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M.R. GUPTA

v.

UNION OF INDIA AND ORS.

AUGUST 21, 1995

B

[J.S. VERMA AND K. VENKATASWAMI, JJ.]

Service Law :

C

Railway Fundamental Rules/Fundamental Rules and Supplementary Rules :

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Rule No. 2018 B/FR 22-C—Fixation of pay—Period of Limitation—Held, claim of an employee to be paid correct salary on proper pay fixation is a recurring course of action—Subsists during entire tenure of service—Can be exercised at the time of each payment of salary—Is a right akin to right of redemption.

E

The appellant, an employee with the State Government of Punjab, on joining the service in the Railways in 1978, challenged fixation of his pay, claiming that he was entitled to fixation of his pay after adding one increment which he would have drawn on 1.8.1978 in accordance with Rule No. 2018 (N.R.S.N. 6447) equivalent to Fundamental Rule 22-C. His representation was rejected before coming into force of the Administrative Tribunals Act, 1985. Later on 4.9.1989, the appellant, filed an application before the Central Administrative Tribunal which dismissed the claim as time barred. Aggrieved, the appellant filed the appeal by special leave.

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Allowing the appeal and remitting the matter to the Tribunal, for consideration of the application of the appellant on merits, this Court

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HELD : 1.1. The claim of an employee to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the enquiry of redemption is

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extinguished. [855-C-D]

Thota China Subba Rao and Ors. v. Mattapalli Raju and Ors. AIR A
(1950) Federal Court 1, relied on.

S.S. Rathore v. State of Madhya Pradesh, [1989] Supp. 1 SCR 43, held in applicable.

1.2. The Tribunal overlooked the crux of the matter and misdirected B
itself when it treated the appellant's claim as 'one time action'. 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 salary which was not
computed in accordance with rules. However his claim, if any, for recovery C
of arrears calculated on the basis of difference in the pay which has become
time barred, has to be considered and decided alongwith other consequen-
tial reliefs in accordance with law in due course by the Tribunal.

[854-E-F; G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7510 of D
1995.

From the Judgment and Order dated 22.5.92 of the Delhi High Court
in O.A. No. 1809 of 1989.

A.K. Sikri and Ms. Madhu Sikri for the Appellants.

K. Lahiri, A.K. Sharma and P. Narasimaha for the Respondents. E

The Judgment of the Court was delivered by

VERMA, J. Leave granted.

The only question for decision is : Whether the impugned judgment F
of the Tribunal dismissing as time barred the application made by the
appellant for proper fixation of his pay is contrary to law? Only a few facts
are material for deciding this point.

The appellant joined the service of the State of Punjab as G
Demonstrator in the Government Polytechnic in 1967. Thereafter, he
joined service in the railways in 1978. The appellant claimed that the
fixation of his pay on his joining service in the railways was incorrect and
that he was entitled to fixation of his pay after adding one increment to the
pay which he would have draw on 1.8.1978 in accordance with Rule No.
2018 (N.R.S.N. 6447) equivalent to Fundamental Rule 22-C. The repre- H

A sentation of the appellatnt to this effect was rejected before coming into force of the Administrative Tribunals Act, 1985. The appellatnt then filed an application on 4.9.1989 before the Tribunal praying *inter alia* for proper fixation of his initial pay with effect from 1.8.1978 and certain consequential benefits. The application was contested by the respondents on the ground that it was time barred since the cause of action had arisen at the time of

B the initial fixation of his pay in 1978 or latest on rejection of his representation before coming into force of the Administrative Tribunals Act, 1985. The subsequent representations made by the appellatnt for proper fixation of his pay were alleged to be immaterial for this purpose.

C The Tribunal has upheld the respondents' objection based on the ground of limitation. It has been held that the appellatnt had been expressly told by the order dated 12.8.1985 and by another letter dated 7.3.1987 that his pay had been correctly fixed so that he should have assailed that order at that time "which was one time action". The Tribunal held that the raising of this matter after lapse of 11 years since the initial pay fixation in 1978 was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merits of the appellatnt's claim for

D proper pay fixation.

E Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellatnt'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 appellatnt is in

F 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 appellatnt'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 appellatnt's claim, if any,

G 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.

H 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 since it is based on a recurring cause of action. A

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao and Other v. Mattapalli, Raju and Others*, AIR (1950) Federal Court 1). B
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Learned counsel for the respondents placed strong reliance on the decision of this Court in *S.S. Rathore v. State of Madhya Pradesh*, [1989] Supp. 1 SCR 43. That decision has no application in the present case. That was case of termination of service and, therefore, a case one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and said. No further consideration of that decision is required to indicate its inapplicability in the present case. E
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For the aforesaid reason, this appeal has to be allowed, we make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs. G

R.P.

Appeal allowed.