

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.060/00933/2017

Chandigarh, this the 6th day of July, 2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

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Nidhan Singh, aged 80 years, S/o Bachan Singh (Retd.) as Grade S-8, Ministry of Railway, resident of VPO Bandal Patti Hinduke, District Amritsar.

....APPLICANT

(Present: Mr. Manjit Singh, Advocate)

VERSUS

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi. (deleted vide order dated 09.03.2018).
2. Assistant Financial Advisor, Northern Railway Mechanical Work Shop, Amritsar.
3. Deputy Chief, Northern Railway Mechanical Work Shop, Amritsar.
4. Senior Accounts Officer, WAO/Northern Railway Mechanical Work Shop, Amritsar.

....RESPONDENTS

(Present: Mr. Yogesh Putney, Advocate)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

The present Original Application (OA) has been filed by the applicant seeking the following relief:-

- “i) Relevant record of the case may be called for from the office of respondents no.2 to 4.
- ii) To issue directions to respondents to fix the pension of the applicant in as S-9 i.e. 5000-8000 @ Rs.6750/- per month from 01.01.2006 or any other appropriate order of direction may deem fit in the facts of the present case may also be passed.
- iii) Cost of the OA may kindly be awarded in favour of applicant.”

2. The facts, which led to filing of the present OA are that the applicant retired on attaining the age of superannuation on 31.10.1995 as Mistry Grade pay of Rs.1400-2300. The solitary grievance raised by the applicant, is that his pension is to be fixed with reference to pay scale of Rs.5000-8000 @ Rs.6750/- per month from 01.01.2006 but he was given revision of pension in the lower pay scale of Rs.4500-7000+100 special pay. The revision of pay scale w.e.f. 01.01.2006 of the applicant was wrongly fixed in the grade S-8 P.B. 1-5200-20200 & grade pay of Rs.2800, whereas, while refixing his pension, on grant of revision of pay on 01.01.1996, he was entitled for pension @ Rs.6750/- per month, with reference to pay scale of Rs.5000-8000/-.

3. The respondents have filed the written statement and submitted that they have rightly revised the pension of the applicant according to the pay scale, which was fixed at the time of his retirement. Therefore, the OA deserves to be dismissed.

4. Apart from the merit, the respondents have also taken the plea of delay in filing the OA. It is stated that the applicant is challenging the order, with a delay of 21 years without there being an application for condonation of delay. It is for the first time that he submitted a notice dated 21.10.2016 only and thus the OA deserves to be dismissed being hopelessly time barred.

5. We have heard the learned counsel for the parties, and perused the pleadings available on record.

6. Admittedly, the applicant retired on 31.10.1995 i.e. prior to revision pay of his pay. At the time of retirement, the applicant was getting pension in the pay scale of Rs.1400-2300, which was subsequently revised to Rs.4500-7000

w.e.f. 01.01.1996 and then in the revised pay scale of Rs.5200-20200 + grade pay of Rs.2800/- w.e.f. 01.01.2006.

7. Learned counsel for the applicant pointed out that the mistake, while refixing the pension of the applicant, is in the revised pay scale as he is entitled to be fixed pension with reference to pay scale of Rs.5000-8000/- and not lower pay scale of Rs.4500-7000/-. However, no reason has been given by the applicant for not approaching the competent Court of law at relevant point of time, if he had any grievance. Though his representation was ordered to be decided by this Court and in furtherance thereto, the impugned order has been passed but merely because the respondents have rejected his belated claim, does not give him any right to approach this Court after a considerable delay. It will not revive the cause of action which had lapsed a long time back. **Section 21** of the Administrative Tribunals Act, 1985, deals with delay which prescribes one year's limit and six months, therefore, on filing of statutory appeal / representation. In this case, the applicant has failed to satisfy this Court by giving any plausible reasons for condoning the delay. In fact he has not filed even any application for condonation of delay. Hence the petition deserves to be dismissed on this count alone.

8. Section 21 of the Act has been interpreted in number of cases where Lordships have held that if an applicant fails to satisfy the court regarding delay, the petition is to be dismissed on this ground alone. Reliance in this regard has been placed upon the case of **Union of India & Ors. versus M.K. Sarkar** reported in (2010 (2) SCC 59). Even as per the recent judgment of Hon'ble Supreme Court in the case of State of **Uttar Pradesh & Others vs. Arvind Kumar Srivastava and others** 2015 (1) SCC 347. It has been held that one cannot get the benefit of judgment passed by a Court of law, on the plea that once others have been granted

benefit, then the same be made available to them, after a considerable delay. Their Lordships have held that if judgment is in 'rem' then the respondents are bound to grant the benefit arising therefrom but if judgment is in 'personam' then each person, who wants to get the benefit has to approach court of law by explaining the delay for not approaching the Court by giving plausible reasons to condone delay. Even otherwise, the applicant claims that the pay scale of Rs.5000-8000/- came about on 01.11.2003 when the existing cadre was restructured. The restructuring was in respect of the existing cadre the applicant had retired on attaining the age of superannuation on 31.10.1995. He was not holding any post nor was he a member of service when cadre restructuring was done. He was not in the cadre. It is admitted fact that the pay scale of Mistry, the post applicant was holding had been revised to Rs.4500-7000/- w.e.f. 01.01.1996, and same was taken into consideration while fixing his pension w.e.f. 01.01.1996 and again from 01.01.2006.

9. Not only that, an identical issue has also been decided by the Hon'ble Apex Court in the case of Union of India versus R. Sethumadhavan & Anr. Civil Appeal No.3173 of 2018 decided on 22.03.2018. The issue raised was 'when, the pre-revised pay scale of Rs.1400-2300 attached to the post of JE. II (TXR) in the Railways was revised to Rs.5000-8000 (while the normal replacement pay scale for the pre-revised pay scale of Rs.1400-2300 is Rs.4500-7500) whether the pension admissible to the pre 01.01.1996 retirees should be based on the pay scale of Rs.5000-8000 or should be restricted to that calculated on the basis of the pay scale of Rs.4500-7000/-.' The claim was dismissed by the Tribunal. Hon'ble Madras High Court allowed the writ petition and quashed order of the Tribunal. The Hon'ble Apex Court held as under:-

“16. Yet another error made by the High Court is in assuming that the post of Train Examiner was re-designated as Junior Engineer Grade-II. There is nothing on record to suggest the re-designation. In fact the conclusion of re-designation is the sole basis on which the writ petition was allowed by the High Court and as mentioned above, we do not find any material on record to suggest the re-designation. Consequently, the entire basis of the decision of the High Court is erroneous, apart from the fact that the High Court did not advert to the decision of this Court in *Krishnaswamy* on the subject.

17. In the circumstances, we have no option but to set aside the impugned judgment and order of the Madras High Court and we do so accordingly. The appeal is allowed.”

10. In the light of the aforesaid reasons, the instant OA is hereby dismissed on the ground of delay as well as on merit. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 06.07.2018.

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