

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.3790/2013

Thursday, this the 24th day of September, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)

Late Syed Farhat Hussain
Through its legal representative, Mrs. Sherein
w/o late Syed Farhat Hussain
r/o Rahim Manzil
Raja Baboo Road, Near Government Inter College
Opp. Shishu Mandir
Bulandshahr, Uttar Pradesh

..Applicant

(Mr. Sidharth Agarwal, Advocate)

Versus

1. The Union of India through the Secretary
Ministry of Information & Broadcasting
Govt. of India, New Delhi
2. Director General of Doordarshan
Doordarshan Bhawan, Copernicus Marg
New Delhi-1
3. Senior Accounts Officer
Pay & Accounts Office (IRLA)
Ministry of Information & Broadcasting
AGCR Building, New Delhi

..Respondents

(Mr. Rajesh Katyal, Advocate for respondent Nos. 1 and 3 –
Nemo for respondent No.2)

O R D E R (ORAL)

The prayer made in the present Original Application is for issuance of direction to the respondents to release the pensionary benefits.

2. During the pendency of the Original Application, the applicant, Mr. Syed Farhat Hussain passed away on 8.4.2014 and M.A. No.1577/2014 was moved by Mrs. Sherein Farhat Hussain for her substitution as legal

representative. The said application was allowed by the Tribunal in terms of the Order dated 17.7.2015.

3. It is not in dispute that on his transfer from All India Radio, Allahabad to Doordarshan Centre at Srinagar (Jammu & Kashmir) in December 1973, the deceased employee did not join duty as Programme Executive and was retired compulsorily in December 1974. The stand taken in the reply filed on behalf of respondent Nos. 1 and 2 is that Mr. Syed Farhat Hussain filed his papers on 5.9.2010, which were forwarded to PAO, IRLA on 31.12.2010 and were handed over in PAO on 10.1.2011 but were returned to the DDK Srinagar with the remarks that the pension papers of the applicant might be sent to PAO (IRLA) through AIR Allahabad duly attested by officer having administrative powers along with vigilance clearance certificate from the office last attended by the official. Paragraph 17 of the reply reads thus:-

“17. That in reply to the contents of para 4.11 it is submitted that the Applicant not mentioned the date when he complied with the necessary formalities and forwarded the pension papers to IRL. However it is noticed that the Applicant filed the pension papers on 05.09.2010 which were forwarded to PAO, IRLA on 31.12.2010, which were handed over in PAO on 10.01.2011. These papers were returned to DDK Srinagar with the remarks that the pension paper of the Applicant may be sent to PAO (IRLA) through AIR Allahabad duly attested by officer having administrative powers along with vigilance clearance certificate from the office last attended by the official. These papers were again forwarded to AIR Allahabad for doing the needful. That the Applicant has therefore not completed the necessary formalities and paperwork required for his pension to be processed.”

4. In said paragraph of the reply, a specific stand has been taken that pension is denied only because the papers were not processed through the concerned office. Further plea raised by the respondents is that the Original

Application is filed almost after four decades of the date of compulsory retirement and is time barred.

5. I heard the learned counsels for the parties and perused the record.

6. As far as the plea of limitation is concerned, as has been ruled by the Hon'ble Supreme Court in **S.R. Bharnale v. Union of India**, 1996 (4) SLR 717, the claim for terminal benefits may not be defeated on the ground of delay.

7. Further, in the case of **M.R. Gupta v. Union of India & others**, 1996 AIR 669, the Hon'ble Supreme Court ruled that the limitation need not apply in fixation of pay, the same being recurring cause of action. The relevant excerpt of the said judgment reads as under:-

“The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Others vs. Mattapalli Raju and Others, AIR 1950 Federal Court 1).

Learned counsel for the respondents placed strong reliance on the decision of this Court in **S.S. Rathore vs. State of Madhya Pradesh**, [1989] Supp. 1 SCR 43. That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.

For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs.”

8. Since a retired government servant is entitled to pension every month, his claim may not be defeated on the ground of delay. Nevertheless, the limitation certainly applies to the arrears.

9. In the circumstances, the Original Application is disposed of with direction to Mrs. Sherein Farhat Hussan (legal heir) to report to the office of respondent No.2 within four weeks from today whereupon the said respondent will ensure that her claim for terminal benefits on account of death of her husband and family pension is processed as expeditiously as possible preferably within four weeks thereafter and on the papers being submitted in accordance with due process, respondent No.3 would verify the claim and release such benefits as admissible to late government employee in accordance with law, within three months thereafter. It is made clear that she would not be entitled to any arrear of pension and family pension for the period beyond three years prior to the date of filing the present Original Application. No costs.

(A.K. Bhardwaj)
Member (J)

September 24, 2015
/sunil/