

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

RA 11/2017 in
OA 1781/2013
MA 153/2017

Reserved on: 11.05.2017
Pronounced on: 16.05.2017

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

1. The Chief Secy.,
Govt. of NCT
5th Floor, Delhi Sectt.
New Delhi
2. The Principal Secy., Finance
Govt. of NCT of Delhi
4th Floor, I.P. Estate, Delhi Sectt.
New Delhi-2

(Through Ms. Alka Sharma, Advocate)

vs.

Shri N.K. Rohtagi
S/o Late Shri S. Narain
R/o 160D, Mansarovar Park,
DDA Flats, New Delhi

...Review Respondent

(Appeared in person)

ORDER

Mr. P.K. Basu, Member (A)

We have heard the counsel for the parties on MA 153/2017, which is an application for condonation of delay filed by the respondents in filing Review Application No.11/2017.

2. The learned counsel for the review applicants relied on **Tota Ram Sharma Vs. Union of India**, (1991) 18 ATC (PB), in which the Tribunal held that "where there is infringement of a fundamental right, bar of limitation does not apply." She also relies on **Rajiv Tandon Vs. Union of India**, 2012 (1) SLJ 129 (CAT).

3. Lastly, it is stated that if delay is not condoned, it will cause an irreparable financial loss to the Government.

4. The M.A. for condonation of delay was, therefore, allowed and the RA heard.

5. The learned counsel for the review applicants stated that RA 11/2017 seeks review of the order dated 6.10.2015 passed in OA 1781/2013.

6. We quote below para 4 of the order of the Hon'ble High Court based on which the High Court permitted the review applicants to withdraw the Writ and file RA before this Tribunal:

"That as per record, Sh.N.K. Rohtagi completed 30 years of regular service on 10.01.2002 and was accordingly eligible for 3rd financial upgradation with effect from 01.09.2008 i.e. the date of introduction of the MACP Scheme.

That as on the due date of eligibility of MACP i.e. 01.09.2008, Sh. Rohtagi was holding the higher post of JAO on ad hoc basis, while holding the post of UDC on regular basis.

That as per Para-26 of the annexure to the OM dated 19.05.2009 of GOI, DoPT, cases of persons holding higher posts purely on ad hoc basis shall also be considered by the Screening Committee along with others. They may be allowed the benefit of financial

up gradation on reversion to the lower post or if it is beneficial vis-à-vis the pay drawn on *ad hoc* basic.

That accordingly the case of Sh. Rohtagi is to be considered by his cadre controlling authority with reference to the post of UDC, the post he was holding on regular basis.

That as on the due date of his eligibility for 3rd financial upgradation under MACP Scheme i.e. on 01.09.2008, Sh. N.K. Rohtagi was holding the post of Junior Accounts Officer on *ad hoc* basis. However, on the said date, he was holding the post of UDC on regular basis. So as on 01.09.2008, he would have drawn pay in PB-2: Rs.9300-34800 plus Grade pay Rs.4200/- had he not been holding the post of JAO on *ad hoc* basis. Accordingly, Sh. Rohtagi was entitled to 3rd financial upgradation on 01.09.2008 in the Grade Pay of Rs.4600/-, being the next hierarchical Grade Pay, in terms of Govt. of India, Dept. of Personnel & Training, OM No.35034/3/2008-Estt.(D), dated 19th May 2009.

That accordingly, Sh. Rohtagi, AAO (Retired) is not entitled for financial upgradation in the Grade Pay of Rs.5400 but only in the Grade Pay of Rs.4600/-.

That however, Sh.N.K. Rohtagi was already drawing higher grade of Rs.4800/- as on 01.09.2008 i.e. the due date for 3rd financial upgradation, consequent upon his promotion on *ad hoc* basis to the post of Junior Accounts Officer with effect from 28.01.2004."

7. Apparently, the respondents have not placed full facts before the Hon'ble High Court. They pleaded before the Tribunal in para 1 of their reply in the OA that subsequent to the promotion on *ad hoc* basis as Junior Accounts Officer (JAO), he was appointed on regular basis as Assistant Accounts Officer (AAO) with effect from 31.12.2009 (Grade Pay Rs.4800/-) as the posts of JAO and AAO were merged on the recommendations of the 6th Pay Commission.

8. OA 1781/2013 was disposed of with the following order:

"7. In view of above discussion, we allow the OA directing the respondents as follows:-

- (i) Grant third MACP to the applicant allowing Grade Pay of Rs.5400/- and payment of arrears from 1.09.2008 to 31.03.2011; and
- (ii) Revise the pension of the applicant based on enhanced pay and make payment of revised pensionary benefits viz. leave encashment, gratuity and commutation.

The above exercise should be undertaken within a period of two months from the receipt of a copy of this order. No costs."

9. Therefore, what the respondents should have pointed out before the Hon'ble High Court was that instead of allowing Grade Pay of Rs.5400/- with effect from 1.09.2008 and payment of arrears from 1.09.2008 to 31.03.2011 (date of superannuation), this date should be 31.12.2009. This was neither pointed out at the stage of hearing of the OA nor before the Hon'ble High Court. But in view of the changed factual position, the RA is allowed and para 7 of the order dated 6.10.2015 passed in OA 1781/2013 is corrected as follows:

"7. In view of above discussion, we allow the OA directing the respondents as follows:-

- (i) Grant third MACP to the applicant in Grade Pay of Rs.5400/- from 31.12.2009 and payment of arrears from 31.12.2009 to 31.03.2011; and
- (ii) Revise the pension of the applicant based on enhanced pay and make payment of revised pensionary benefits viz. leave encashment, gratuity and commutation.

The above exercise should be undertaken within a period of two months from the receipt of a copy of this order. No costs."

10. Registry shall make necessary corrections in the order dated 6.10.2015 in OA 1781/2013 and issue a certified copy of the corrected order to both the parties.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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