

Union Of India And Ors. vs Rameshwar Tiwari on 8 April, 2025

Author: Navin Chawla

Bench: Navin Chawla

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 08.04.

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W.P.(C) 7188/2024 & CM APPL. 30038/2024 & CM APPL.
30039/2024

UNION OF INDIA AND ORS.

.....Petitioners

Through: Mr.Vikrant N. Goyal, Mr.Nitin
& Ms.Divya Rana, Advs.

versus

RAMESHWAR TIWARI

.....Respondent

Through: Mr.Puneet Taneja, Sr. Adv.
with Mr.Manmohan Singh
Narula, Mr.Amit Yadav &
Mr.Anil Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the Order dated 18.10.2022 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (in short, 'Tribunal') in O.A. 194/2021, titled Rameshwar Tiwari v. Union of India & Ors., allowing the said O.A. filed by the respondent, with the following directions:

"14. However, in the present facts of the case decision has been taken by virtue of order dated 24.01.2020, therefore, no useful purpose will be served in remanding the matter back regarding disposal of the representation. In this scenario, the present OA is allowed in terms of the order passed by the Hon'ble High Court in Shiv Mangal Rai case (supra). The respondents are directed to fix pension as payable to Mr. Rameshwar Tiwari on superannuation on 28.02.1998 and re-fix the pension accordingly. A revised PPO in terms of the Rule Position be issued within a period of two months from date of receipt of certified copy of the order, failing which the applicant shall be entitled to GPF rate of interest till the date of actual payment."

2. The respondent had filed the above O.A. praying for a direction to the petitioners to fix his pension as on the date of his superannuation, that is, 28.02.1998, and pay the same along with

interest at the rate of 12% per annum.

3. Just as a brief background, the respondent was appointed on 04.12.1960 by the First Secretary to the Indian Embassy, Nepal, on behalf of the President of India, in the Military Pension Paying Branch, as a temporary clerk. The said appointment order mentioned that he would not be entitled to any right to earn full pension.

4. The petitioners have challenged the order passed by the learned Tribunal, by relying upon the said appointment order and the condition mentioned therein, however, the same is not the end of the facts. By an order dated 28.03.1972, passed by the Military Branch of the Embassy of India, Nepal, the respondent was confirmed in the exiting permanent post in the sanctioned Establishment of Pension Paying Office in Nepal.

5. After his superannuation on 25.02.1998, he made a representation in the year 2019 for the release of his pensionary dues, by placing reliance on the common Judgment dated 29.11.2018, passed by this Court in W.P. (C) 11919/2016, titled Shri Shiv Mangal Rai v. Union of India & Ors., and W.P. (C) 11936/2016, titled Basistha Narayan Chaudhary v. Union of India & Ors., stating therein that this Court had upheld the entitlement of the employees, including the colleagues of the respondent, to receive pension, and directed the release of pensionary benefits along with arrears. He claimed that the said judgment had also been upheld by the Supreme Court.

6. The representation of the respondent was, however, rejected by the petitioners, vide an order dated 24.01.2020, which was challenged by the respondent by filing the above O.A.

7. The learned Tribunal, while allowing the said O.A., has placed detailed reliance on the Judgment dated 29.11.2018, passed by this Court in Shiv Mangal Rai (supra). The learned Tribunal further noted that the challenge to the said Judgment, being SLP (C) Diary No. 37010/2019, titled Union of India & Ors. v. Basistha Narayan Chaudhary, has also been dismissed by the Supreme Court vide its order dated 18.11.2019. The learned Tribunal, therefore, allowed the said O.A. filed by the respondent with the above-quoted direction.

8. The learned counsel for the petitioners contends that the appointment letter issued to the respondent, itself mentioned that the respondent would not be entitled to any pensionary benefits. Having obtained the appointment on that basis, the respondent could not have later challenged the same and claimed pensionary benefits. He submits that the respondent should, therefore, be estopped from making such a claim.

9. On the other hand, the learned senior counsel appearing for the respondent, reiterates that the case of the respondent is squarely covered by the judgment of this Court in Shiv Mangal Rai (supra). He submits that the respondent, having been confirmed against the existing permanent post by an order dated 28.03.1972, was entitled to the pensionary benefits. He submits that the reliance of the petitioners on the initial appointment order dated 04.12.1960 to deny the pensionary benefits to the respondent, therefore, cannot be accepted. He also places reliance on the judgment of a Coordinate Bench of this Court in Union of India & Ors. v. Saroj Devi, 2024 SCC OnLine Del 8065, wherein, by

a recent order, a similar challenge by the petitioners has been rejected by this Court.

10. We have considered the submissions made by the learned counsels for the parties.

11. It is not disputed that the respondent was confirmed against the existing permanent post by an order dated 28.03.1972. His initial appointment, which was on a contractual basis by an order dated 04.12.1960, therefore, loses all significance. In similar circumstances, in Shiv Mangal Rai (supra), this Court, by a detailed order, had considered the entitlement of employees who were appointed on a purely temporary capacity but were later regularized against a sanctioned post by the same order dated 28.03.1972, and held them entitled to pensionary benefits. The findings of this Court were quoted in detail by the learned Tribunal and, therefore, we would not like to quote them again in this judgment. However, we must note that the respondent herein was fully covered by those directions.

12. A challenge of the petitioners similar to the one raised in the present petition, has recently been rejected by this Court in its Judgment in Saroj Devi (supra), by observing as under:

"15. The above findings of the Division Bench apply on all fours to the facts at hand. Jha was also entitled, applying the principles in Shiv Mangal Rai, to be regarded as an employee of the Ministry of Defence, and not as an employee of the MEA. His having been confirmed on the post of LDC on which he was initially appointed and subsequently promoted, he was entitled to pensionary benefits in accordance with CCS (Pension) Rules."

13. Therefore, we do not find any infirmity in the Impugned Order, as far as the claim of respondent for the pensionary benefits is concerned.

14. This now brings us to the final relief granted to the respondent by the Impugned Order, that is, the arrears of the pensionary benefits.

15. As would be evident from the above, the learned Tribunal in the Impugned Order has directed the petitioners to fix the pension payable to the respondent from the date of his superannuation, that is, 28.02.1998, and issue a revised PPO within a period of two months, failing which he will be entitled to the GPF rate of interest till the date of actual payment.

16. The learned counsel for the petitioners, placing reliance on the Judgment of the Supreme Court in Union of India & Ors. v. Tarsem Singh, (2008) 8 SCC 648, submits that, at best, the relief that can be granted to the respondent should have been confined to a period commencing three years before the filing of the O.A. and not before that.

17. On the other hand, the learned senior counsel for the respondent submits that no such restriction was placed by this Court in its judgments in Shiv Mangal Rai (supra) or Mrs Saroj Devi (supra).

18. We have considered the submissions made by the learned counsels for the parties.

19. In *Tarsem Singh (supra)*, the Supreme Court, considering the claim for the grant of pension and the period of limitation applicable thereto, has held as under:-

"7. 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 reopening 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 refixation 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. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the 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."

(Emphasis Supplied)

20. The relief to the respondent, therefore, has to be confined to a period of not more than three years prior to the date when the respondent agitated his claim.

21. In the present case, from the narration of the facts given hereinabove and by the learned Tribunal, it would be apparent that the respondent, having superannuated on 25.02.1998, made his first representation for the claim of grant of pension on 23.12.2019. The same was rejected by the petitioners vide an order dated 24.01.2020, pursuant to which the respondent filed the above O.A. In terms of the Judgment of *Tarsem Singh (supra)*, therefore, the respondent is entitled to the fixation of his pension taking his date of superannuation as 25.02.1998, however, the actual arrears of pension are directed to be released by the petitioners to the respondent for a period commencing three years prior to 23.12.2019, that is, when the representation was made by the respondent for the same, placing reliance on the judgment of this Court in *Shiv Mangal Rai (supra)*.

22. In passing this direction, we also observe that the respondent was claiming pensionary rights, which are not a bounty. This Court, having decided that similarly situated persons were entitled to the grant of pension, the petitioners should have considered his representation in terms of our judgment, which has also been upheld by the Supreme Court. By rejecting the same, the petitioners

have, in fact, given rise to further unnecessary litigation and delayed the grant of pensionary benefits to the respondent.

23. We, therefore, direct that the arrears of pensionary benefits accrued to the respondent shall carry interest at the rate of 6% per annum, from the date that they became due to the respondent.

24. The petitioners shall also pay costs of Rs.15,000/- to the respondent for the present petition.

25. The arrears of pension shall be paid by the petitioners to the respondent within a period of 12 weeks from today. However, the future pension shall continue to be paid in accordance with the Rules, as and when it becomes due.

26. The petition, along with the pending applications, is disposed of in the above terms.

NAVIN CHAWLA, J RENU BHATNAGAR, J APRIL 8, 2025/rv/VS Click here to check corrigendum, if any