

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

M.A.NO.3197/17
(In OA No.2572/16)

New Delhi, this the 12th day of December, 2017

CORAM:
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....
Sunehari Devi Jatav,
w/o late Shri Phool Singh Jatava,
Age: 84 years,
R/o SL-22, Shastri Nagar,
Ghaziabad-201002 (Uttar Pradesh)
Through Attorney: Mukesh Kumar, Advocate
S/o Sunehari Devi Jatav Applicant

(By Advocate/Attorney: Mr.Mukesh Kumar)
Vs.

1. Union of India,
Through its General Manager (Northern Railway),
Ministry of Railways, Head Office, Badoda House, K.G.Marg,
New Delhi 110001
2. Deputy Chief Personnel Officer (H.Q.),
Northern Railway, Head Office, Badoda House,
Kasturba Gandhi Marg, New Delhi 110001
3. Divisional Railway Manager,
Northern Railway, DRM Office, Civil Lines,
Near Railway Stadium, Morabadad 244001
4. Divisional Finance Manager,
DRM Office, Northern Railway,
Near Railway Stadium, Morabadad 244001..... Respondents

(By Advocate: Mr.V.S.R.Krishna)

.....
ORDER

O.A.No.2572 of 2016 was filed by the applicant on 29.7.2016
seeking the following reliefs:

“(a) To grant revised Pay Scales of IRSE Junior Scale to late
Shri Phool Singh Jatava, husband of Applicant No.1
herein, for the purpose of pension, i.e., Pay Scales of
Rs.2200-75-2800-EB-100-4000 (4th CPC), Rs.8000-275-

13500 (S-15) (5th CPC) and 15600-39100 (GP 5400) PB-3 (FP:6300)(BP:10500)(6th CPC) or as due time to time;

- (b) To grant revised Basic Pension from 1.7.1988 to 25.9.2005 in respect of the revised Pay Scales as well as the calculations given under para no.4 above to the husband of Applicant No.1 herein, i.e., late Shri Phool Singh Jatava or as due to him time to time, and release the arrears thereof in favour of the Applicant No.1 herein;
- (c) To grant revised Family Pension from 26.9.2005 onwards in respect of the revised Pay Scales as well as calculations given under para no.4 above to the Applicant No.1 or as due to her time to time;
- (d) To grant arrears of pension from 1.7.1988 onwards till date with interest @ 24% per annum to Applicant No.1 or as due to her time to time;
- (e) To allow cost(s) to the Applicant against the Respondent, in the interest of justice;
- (f) To pass such other order(s) and further reliefs which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."

2. The O.A. was placed before the coordinate Bench of the Tribunal for preliminary hearing on the question of admission on 2.8.2016, when notices were directed to be issued to the respondents, and Shri R.N.Singh, the learned counsel, accepted notices on behalf of the respondents and sought time to file counter reply within four weeks. Thereafter, the O.A. was listed on several dates for filing of the counter reply to the O.A. by the respondents.

3. While the matter stood thus, M.A.No.3197 of 2017 was filed by the applicant on 21.8.2017 with the following prayer:

- “(a) Condone the delay of 26 years against mistake of fact as well as continuous cause of action on pensionary benefits in respect of Revised Pay Scale already granted vide Office Order dated 27.12.1988, copy placed as ANNEXURE A-4, at page no.19 of OA; and/or
- (b) Pass any other order/s as this Hon’ble Tribunal may deem fit and proper in the interest of justice.”

Though the coordinate Bench of the Tribunal granted time on two occasions to the respondents to file counter reply to MA No. 3197 of 2017, the respondents did not file any counter reply till 22.11.2017 when the Tribunal heard the learned counsel appearing for the parties and reserved its order on MA No.3197 of 2017.

4. It transpires from record that the applicant is the widow of late Shri Phool Singh Jatava who retired as AEN/Spl. on 30.6.1988 on his attaining the age of superannuation. He was granted basic pension of Rs.1763/- per month. By notification dated 17.6.1988 issued by the Railway Board, which was published in the Gazette of India, dated 16.7.1988, the applicant and others were promoted to the Junior Scale of the Indian Railway Service of Engineers (Group ‘A’) in the pay scale of Rs.2200-4000/- with effect from 25.3.1988. It further appears that in the case of the applicant’s husband, the respondent-Railways did not grant him consequential benefits of promotion, such as, pay fixation, etc., in the pay scale attached to the Junior Scale of IRSE with effect from 25.3.1988, i.e., before the date of his retirement from service on 30.6.1988, as well as re-fixation of pension from the date following the date of his retirement. It also

appears that the basic pension of the applicant's husband was determined at Rs.1763/- on the basis of his last pay drawn by him in Group B post. Based on that, the pension of the applicant's husband and family pension were also revised as per the 5th CPC recommendations, and the applicant's husband was getting pension till 26.9.2005, i.e., the date of his death. After the 6th CPC recommendations were implemented by the Railways, revised pension payment advice dated 21.12.2010 was issued by the Divisional Finance Manager, Northern Railway, Moradabad, showing, *inter alia*, the corresponding pay band and grade pay of the applicant's husband at Rs.9300-34800/- and Rs.4800/- and granting revised family pension at Rs.5308/- to the applicant with effect from 1.1.2006. While so, the applicant made a representation dated 11.3.2016 claiming grant of pay scale of Junior Scale of IRSE to her husband with effect from 25.3.1988 and consequential re-fixation of his basic pension and family pension with effect from 1.7.1988 as well as revision of basic pension and family pension with effect from 1.1.1996 and 1.1.2006 on the basis of recommendations of the 5th CPC and 6th CPC recommendations. The applicant also claimed payment of arrears of Rs.2,69,230/- and simple interest @ 12% thereon at Rs.2,84,838/-, totalling to 5,54,068/-, as on 1.3.2016. There being no response from the respondent-Railways, OA No.2572 of 2016 was filed by her on 29.7.2016 claiming the reliefs as aforesaid, and MA No.3197 of 2017 was filed by her on 21.8.2017 seeking condonation of delay in filing of the O.A.

5. As already stated, the respondents, despite being granted repeated opportunities, have not filed their counter reply to the O.A. or counter reply to MA No.3197 of 2017.

6. From a perusal of the averments made in the O.A and documents filed by the applicant along with the O.A., it appears that after publication of the notification dated 17.6.1988 in the Gazette of India dated 16.7.1988 (*ibid*), the consequential benefits of promotion to Junior Scale of IRSE were not granted to the applicant's husband and the basic pension/family pension payable to him/family were not re-fixed with effect from 1.7.1988, as a result of which the applicant's husband was getting less pension than what he was entitled to, and after his death, the applicant has been getting less family pension than what she is entitled to under the rules. Therefore, the Tribunal is of the considered view that in the present case, the cause of action is a recurring one, and the O.A. cannot be held to be hit by the doctrine of delay and laches. This view of ours is fortified by the decisions of the Hon'ble Supreme Court in *M.R.Gupta v. Union of India and others*, (1995) 5 SCC 628, and in *Union of India and others v. Tarsem Singh*, (2008) 8 SCC 648. In *M.R.Gupta v. Union of India and others* (supra), it has been held by the Hon'ble Supreme Court that 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 *Union of India and others v. Tarsem Singh*

(supra), it has been observed by the Hon'ble Supreme Court that 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. 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 be 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.

7. In the light of what has been discussed above, MA No.3197 of 2017 is allowed.

8. The respondents are directed to file counter reply to OA No.2572 of 2016 within four weeks from today. The applicant shall file rejoinder reply, if any, within four weeks from the date of receipt of copy of the counter reply. After completion of pleadings, the OA be listed on 12.02.2018 for hearing before appropriate Bench as per roster.

**(RAJ VIR SHARMA)
JUDICIAL MEMBER**