CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

26.05.2009

OA No.133/2008 with MA No.117/2008

Mr. P.N.Jatti, counsel for applicant
Mr. Kunal Rawat, counsel for respondent No. 1,2, & 4
Mr. Satyavratt Sharma, counsel for respondent No.3

    Heard the learned counsel for the parties.

    For the reasons dictated separately, the OA and MA for condonation of delay are disposed of.

(B.L.KHATRI)
Admv. Member

R/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 26th day of May, 2009

ORIGINAL APPLICATION No.133/2008
with Misc.Application No.117/2008

CORAM:

HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

Smt. Phooli Devi
W/o late Shri Poonam Chand,
r/o Plot No.24, Keshav Colony,
Gangori Bazar,
Jaipur.

                                              .. Applicant

(By Advocate: Shri P.N.Jatti)

                              Versus

1.   Union of India
      Through the Secretary,
      Ministry of Urban Development
      and Poverty Alleviation,
      Govt. of India,
      Directorate of Estate (Policy-III Cell),
      Nirman Bhawan, New Delhi.

2.   Executive Engineer
      Central Public Works Department,
      Jaipur Central Division-I,
      NCR Building,
      Statue Circle,Jaipur

3.   National Airports Authority
      O/o the Controller of Aerodrome,
      Civil Aerodrome Sanganer,
      Post Airport, Sanganer, Jaipur

4.   The Assistant Engineer,
      Vidyut Vimanan Sub Dn. Jaipur,
      Kendriya Lok Nirman Vibhag,
      Sanganer Hawai Adda,
      Sanganer, Jaipur

.. Respondents

(By Advocate: Shri Kunal Rawat for resp. 1,2 and 4 and Shri Satyavratt Sharma for resp. No.3)

O R D E R (ORAL)

In this Original Application, the applicant has filed a Misc. Application for condonation of delay in filing the Original Application wherein prayer has been made for release of family pension.

The law on this point is well settled. The Apex Court in the case of Union of India and Ors. Vs. Tarsem Singh, (2008) 2 SCC (L&S) 765 has held that 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. In that case a delay of 16 years was condoned by the Hon'ble Apex Court. The case of the applicant for condonation of delay is also covered by the judgment of the Hon'ble Apex Court in the case of M.R.Gupta vs. Union

of India, 1995 SCC (L&S) 1273. In this case the appellant approached the Hon'ble High Court in 1989 with a grievance in regard to his initial pay fixation w.e.f. 1.8.1978. The claim was rejected as it was raised after 11 years. The Apex Court has held in para 5 of the judgment as under:-

> "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 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 view of the law laid down by the Hon'ble Apex Court, as noticed above, the delay in this case is condoned as non-payment of family pension is a continuous wrong. The Misc. Application No.117/2008

for condonation is allowed and disposed of accordingly.

2. In the OA, the applicant has prayed for the following reliefs:-

> "8.1 That by a suitable writ/order of the directions the respondents be directed to release the pension/family pension on the part of the widow of late Shri Poonam with effect from 1.11.1993 with all other retiral benefits and with all the consequential benefits with effect from 1.11.1993.
>
> 8.2 That a reasonable interest also be allowed to the applicant on the delayed payment of the retiral benefits.
>
> 8.3 Any other benefit which the hon'ble bench deems fit."

3. Brief facts of the case are that husband of the applicant Shri Poonam Chand, Assistant Pump Operator, was working in the Central Public Works Department. Shri Poonam Chand expired on 31.10.1993. A Legal Notice dated 30.9.2007 was given to the Assistant Engineer, Vidyut Vimanan, Sub-division, Jaipur Central Public Works Department, Sanganer Airport, Sanganer on 30.9.2007 for release of family pension and other retiral dues.

4. The learned counsel for the applicant has also made reference to Ann.A/1 which has been addressed to the National Airport Authority. No cognizance on this letter can be taken as the National Airport Authority is not under the jurisdiction of this Tribunal and no

mandatory direction can be issued to the National
Airport Authority as held in the case of M.P.Mehta vs.
Union of India and Ors., OA No.242/2008, decided on
12th May, 2008.

5.   Dispute in this case is whether the family
pension is payable by the National Airport Authority
or by the Central Public Works Department? The learned
counsel for respondent No.3 i.e. National Airport
Authority has categorically stated that since pension
has been paid by the Central Public Works Department,
the family pension should also be paid by them as per
rules.

6.   Late Shri Poonam Chand expired on 31.10.1993. The
order for pension was issued by the Pay and Accounts
Office, Central Public Works Department as per
Ann.R/2. However, while issuing the PPO to late Shri
Poonam Chand, no order for payment of family pension
was issued by the Central Public Works Department. In
the PPO (Ann.R/2) it is stated that family pension
will be authorized on confirmation of Family Pension
Scheme. However, till today, no pension has been paid
to the widow of late Shri Poonam Chand and the widow,
Smt. Pooli Devi has prayed for the reliefs as
mentioned above.

7.   I have heard the learned counsel for the parties and gone through the material placed on record.

8.   After having regard to the material placed on record and the reply filed by the respondents, I am of the opinion that since pension has been paid by the Pay and Accounts Office of the Central Public Works Department, the family pension is also payable by them as per rules. Therefore, respondent No. 2 and 4 are hereby directed to process the case of family pension of the applicant within a period of three months and allow the same as per rules. In case the family pension is not payable as per rules, a reasoned and speaking order should be passed by the respondents. In case the applicant is still aggrieved by the order, if any, passed by the respondents not releasing family pension, she is at liberty to file a substantive OA for the same cause of action.

9.   In the result, the OA as well as MA stand disposed of with no order as to costs.

(B.L.KHATRI)
Admv. Member

R/