma and Mr.K.K.Chaturvedi. Since the restrictions

imposed for not granting benefit of the upgraded pay scale to the employees who retired on or before 6.6.2000 by way of Circular dtd.26.04.2001 and the said clarification was set aside by this Tribunal and when such decision of the Tribunal attained the finality with the dismissal of the SLP. In our considered view, the said order of this Tribunal and the judgment passed by the Hon'ble High Court referred herein above, applies to all the similarly situated employees, who had completed 13 years of service on or before 1.1.1996 in Gr."A" services, and retired on or before 6.6.2000. Thus, the said judgment/order with regard to grant of upgraded pay scale and consequential benefits cannot be considered to be *in personam*, but has to be considered *in rem*.

7.4 In this regard, we may profitably refer to the decision of the the Hon'ble Supreme Court in **State of Uttar Pradesh & Ors. Vs.Arvindkumar Srivastava & Ors. Reported in 2015) 1 SCC 347**. Paras 22 to 22.3 of the said judgment is relevant, which are reproduced herein below:-

“22.The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that

their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

(emphasis supplied)

7.5 The judgment and order pronounced by the Tribunal as well as the Hon'ble High Court with respect to grant of upgraded pay scale by quashing and setting aside the restrictions imposed by the respondents, in no uncertain terms was judgment *in rem* and same is with intention to give benefit to all similarly situated persons, whether they approached the Court or not. Therefore, the obligation is cast upon the authorities to extend the benefit thereof to all similarly situated persons without any ifs and buts. It is worth to be mentioned here that grant of upgraded pay scale and its consequential effect by way of revising the pension, it relates to only the applicant and it does not affect the right of any third party. It is also worth mentioning that the cause of action pleaded by the applicant actually continues from months-to-months. Still, the respondent No.3 raised its hands and vide impugned order/letter dtd.12.11.2014 stated that the issue

related to pay fixation in the case of the applicant is not related to his office.

- 7.6 In the present case, it is not in dispute that the applicant had completed 13 years of service before 01.01.1996 in Gr."A" as JAG and he retired in the year 1999, while working with respondent Nos.1 & 3. Thus, he was fulfilling the criteria to be accorded the upgraded pay scale as per OM dtd.27.10.1997.
8. When the restrictions imposed by clarification No.3 of 26.4.2001 in extending the upgraded pay scale has been set aside, it is not open for the respondent to impose the said non-existent clause to restrict the grant of benefit of upgraded pay scale by stating that the benefit extended to the junior and other similarly employees cannot be treated as a precedent. The said stand of the respondent is in fact contrary to the decision taken by this Tribunal, and the said decision admittedly attained the finality on dismissal of the SLP. Thus, the respondents have erred in not extending the benefit of upgraded pay scale as prayed for in the present application.
9. In view of what has been discussed hereinabove, we have no hesitation in holding that inaction on part of the respondents in not granting the upgraded pay scale to the applicant under the provision of OM dtd.27.10.1997, as prayed for by the applicant is in flagrant disregard to the order passed by this Tribunal in O.A.No.454/2000, which stood confirmed upto the stage of Hon'ble Supreme Court as mentioned hereinabove. The applicant herein, admittedly was working with the Department of Telecommunication and the said Department is under statutory

obligation to decide the revision of pay including grant of upgraded pay as also revising the pension in the case of the applicant. In the result, the impugned order dated 12.11.2014 (Annex. A/1) is quashed and set aside. In light of what is stated herein above, the respondents are directed to consider the case of the applicant for grant of upgraded pay scale as per OM dtd. 27.10.1997, and to pass the consequential order in that regard including revising the pension of the applicant within a period of 3 months from the date of receipt of copy of this order.

10. While deciding this matter on merit in favour of the applicant, this court is not oblivious to the fact that there is long delay in preferring this OA. In the facts and circumstances of the case, though the delay has been condoned for the reasons stated above, we consider it just and proper to **restrict the arrear part**. Therefore, we order that the applicant will be entitled to get the consequential benefits of revision of pension only from the date of filling of the present OA., but with no interest thereon.
11. Accordingly, the OA stands partly allowed in the aforesaid terms. No orders as to costs.

(A. K. Dubey)
Member (A)

(Jayesh V. Bhairavia)
Member (J)