

W.P. No.15985/2015

21.3.2016

Shri Atul Choudhari, counsel for the petitioner.
Shri Manoj Sharma, counsel for the respondent.
Heard counsel for the parties.

As short question is involved, petition is taken up for final disposal forthwith, by consent. Counsel for the respondent waives notice for final disposal.

This writ petition under Article 226 of the Constitution of India takes exception to the decision of the Central Administrative Tribunal, Jabalpur Bench, Jabalpur dated 8.5.2015 in O.A. No.73/2013. The Tribunal has allowed the original application thereby quashed the order dated 21.12.2012 (Annexure A-1) and also directed the petitioners to pay actual benefit of pay fixation in the pay scale of Rs.5500-9000 w.e.f. 13.2.2001 within two months from the date of communication of the order. The Department has questioned the said decision on the ground that the respondent/applicant was not entitled for actual benefit w.e.f. 13.2.2001. The claim of the respondent was considered in the year 2010 vide order dated 16.6.2010. That order has not been set aside by the Tribunal.

Notably, the first representation to get benefit, as directed by the Tribunal, was made by the respondent on 20.2.2007. The respondent, no doubt, contends that the order dated 16.6.2010 has merged in the order dated 21.12.2012.

The fact remains that the representation was filed by the respondent only in 2007. Further, the Original Application was filed before the Tribunal in the year 2013, after order dated 21.12.2012 was passed on the second representation filed by the respondent.

In that sense, whether the challenge to the action of the Department as manifested in order dated 16.6.2010, had become time barred or for that matter the claim of the respondent for actual benefit from 13.2.2001, either as a whole or in part thereof, has become barred by limitation, were matters to be considered by the Tribunal in the first place.

Respondent, no doubt, wanted to rely on the provision of Indian Railway Establishment Manual, which according to him predicates that once the representation is accepted, the question of claim for actual benefit will not be barred by limitation in part. Even this question can be considered by the Tribunal on its own merits.

In other words, the Tribunal must first examine whether the original application itself is barred by limitation in relation to challenge, direct or indirect, made to the order dated 16.6.2010; and whether the claim of the respondent w.e.f. 13.2.2001 had become time barred having filed representation for the first time in the year 2007, either in part or as a whole.

Accordingly, we **allow** the writ petition by setting aside the impugned order and relegate the parties before the Tribunal to examine all aspects of the matter on its own merits in accordance with law. As we find that the pleadings of the parties in respect of aforesaid issues are not very clear but vague, it will be open to the respondent to amend the original application as also to the petitioners to file further reply to deal with the issues referred to above specifically and elaborately. The Tribunal after taking into account amended/fresh pleadings filed by the parties and the documents in support thereof, may examine the aforesaid issues and related matters on its own merits, in accordance with law.

All questions in that behalf are left open.

The original application filed before the Tribunal stands restored. To be listed on **4.4.2016**.

The parties may appear before the Tribunal and file amended pleadings on that date, if so advised, or such other date as may be granted by the Tribunal.

Needless to observe that the restored original application be decided expeditiously preferably not later than six months from the date of receipt of copy of this order.

(A. M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge