Eastern Railway
(Personnel Department)
17 N. S. Road, Kolkata - 700 001

Serial Circular No. 53/2024

No. E.511/0/Pt.I

Kolkata, Dated: 31/05/2024

All Concerned
(as per standard list)

Sub: Grant of notional increment (as due on 1st July/1st January) for the pensionary benefits to those employees who had retired on 30th of June before drawing the same - Clarification reg.

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A copy of Ministry of Railways (Railway Board) letter no. **PC-VI/2023/Misc./03-Part(2)**, dated 20/05/2024 is circulated herewith along with its enclosure for information, guidance and strict compliance. Board's earlier letter dated 09/02/2024 mentioned therein was circulated vide this office letter of even number dated 13/02/2024. A copy of which is enclosed for ready reference.

DA: As above.

31/5/24

(S.K.Chattopadhyay)
Sr. Personnel Officer/Admin.
For Pr. Chief Personnel Officer
Phone No. 24122 (Rly.)
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31/5/2024.

Index No. 1057: The benefit of notional increment for pensionary benefits to the applicants shall be allowed in 'personam' only in contempt cases and payment of arrears would be restricted only to 3 years preceding the date of filling of the case. As regards to other cases/similarly situated pensioners, necessary instructions would be issued separately on receipt of general policy guidelines/clarification from DoP&T.

MOST IMMEDIATE
COURT CASE MATTER

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. PC-VI/2023/Misc./03-Part(2) New Delhi, dated: 20 .05.2024

The General Managers/ Principal Financial Advisors,
All Zonal Railways & Production Units
(as per the standard mailing list)

Sub: Grant of notional increment (as due on 1st July/1st January) for the pensionary benefits to those employees who had retired on 30th of June before drawing the same – Clarification reg.

Attention is invited to Board's letter dated 09.02.2024 whereby it was advised to implement the orders pronounced by various courts of law granting the benefit of notional increment in letter & spirit strictly on personam basis, only in those cases where a contempt petition has been filed by the petitioner subject to any administrative directions received from DOP&T and fulfillment of the condition that the petitioner(s) had completed 12 months of service on the date of retirement on superannuation since the date of accrual of last annual increment.

2. Subsequently, it has come to the notice of this Ministry that Hon'ble Courts/Tribunals are dismissing the new/fresh cases filed by granting the benefit of notional increment to the applicants **restricting the payment of arrears to only three (03) years preceding the date of filing of the case** instead of payment of entire arrears w.e.f the date of applicability of the notional increment. This principle has been adopted by various Courts/Tribunals relying upon the law laid down by the Hon'ble Apex Court in its judgment dated 13.08.2008 passed in Civil Appeal No. 5151-5152 of 2008 titled as Union of India & Ors Vs Tarsem Singh wherein the Hon'ble Court has dealt with the issue of delay and latches / limitation while conferring the relief (**copy enclosed**).

3. In view of the above, it has been decided that henceforth while implementing the orders pronounced by various Courts/ Tribunals on 'personam' basis only in contempt cases, payment of arrears would be restricted only to 3 years preceding the date of filing of the case. These instructions would be applicable with immediate effect and strict compliance thereof should be ensured. Past cases already decided shall not be reopened.

4. It is reiterated that the aforesaid benefit of notional increment shall only be restricted to contempt cases. As regards to other cases/ similarly situated pensioners, necessary instructions would be issued separately on receipt of general policy guidelines/clarification from DOP&T.

DA: As above

20/5

(Sundeep Pal)
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Union Of India & Anr vs Tarsem Singh on 13 August, 2008

Equivalent citations: AIRONLINE 2008 SC 68, (2008) 4 RAJ LW 3167, (2009) 1 MAD LW 986, (2008) 6 SERV LR 440, 2008 (8) SCC 648, (2009) 1 SERV LJ 371, (2008) 7 MAD LJ 1245, (2008) 4 SCT 19, (2008) ILR 4 KER 752, (2008) 11 SCALE 594, (2008) 118 FAC LR 1079, (2009) 1 KER LT 101, (2008) 71 ALL IND CAS 61 (SC), (2008) 71 ALLINDCAS 61, (2008) ILR 4 SC 752

Author: R.V.Raveendran

Bench: Lokeshwar Singh Panta, R. V. Raveendran

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Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5151-5152 OF 2008
(Arising out of SLP [C] Nos.3820-3821 of 2008)

Union of India & Ors. ... Appellants

Vs.

Tarsem Singh ... Respondent

ORDER

R.V.RAVEENDRAN, J.

Leave granted. Heard learned counsel for the parties.

2. The respondent while working in the Indian Army was invalidated out of Army service, in medical category, on 13.11.1983. He approached the High Court in 1999 seeking a direction to the appellants to pay him disability pension. A learned Single Judge by order dated 6.12.2000 allowed the writ petition and directed the appellants to grant him disability pension at the rates permissible. In so far as arrears, the relief was restricted to 38 months prior to the filing of the writ petition. The respondent was also directed to appear before the Re-survey Medical Board as and when called upon by the appellants. The appellants did not contest the said decision and granted disability

pension to respondents and also released the arrears of disability pension for 38 months.

3. The respondent however was not satisfied. According to him the disability pension ought to be paid from the date it fell due on 13.11.1983. He therefore filed a Letters Patent Appeal. The said appeal was allowed by the Division Bench of the High Court by judgment dated 6.12.2006. The Division Bench held that the respondent was entitled to disability pension from the date it fell due, and it should not be restricted to a period of three years and two months prior to the filing of the writ petition. By a subsequent modification order dated 23.2.2007, the Division Bench also granted interest on the arrears at the rate of 6% per annum. The said judgment and order of the Division Bench is challenged in this appeal. The only question that therefore arises for our consideration is whether the High Court was justified in directing payment of arrears for a period of 16 years instead of restricting it to three years.

4. 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. This Court in Balakrishna S.P. Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan - [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963) :

> "It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

In M. R. Gupta vs. Union of India [1995 (5) SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held :

> "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....."

In Shiv Dass vs. Union of India - 2007 (9) SCC 274, this Court held:

> "The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.
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> In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition..... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

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.

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.

7. In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored.

.....J [R. V. Raveendran] .....J [Lokeshwar Singh Panta] New Delhi;

August 13, 2008.

171/C

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MOST IMMEDIATE
COURT CASE MATTER

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. PC-VI/2023/Misc./03 (Part) New Delhi, dated: .02.2024

The General Managers/ Principal Financial Advisors,
All Zonal Railways & Production Units
(as per the standard mailing list)

Sub: Grant of notional increment (as due on 1st July/1st January) for the pensionary benefits to those employees who had retired on 30th of June before drawing the same – Clarification reg.

A large number of cases had been filed by the retired employees of Indian Railways & also by the retired employees of other Ministries/ Departments of Union of India who had retired on 30th of June/31st of December of a year seeking the benefit of notional increment (as due on 1st July/1st January of the retirement year) for the purpose of pensionary benefits.

2. In one such case viz. Civil Appeal No. 2471 of 2023 arising out of SLP (C) No. 6185 of 2020 {The Director (Admn. and HR) KPTCL &Ors Vs C. P. Mundinamani & Ors}, Hon'ble Supreme Court had decided the issue of notional increment on merits and interpreted the law involved vide their judgements dated 11.04.2023 inter-alia granting the benefit of notional increment to the applicants. Subsequently, the SLP (C) No. 4722/2021 (Union of India & Ors Vs M. Siddaraj) was also dismissed relying on their above judgement.

3. Consequent to Hon'ble Apex Court's aforesaid judgements, a number of contempt petitions have been filed before various courts of law seeking early compliance of orders pronounced by the said Hon'ble Court/ Tribunal whereby benefit of notional increment was granted in favour of the applicants. Considering the huge ramifications & financial implications involved, the matter was again referred to the nodal department on the issue i.e. Department of Personnel & Training (DOP&T) to advise the further course of action to be adopted such cases.

4. As of now, based on the advice tendered by DOP&T, the benefit of notional increment is being granted strictly on personam basis, only in contempt cases. However, it is understood that multiple contempt petitions are being filed before various Courts/ Tribunals across all Indian Railways. On each such occasion, the Railway had to refer the case to Board's office seeking concurrence before implementing the orders wherein there always remained certain uncertainity in ensuring timely compliance of the directions. Of late, it has been observed that the number of contempt cases has increased and many field units have raised concern as monitoring these cases on case to case basis has become difficult.

5. Taking into account of these factors and also to avoid any embarrassing situation to senior officials impleaded as contemnors in such contempt cases, all Zonal Railways/PUs are hereby advised to implement the orders pronounced by various courts of law granting the benefit of notional increment in letter & spirit without referring the same to Board's office, **strictly on personam basis, only in those cases where a contempt petition has been filed by the petitioner subject to any administrative directions received from DOP&T and fulfillment of the condition that the petitioner(s) had completed 12 months of service on the date of retirement on superannuation since the date of accrual of last annual increment**.

...contd.

6. It is reiterated that the aforesaid benefit of notional increment shall only be restricted to contempt cases. In other cases, the matter may be referred to Board's office **invariably** for further clarification which will be issued separately on receipt of necessary guidelines from DOP&T.

Signed by
Sundeep Pal
Date: 09-02-2024 17:31:45

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