

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-3671/2016
MA-1668/2018**

Reserved on : 05.12.2018.

Pronounced on : 17.12.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Ashok Singh Rana (Aged 53 years)

S/o Sh. Rampal Singh Rana,

R/o C-22 F, Vijeta Vihar, Sector-13,

Rohini, Delhi-110085.

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Applicant

(through Sh. B.S. Jarial, Advocate)

Versus

Govt. of NCT of Delhi

Through Commissioner of Police,

PHQ, MSO Building,

I.P. Estate, New Delhi-110001.

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Respondent

(through Ms. Rashmi Chopra, Advocate)

O R D E R

MA-1668/2018 has been filed seeking amendments in O.A.

After hearing, the same is allowed.

2. Briefly stated, the facts of the current O.A. are that the applicant joined Delhi Police on 13.07.1989 as Sub Inspector (Exe.). The applicant along with other police personnel participated in an operation "C.P. Shoot out case" on 31.03.1997. All the police personnel involved in the said encounter were placed under

suspension w.e.f. 01.04.1997. On 01.04.1997, an FIR No.10(S)/97 PS CBI Delhi was registered against the entire police team including the applicant herein, who participated in the encounter. Vide judgment dated 16.10.2017, Trial Court held the applicant and other co-accused guilty and sentenced them to life imprisonment vide order dated 24.10.2007. The applicant along with other co-convicts submitted an appeal against the order of conviction. Hon'ble High Court of Delhi upheld the decision of Trial Court vide order dated 18.09.2010. SLP preferred by the applicant and other co-accused persons was dismissed by the Hon'ble Supreme Court vide order dated 02.05.2010. The applicant was dismissed from service vide order dated 11.05.2010. One of the co-convicts (Mr. Satyavir Singh Rathi) was allowed and granted 50% of his compensation pension and 50% of gratuity by the respondents with due approval from LG, Delhi vide order dated 06.11.2015.

3. The applicant submits that he moved a representation dated 07.06.2012 to the Deputy Commissioner of Police, Crime Branch Delhi seeking compassionate allowance under Rule-41 of the CCS (Pension) Rules, 1972 but the same was rejected by the respondents vide order dated 02.08.2012. The applicant again submitted a representation in June/July 2016 for grant of compassionate allowance pension and gratuity under Rule 41 of CCS (Pension) Rules, 1972.

4. The applicant avers that his co-accused Ex. ACP Satyavir Singh Rathi was granted 50% of his compensation pension and 50% of gratuity. However, the respondents passed a vague order dated 01.11.2017 in the case of nine co-accused including the applicant. Another co-accused Sunil Kumar Vs. CP Delhi and Ors. filed an OA-3565/2017 before the Principal Bench of the Central Administrative Tribunal. Vide order dated 09.01.2018 the Tribunal directed the respondents to consider and grant compassionate allowance to the applicant under Rule 41 of CCS (Pension) Rules, 1972 within a period of three months from the date of issue of the order. OA Nos. 275/2018, 288/2018, 311/2018 and 312/2018 (were also disposed of on 22.01.2018, 23.01.2018 and 24.01.2018 respectively in respect of 03 other co-accused of the applicant, giving similar relief. The applicant has also placed reliance on the decision of Hon'ble Calcutta High Court in the case of **Sri Nani Gopal Deb Vs. UOI** (WP-27383(W) of 2006) decided on 20.06.2014 in which it was held that the petitioner (therein) deserved special consideration and was entitled to avail the benefits of compassionate allowance in terms of the provisions of Rule-41 of the said Rules of 1972. The applicant has cited decision of Hon'ble Supreme Court in the case of **Government of India & Ors. Vs. Anil Kumar & Ors.**, 2010(4)SC 77, and the decision of the Hon'ble High Court of Delhi in CW(P) No. 628/2014 in the case of **Surender Kumar Vs. GNCT of Delhi**. Finally, Hon'ble Supreme Court in the case

of **Dr.(Mrs) Santosh Kumari Vs. UOI & Ors.**, 1994(7)SC 565 lamented that a more deserving candidate may not have the means to approach the Court and should not be denied benefits granted to similarly situated persons (who dared the department with orders).

5. It is submitted that since the respondents have granted relief to some of the other similarly situated employees, the action of the respondents to deny the same relief to the applicant is illegal & arbitrary and in defiance of Articles 14 and 16 of the Constitution of India.

6. In their counter reply, the respondents have taken a preliminary objection has been taken that the O.A. is barred by limitation. It is contended that the representation of the applicant had already been decided by the respondents in 2012 and the decision was accepted by the applicant. As per Section-21 of the Administrative Tribunals Act, 1985, an application is maintainable within one year from the date of passing of the impugned order.

6.1 The respondents have relied upon the decision of Hon'ble Supreme Court in the case of **D.C.S. Negi Vs. UOI & Ors.** in SLP(C) No. 7956/2011(CC No.3709/2011) dated 07.03.2011 in which it was held that the Administrative Tribunal is duty bound to first consider whether the application is within limitation and the prescribed period. The same should be filed with sufficient reasons for not doing

so within the prescribed period. The respondents have also relied upon the decision of Hon'ble Supreme Court in the case of **State of Tripura Vs. Arabinda Chakraborty**, (2014)5SCALE 335 in which the following has been held:-

"18. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done. "

The respondents aver that Hon'ble Supreme Court in the case of **Nadia Distt. Primary School Council Vs. Sristidhar Biswas**, AIR 2007 SC 26400 has held that law cannot help those who sleep over their rights. Hon'ble High Court in the case of **T.K. Bhardwaj Vs. Director General of Audit & Ors.** [WP(C)-2610/2011 has observed as under:-

"16....The order dated 26th March, 2009 was passed by the respondent on the direction of the Tribunal and not suo motu or on their own. The said order dated 26th March, 2009 does not constitute and cannot be regarded as a fresh cause of action to challenge the earlier order dated 2nd September, 2002. It is now well settled that repeated representations do not extend the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985."

Further, Hon'ble Supreme Court in the case of **UOI Vs. SS Kothiyal**, 1998(8) SCC 682 held that:-

"3. In our opinion, the admitted facts of this case alone are sufficient to reverse the judgment of the learned Single Judge as well as that of the Division Bench of the High Court. According to the version of Respondent 1 himself, his representation against non-promotion as Deputy Commandant was rejected on 10-6-1971, the second such representation made on 19-8-1971 was rejected on 4-11-1974 and the third representation made on 12-4- 1977 was rejected on 11-7-1977. It is obvious that on rejection of his representation in June 1971, there was no occasion for Respondent 1 to wait any longer to challenge his non-promotion and, therefore, the filing of the writ petition 8 years thereafter in December 1978, was highly belated and deserved to be rejected on the ground of laches alone in view of the settled principles relating to interference in service matters of this kind in exercise of the power of judicial review. The learned Single Judge as well as the Division Bench of the High Court completely overlooked this aspect. The fact that Respondent 1 waited for several years till he was actually promoted as Deputy Commandant in 1972 and even as Commandant in 1975 and more than three years elapsed even thereafter before he had filed the writ petition, is itself sufficient for the rejection of the writ petition."

In the case of **Jai Gupta Vs. State of H.P.**, 1997(11)SCC 13, the Hon'ble Apex Court reaffirmed this stand and observed as under:-

"Learned counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May, 1989. We do not think that such an excuse can be advanced to claim the difference in backwages from the year 1971. In Administrator of Union Territory of Daman and Diu & Ors. Vs. R.D. Valand 1995 Supp(4) SCC 593 this court while setting aside an order of Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned counsel for the appellant that the difference in backwages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking section 21 of the Administrative Tribunals Act for restricting the difference by backwages by one year."

6.2 The applicant had requested to grant him 50% of compassionate pension and 50% of gratuity under Rule-41(1) of the CCS (Pension) Rules, 1972, which was examined and rejected in June, 2012, hence he cannot be allowed to reagitate the issue four years later in view of the catena of judgments on the subject cited above.

7. During the course of hearing, the learned counsel for the applicant Sh. B.S. Jarial forcefully argued that the respondents arbitrarily rejected his request while allowing similar benefit to his co-accused Sh. Satyavir Singh Rathi, who in fact led the entire operation, which ultimately led to initiation of criminal case leading in the conviction of the applicant and other 09 police officers. The earlier representation made in 2012 seeking compassionate allowance was rejected by the respondents without taking into consideration the terms of proviso to Rule-41(1) of CCS (Pension) Rules, 1972 and his unblemished service record.

7.1 Learned counsel for the respondents Ms. Rashmi Chopra vehemently argued that the applicant's request for grant of compassionate allowance was rejected by the respondents as early as 2012. Merely making a fresh representation on the subject 04 years later does not tantamount to a fresh cause of action and the O.A. is terribly barred by limitation. She tried to put forth the

argument that the applicant cannot be said to be similarly placed like the convict Ex.ACP Sh. Satyavir Singh Rathi, who was granted compassionate allowance on his continuous agitation of his case whereas the applicant had not challenged the rejection of his case in 2012.

8. I have gone through the facts of the case carefully and the rival contentions raised by both sides. The respondents counsel Ms. Rashmi Chopra made a valiant attempt in the oral hearing to differentiate the case of the applicant from that of other co-accused Sh. Satyavir Singh Rathi and Sh. Sunil Kumar. However, I find no substance in the contentions raised by her.

8.1 Rule-41(1) of CCS (Pension) Rules, 1972 stipulates that the authority competent to dismiss or remove the Government servant from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two - third of pension or gratuity or both which would have been admissible to him if he/she had retired on compensation pension. The competent authority has the discretion to grant compassionate allowance to a Government servant, who is dismissed or removed from service and such compassionate allowance is payable to him/her every month. Thus, the non consideration of the request for grant of such compassionate allowance gives rise to a recurring cause of action

inasmuch as such denial would tantamount to a continuous/recurring denial of a compassionate allowance every month. Hence, the cause of action becomes a recurring one and cannot be held to be hit by limitation.

8.2 Hon'ble Supreme Court in the case of **M.R. Gupta Vs. Union of India and Ors.**, (1995) 5 SCC 628 has held that whereas 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 the case of **Union of India and Ors. Vs. Tarsem Singh**, (2008) 8 SCC 648, Hon'ble Supreme Court has observed 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 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 commences, if such continuing wrong creates a continuing source of injury. In view of the facts and circumstances of the case, (& the decisions referred to above) this Tribunal overrules the plea of limitation raised by the respondents.

8.3 It has not been disputed by the respondents that the applicant had an unblemished record of service in Delhi Police based on which he had received commendation certificates and cash awards for acts of bravery during his service career. The applicant had never been served with any adverse remark till date of his dismissal from service.

9. In view of the aforesaid facts when the Ex.ACP Sh. Satyavir Singh Rathi and eight others have been granted compassionate allowance, the respondent department has no reason to treat the applicant differently. Hence, it is directed that the applicant's request for grant of compassionate allowance and gratuity under Rule-41 of CCS (Pension) Rules may be considered favourably and granted to the applicant within a period of three months from today. The O.A. is accordingly allowed. No costs.

**(Praveen Mahajan)
Member (A)**

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