

BHARAT SANCHAR NIGAM LTD. (B.S.N.L.) & ANR.

v

S.K. BHATNAGAR & ORS.
(Civil Appeal No. 9644 of 2013)

OCTOBER 24, 2013

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

Service Law – Pension – Commutation of – Respondent retired from service of appellant-company – Prior to retirement, he had applied for commutation of his pension – 17 years after retirement, grievance raised by respondent in regard to non-receipt of commuted pension amount – Held: Tribunal proceeded in haste in not addressing the dispute in detail – High Court also passed a laconic order – Matter remanded back to High Court for complete and detailed consideration of the matter.

Respondent no.1 retired from the service of appellant-company on 31-5-1990. He had applied for commutation of his pension prior to his retirement but he had not received the commuted pension amount of Rs.87,400/- and was not receiving his full pension. Application was filed by respondent no.1 before the Tribunal in the year 2007. The Tribunal observed that disputed questions of fact had arisen and, therefore, it would not be proper for the Tribunal to decide the case, and yet went on to hold that it could not be concluded that the amount of Rs.87,400/- had been paid to respondent no.1. On appeal, the High Court passed the impugned order which was challenged before this Court.

Allowing the appeal, the Court

HELD: 1. While one appreciates that Respondent no.1-claimant cannot prove the negative, viz., that he did

A not receive the cheque allegedly dispatched to him, the factum of the passage of 17 years would be good ground not to cast a presumption of law against the Appellants. Before this Court, a photocopy of the Cash Book maintained by the Appellants, presumably in the ordinary course of business, has been furnished. It purportedly indicates that three Demand Drafts had been got issued, ostensibly against cash deposit. The Tribunal proceeded in haste in not addressing the dispute in detail. [Para 2] [282-C-E]

C 2. Two facts are important – (a) that it is the case of Respondent no.1 himself that he applied for commutation of his pension before his retirement; and (b) that he was not receiving his full pension. This should have alerted any Adjudicating Authority to consider the veracity of his claim without invoking the principle of ‘presumption in law’. [Para 3] [282-G-H; 283-A]

D 3. There is no alternative but to remand the matter back to the High Court of Judicature at Allahabad for a complete and detailed consideration of the matter. It must consider all the evidence collected by both the adversaries and come to a definite answer without resorting to fastening a ‘presumption in law’ on either party keeping the long passage of time in perspective. It must also consider whether the claim stood barred by limitation, or was pregnant of the possibility of being rejected for delay and laches. [Para 4] [283-B-C]

E *Union of India v. Tarsem Singh*, (2008) 8 SCC 648 – held inapplicable.

G

Case Law Reference:

(2008) 8 SCC 648 held inapplicable Para 3

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9644 of 2013.

BHARAT SANCHAR NIGAM LTD. (B.S.N.L.) v. S.K. 281
BHATNAGAR

From the Judgment & Order dated 22.11.2010 of the High Court of Judicature at Allahabad, Lucknow Bench at Lucknow in Writ Petition No. 1580 (S/B) of 2010.

Dr. A.K. Gautam, Ashok Mathur for the Appellants.

Y.S. Lohit, Dr. Sumant Bhardwaj, Mridula Ray Bharadwaj, Siddharth Sangal, Anil Kumar Sangal for the Respondents.

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. Leave granted.

2. This Appeal assails the Order passed on 22.11.2010 by the Division Bench of the High Court of Judicature at Allahabad in Writ Petition No.1580 (S/B) of 2010. Regretfully, it is a laconic order in respect of an extremely cryptic decision of the Central Administrative Tribunal (CAT), Lucknow Bench, Lucknow rendered on 7.1.2008 in Original Application No.153 of 2007. In the impugned Order it has been noted that Respondent no.1 retired from the service of the Appellant-company on 31.5.1990; he was serving as Telecom District Engineer (Chambal), Gwalior. It is also duly noted that Respondent no.1 had applied for commutation of his pension. It stands admitted that he was receiving pension predicated on the commutation viz., not full pension. Neither of the Orders state the date of the application for commutation of pension, but in the hearing before us it has been indicated that this request was made in 1988. The Appellants' submission before the Division Bench of the High Court was that a Cheque No.312436 dated 18.12.1990 had been dispatched to Respondent no.1 at his Lucknow address. Before this Court, the contention is that payment was made by a Demand Draft bearing even number. It was in 2007 that Respondent no.1 filed the abovementioned Original Application before the CAT, Lucknow Bench which passed the aforementioned cryptic Order on 7.1.2008. Since Respondent no.1 had retired on 31.5.1990 his grievance of having not received the commuted pension

A amount of Rs.87,400/- has come after the passage of 17 long years. It is palpably clear that this inordinate delay has been glossed over in the impugned Order. So far as the CAT, Lucknow Bench is concerned it has firstly observed that disputed questions of fact have arisen and, therefore, it would not be proper for the Tribunal to decide the case yet, inexplicably it has gone on to opine that it cannot be concluded that the aforesaid amount of Rs.87,400/- had been paid to Applicant-Respondent no.1. It has directed B.S.N.L. to furnish within one month valid proof of receipt of cheque by the Applicant-Respondent no.1, failing which an adverse inference would be drawn in law. While we appreciate that Respondent no.1-claimant cannot prove the negative, viz., that he did not receive the cheque allegedly dispatched to him, the factum of the passage of 17 years would be good ground not to cast a presumption of law against the Appellants. It appears that the State Bank of India has pleaded that the records, being more than ten years old, stand destroyed, and therefore no information in this regard could be furnished. In these circumstances how is the dispute to be decided. Before us, a photocopy of the Cash Book maintained by the Appellants, presumably in the ordinary course of business, has been furnished. It purportedly indicates that three Demand Drafts had been got issued, ostensibly against cash deposit. The Tribunal proceeded in haste in not addressing the dispute in detail.

F 3. Learned counsel for Respondent no.1 has drawn our attention to *Union of India & Ors. v. Tarsem Singh* (2008) 8 SCC 648 wherein this Court has held that normally service matter claims are rejected either on limitation or on the grounds of delay/laches; the exception being cases of continuing wrong. We cannot appreciate how this advances the case of Respondent no.1. Two facts are important – (a) that it is the case of Respondent no.1 himself that he applied for commutation of his pension before his retirement; and (b) that he was not receiving his full pension. This should have alerted any Adjudicating Authority to consider the veracity of his claim

without invoking the principle of 'presumption in law'. Tarsem Singh, therefore, does not assist the case of Respondent no.1 a wit.

4. We find that there is no alternative but to remand the matter back to the High Court of Judicature at Allahabad for a complete and detailed consideration of the matter. It must consider all the evidence collected by both the adversaries and come to a definite answer without resorting to fastening a 'presumption in law' on either party keeping the long passage of time in perspective. It must also consider whether the claim stood barred by limitation, or was pregnant of the possibility of being rejected for delay and laches.

5. The impugned Order is accordingly set aside and the matter is remanded to the High Court for fresh adjudication. The Appeal is allowed accordingly. We hasten to clarify that nothing contained in these presents shall be construed to indicate our views on the merits of the case.

B.B.B.

Appeal allowed.