* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: November 07, 2023**
Judgment pronounced on: January 03, 2024

\+ W.P.(C) 4447/2013

MAHANAGAR TELEPHONE NIGAM LTD. & ANR.
.... Petitioners

Through: Mr. Jasbir Bidhuri, Adv.

versus

BALBIR GULIA ..... Respondent

Through: Mr. M. K. Bhardwaj, Mr. Priyanka M. Bhardwaj adn Mr. Arun Prakash, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE SHALINDER KAUR

JUDGMENT

SHALINDER KAUR, J

1. Challenging the order dated 12.03.2013 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "Tribunal") in Original Application No. 2455/2012 (hereinafter referred as "OA"), the present writ petition has been filed under Article 226 of the Constitution of India. The learned Tribunal allowed the OA of the respondent for counting his past service rendered in Central Industrial Security Force (hereinafter referred as "CISF").

2. To the extent necessary, we shall narrate the facts that the respondent joined CISF in the rank of Assistant Sub-Inspector (Sports) with effect from

01.10.1993 and continued to work till 20.05.2000. Petitioner No. 1 opted Wrestling as one of the core games and required a Wrestling Coach for its organization. To that effect, the Regional Sports & Cultural Board (hereinafter referred as "RSCB") vide its letter dated 07.05.1999, inquired from CISF whether they would spare respondent's services, if he desired to join them on "absorption basis" as he was found to be qualified/competent as a NIS Coach.

3. Thereafter, CISF vide letter dated 18.05.1999 informed General Manager (Admn.), RSCB of its no objection in allowing the respondent to join the service of petitioner no. 1 after his technical resignation from the CISF on immediate "absorption basis". In the meanwhile, petitioner no. 1 also issued a common letter dated 25.02.2000 to Director General Sports, Sports Authority of India, New Delhi, Director General (CISF) and Director General (BSF) requesting them to provide names of competent/qualified NIS Coach in Wrestling on "absorption basis" in the pay scale of Rs. 4000-6000. CISF permitted the respondent to appear for an interview with petitioner no.1 on 06.03.2000 to consider him for absorption as a Wrestling Coach with them. The respondent was selected for the post of Wrestling Coach under the petitioners on *adhoc* basis in the IDA Scale of Rs. 2780-80-3420-90-4500 with usual allowances as applicable to petitioners' employees from time to time subject to the Pay Protection on certain terms and conditions. Petitioners had issued Offer of Appointment dated 01.05.2000 to the respondent and he accepted their terms and conditions as mentioned in the letter; which are provided as under:-

> "(a) Respondent will not hold any lien in the CISF cadre and will severe all connections with the post held by him there before joining as Wrestling Coach.
>
> (b) Further, that he will be required to extinguish all financial liabilities due from him before taking over his new assignment and Petitioner will not bear any kind of liability whatsoever."

4. Respondent thereafter, tendered his technical resignation to CISF on 08.05.2000 and reported for duty as Wrestling Coach on 22.05.2000 and was posted under Secretary Regional Sports & Cultural Board (RSCB), MTNL.

5. CISF further issued a letter dated 14.05.2000 to all concerned that since respondent had applied through proper channel for the post of Wrestling Coach with petitioners with proper permission and he resigned from the service of CISF w.e.f. 19.05.2000 (AN) as a technical formality to join petitioners, he will be entitled for all the benefits under Rule 26(2) of CCS (Pension) Rules, 1972, which is reproduced below:-

> "**26. Forfeiture of Service on resignation**
> (1)….
> (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

6. Around 8 years after joining services under the petitioners, the respondent submitted a representation dated 09.04.2008 to petitioner no.1 and requested for counting of his past services under the CISF. Further, at the time of his absorption, he was given to understand that his whole past service will be counted for all purposes and conversion to IDA scale from CDA scale will be given at par with the Department of Telecommunication (hereinafter referred as "DoT") employees who have been absorbed with

petitioners in IDA scale from CDA scale. Also, since he is working under the Central Government and his service is covered under CCS (Pension) Rules, 1972, he is entitled to all benefits as per CCS (Pension) Rules, 1972 for the purpose of pensionary and other benefits without discrimination.

7. Due to inaction on his representation, respondent made representations to the higher officials. The case of the respondent was examined by the petitioners and it was noted that petitioners had never informed the respondent that the selected candidate for the post of Wrestling Coach would be given the benefit of past-service neither the same finds mention in the appointment letter dated 01.05.2000. The respondent joined services under the petitioners as a fresh candidate after accepting the terms and conditions of his appointment.

8. Thereafter, the competent authority under the petitioners passed an order dated 16.05.2012 and rejected the request of the respondent stating that his case was examined by Competent Authority/Corporate Office Level and as per the decision taken, his claim for counting of past service rendered in CISF was not tenable and gave the following reasons:-

a. "He had resigned from CISF before joining MTNL
b. His appointment under petitioners was temporary and adhoc for period of 2 years and after satisfactory completion of work, during two years, his services was to be confirmed.
c. As per clause 4 of appointment letter, he was under obligation to clear all financial liability of past organization CISF and he was not allowed to

keep lien with present cadre in CISF. It was made clear that petitioner no.1 shall not bear any kind of liability of past service whatsoever."

9. Aggrieved by aforesaid order dated 16.05.2012, the respondent filed an application under Section 19 of the Administrative Tribunal Act, 1985 before the learned Tribunal impugning the letter dated 16.05.2012 rejecting his representation dated 19.04.2012 for counting his past service. Thereafter, petitioners contested the OA by filing a counter affidavit reply.

10. After completion of the pleadings, the learned Tribunal allowed OA vide order/ judgment dated 12.03.2013 and held as under:-

> "13. In the above facts and circumstances of the case, we do not agree with the respondents that the applicant is not entitled for counting of his past service rendered in CISF for benefits in MTNL as available to all their other absorbed employees. Therefore, we direct that, as agreed to by the MTNL in the offer of appointment, his pay shall be protected from his date of joining service itself, i.e., w.e.f. 22.05.2000. In other words, since the applicant was drawing the basic pay of Rs.4700 in CDA scale of Rs.4000-6000 on 21.05.2000, his pay should be fixed in the corresponding scale of pay in the IDA pay scale as in the case of the DoT employees, who have joined the MTNL on permanent absorption basis and whose pay has been fixed by the respondents. We also direct the respondent-MTNL to pass appropriate orders in implementing of the aforesaid directions within a period of one month from the date of receipt of a copy of this order."

11. The petitioners being dissatisfied with the impugned order/judgment challenged it by filing the present writ petition.

Assertions by Petitioner:

12. Mr. Jasbir Bidhuri, learned counsel for the petitioners submits that the OA filed by respondent was barred by Section 21 of the Administrative Act, 1985, which prescribed limitation of 2 years for filing any claim. Respondent joined the services of petitioner in the year 2000, whereas, he

raised the issue of counting his past service vide his belated representation dated 09.04.2008 after 8 years of his joining services under the petitioners, whereas, OA was filed in year 2012. Therefore, it was the duty of the learned Tribunal to first consider whether the OA was filed within the period of limitation or sufficient cause was shown for not doing so within the prescribed period. Reliance was placed on the judgments titled **D.C.S. Negi v. Union of India & Ors** [(2018) 16 SCC 721] and **S.S. Rathore v. State of Madhya Pradesh** [AIR 1990 SC 10].

13. Learned counsel also submitted that law is settled that the terms of the appointment letter are binding on both the employee and the employer. Respondent joined the services under petitioners as a fresh appointee and he was not similarly placed with those employees of DoT, who joined MTNL on permanent absorption basis in view of policy decision of MTNL.

14. It was submitted that learned Tribunal failed to appreciate that claim of respondent was considered by the Competent Authority and it was found that there was no rule which allowed for counting of past service in such cases and granting of benefits of past service to the respondent would set a wrong precedent and would open a pandora box of litigation as other ineligible employees of MTNL would claim similar benefits based on the impugned order of the Tribunal.

15. It was further submitted that learned Tribunal failed to appreciate that respondent had joined services after knowing fully well the terms and conditions of his employment and after duly accepting the same, thus the impugned order passed by learned Tribunal needs to be set aside.

Assertions by Respondent:

16. Mr. M. K. Bhardwaj, learned counsel for the respondent refuted all the submissions advanced on behalf of the petitioners and contended that the respondent had applied through proper channel i.e., his parent department and had resigned from CISF before joining the services of the petitioners. He had tendered technical resignation which was accepted by CISF, therefore as per DOP&T OM dated 17.08.2016, he was entitled for pay protection, which was not granted to him by the petitioners and learned Tribunal has rightly passed the same in his favour.

17. Learned counsel further submitted that though petitioners granted pay protection by releasing his salary of May-July 2000 but did not provide him benefit of all the increments available to him. While fixing the pay of the respondent in the revised pay scale of Rs. 6700-220-10000 by petitioners, said benefits were not given to him, whereas the similarly placed employees absorbed by the petitioners had earned increments in the pay scale of Rs. 4000-6000 and were given benefit of the increments in the revised pay scale of Rs. 6700-10000 with effect from 01.01.2000. Therefore, on the same analogy respondent is also entitled for the same increments. Moreover, as per Clause 4 of the appointment letter, the respondent was under an obligation to clear all financial liability of his past organization i.e., CISF and he was not allowed to keep lien with CISF which meant foregoing all his financial liabilities which in no manner reflects giving up the financial benefits of previous service.

18. It was submitted that order passed by learned Tribunal cannot be faulted with which is based on sound principle of Administrative Law, therefore, there is no error in the impugned order. Reliance was placed on the judgment dated 15.09.2014 in WP(C) No. 6140/2014 and submitted that where substantial justice is rendered by the Tribunal, interference under Article 226 is not warranted.

Reasons and Conclusions

19. The questions before us concern determination, whether the claim of respondent suffers from delay and laches and is barred by limitation and whether the respondent is entitled to "pay protection" and also for counting of the "past service" from October 1, 1993 to May 20, 2000 spent in CISF.

20. It is to be noted that ordinarily, a belated service claim will be defeated on the ground of limitation. However, one of the exceptions to the general rule of limitation (which are applied with the aim to secure greater public interest and are founded on public policy) relates to a 'continuing' cause of action which may give rise to a recurring cause of action in a service related claim of an individual or several others but which are not affecting the rights of third parties.

21. To begin with, we would refer to few judgments observing legal principles touching upon the issues at hand. In **M.R. Gupta v. Union of India** [1995 (5) SCC 628], the aggrieved person filed an application before the learned Tribunal in 1989 with regard to his initial pay fixation with effect from 01.08.1978. His claim was rejected being barred by limitation as it was raised after 11 years. The Hon'ble Supreme Court applied the

principles of "continuing wrong" and "recurring wrongs" and set aside the order of the learned Tribunal. It was observed:-

> "The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc., would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time barred....."

22. The next decision, in the chronology which we would want to refer to is the judgment of Hon'ble Supreme Court in the case of **Union of India & Ors. v. Tarsem Singh** [(2008) 8 SCC 648], wherein it was held:

> "5. To summarise, normally, 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 commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue

> would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.
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> 6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

23. The Hon'ble Supreme Court in **Rushibhai Jagdishchandra Pathak v. Bhavnagar Municipal Corporation** [2022 SCC OnLine SC 641] considered the doctrine of "delay and laches" and "law of limitation" with respect to service law and held:

> "At the same time, the law recognises a 'continuing' cause of action which may give rise to a 'recurring' cause of action as in the case of salary or pension."

24. On the analogy of principles of law enunciated in the above mentioned judgments, we do not find merit in allegations raised by the petitioners that the claim of respondent is time barred. An employee has a right to be paid accurate salary in accordance with rules. Whenever the pay fixation is not as per rules, it gives rise to a recurring cause of action each time when such an employee is paid salary by not following the rules, so a

fresh cause of action arises every month when salary is paid to the employee on the basis of wrong computation made contrary to the rules. In the present case also, the grievances of the respondent was that he was not given benefits of his past service, therefore, his pay was not computed correctly.

25. Now adverting to the next issue of pay protection and counting of past service of the respondent, it will be recalled that in the present case the respondent was initially working as ASI in CISF and had worked from October 1, 1993 till May 20, 2000. It was in the year 1999, vide letter dated May 7, 1999, the petitioner no. 1 wrote to Director General, CISF that the respondent is a qualified Wrestling Coach and the petitioner no. 1 requires his services, being a qualified Wrestling Coach, and in this regard enquired from the Director General CISF, that if the respondent herein could be spared as he also desires to join the petitioners on "absorption basis". The intent of the petitioners is thus clear that they wanted to "absorb" the respondent in the department. Vide its letter dated May 18, 1999 Director General CISF, gave its no objection for appointment of the respondent in MTNL on immediate "absorption basis".

26. Consequently, the petitioners vide its communication dated 01.05.2000 offered the post of Wresting Coach to the respondent subject to "Pay Protection" on the terms and conditions mentioned therein. The respondent, thereafter, submitted its "Technical resignation" to Director General CISF which was accepted by the Director General CISF with effect from May 19, 2000 and his name was struck off from the strength of the unit

as well as CISF with effect from May 20, 2000. The respondent reported for duty with the petitioners on May 22, 2000.

27. The aforesaid being the position, when we look at the sequence of events, the respondent was already an employee with the CISF working since 1.10.1993 i.e. almost for 6 years and 8 months; the petitioner no. 1 was in need of a qualified Wrestling Coach and approached CISF for absorption of the respondent on May 7, 1999; the petitioner no. 1 offered the appointment first to the respondent, whereupon the respondent tendered the "Technical" resignation, it is observed that it was not a case of fresh appointment. The petitioners consciously offered the appointment by using the words "absorption basis" and so was the response of Director General CISF, on "absorption basis". Secondly, the resignation which was submitted by the respondent to CISF, and was accepted by CISF, was a "Technical resignation". Under a technical resignation, for all instances and purposes, the period of service of the respondent with CISF was not wiped out. Thus, the Technical resignation in the present case cannot be equated with the resignation in common parlance. The past service obviously had to be counted for the purposes of seniority, fixation of pay, promotion etc. Further the appointment which was offered to the respondent was on "Pay Protection" basis. In case of absorption on transfer, promotion earned in previous or present organization together with past regular service shall also be counted for all purpose. Counting past service, would be an incentive for the persons like respondent who have shown enterprise and agreed to join the petitioners who were in need of a Wrestling Coach.

28. The petitioners are misreading clause 4 of the communication dated May 1, 2000.It is clearly mentioned there that it is the respondent who had to extinguish all financial liabilities due from the respondent to the CISF before taking over the new assignment. This clause has no bearing on counting the past service rather here also the word used is new assignment.

29. When it is a case of transfer of service, the benefit of past service could not be denied to such person whose services stand transferred. The petitioners could not have treated the respondent as a new case of appointment, as his case was not a case of fresh appointment but the services of respondent were transferred from CISF to the petitioners. When such transfer takes place, benefit of past service of 6 years and 8 months cannot be done away and denied to him. To deprive the respondent of the benefit of past service rendered by him would definitely work against his interest and to his disadvantage. The very word "absorption" "pay protection" and the sequence of events as detailed above prove that it was not a case of new appointment particularly when the pay was also protected. The said non-counting of past service rendered by the respondent in CISF prior to transfer to the petitioners is contrary and contradictory to rule of "pay protection".

30. No doubt the respondent ought to have taken better care and approached the petitioners immediately for pay protection and for counting the past service, however, the same cannot be a ground for denying the benefit to the respondent herein. The Hon'ble Supreme Court in the case of **M. R. Gupta v. Union of India & Ors.** reported in AIR 1996 SC 669 held that cause of action continues only till such time, the employee continues in

service. In the case in hand, since wrong denial is a continuing wrong and injury as such cause of action is continuous and the respondent has been rightly awarded the relief. It is observed that the respondent for the first time approached the petitioners on April 09, 2008 for counting of past service and also for pay protection, this representation of the respondent was decided by the petitioner vide its order dated May 16, 2012. It seems from the record that the interregnum period from April 25, 2008, the file of the respondent was being handled by various departments of the petitioners. Thus, the respondent cannot be denied the financial benefit for delay on the part of the petitioners from April 25, 2008 onwards. Thus, we make it clear that the learned Tribunal has correctly directed the petitioners vide impugned judgment that the pay of the respondent shall be protected from his date of joining service itself w.e.f. 22.05.2000. Since, the respondent was drawing the basic pay of Rs. 4,700/- in CDA scale of Rs. 4000-6000 on 21.05.2000, his pay should be fixed in the corresponding scale of pay in IDA pay scale as in the case of the DoT employees, who joined the service of petitioner no. 1 on permanent absorption basis and whose pay has been fixed by the petitioners. So far as the arrears are concerned, the respondent shall be paid the arrears for a period commencing from 03 years prior to April 09, 2008.

31. In view of the above, the petitioners are directed to pass the appropriate orders in implementing the aforesaid directions within a period of four months from the date of this judgment, failing which the respondent shall be entitled interest @ 6% p.a. on the delayed payments. A

computation of statement of accounts on the basis of which payment is to be made by the department of petitioner no. 1 shall be furnished to the respondent.

32. The writ petition is disposed of accordingly.

SHALINDER KAUR, J.

SURESH KUMAR KAIT, J.

JANUARY 03, 2024
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