2025 INSC 565

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. /2025
[ARISING OUT OF SLP(C) NO.6289/2019]

THE CHIEF EXECUTIVE OFFICER & OTHERS ... APPELLANTS

VS.

S. LALITHA & OTHERS ... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

2. The challenge in this appeal is to a short order of the High Court of Karnataka at Bengaluru[1] dated 8th March, 2018[2] dismissing a writ petition[3] that the appellants had presented before it. The appellants felt aggrieved by a judgment and order dated 1st August, 2017 of the Central Administrative Tribunal, Bengaluru[4] whereby it allowed an original application[5] of the respondent.

[1] High Court
[2] impugned order
[3] W.P. No. 9171 of 2018
[4] Tribunal
[5] O.A. No. 2 of 2017

3. Undisputed facts, giving rise to this appeal, in a nutshell are these:

a. The respondent joined as TV News and Film Librarian (Library & Information Assistant) at Doordarshan Kendra, Bangalore on 11th March, 1985.

b. On 31st May, 2002, the appellant received benefit of financial upgradation under the Assured Career Progression[6] Scheme, 1999 for the first time w.e.f. 9th August, 1999.

c. Since the ACP Scheme envisaged benefits of financial upgradation in the hierarchical scale after 12 and 24 years of service, the respondent became entitled to receive benefit of financial upgradation under the ACP Scheme for the second time w.e.f. 11th March, 2009.

d. The Modified Assured Career Progression[7] Scheme, 2009 was brought into force superseding the ACP Scheme, w.e.f. 19th May, 2009.

e. The MACP Scheme envisaged placement in the immediate next higher grade pay on completion of 10, 20 and 30 years of service. It also provided that upgradation granted under the ACP Scheme in the past to those grades which now carry the same Grade Pay due to the merger of pay scale/upgradation of pay recommended by the 6th Pay Commission shall be ignored for the purpose of granting upgradation under the MACP Scheme.

f. The basic difference between the ACP Scheme and the MACP Scheme appears to be that while under the former scheme the financial upgradation was to the pay scale of the next higher promotional post

[6] ACP Scheme
[7] MACP Scheme

in the service, under the latter scheme, financial upgradation was with reference to the next higher grade pay in the scale of pay as notified upon implementation of the Central Civil Services (Revised Pay) Rules, 2018.

g. Since the respondent had not been promoted to a higher post till 1st September, 2008, she was granted the second benefit envisaged in the MACP Scheme [Pay Band 2 with Grade Pay of Rs.4,800/-] *vide* an order dated 10th August, 2010, w.e.f. 1st September, 2008.

h. In due course of time, w.e.f. 11th July, 2015, the respondent was granted the benefit of third financial upgradation under the MACP Scheme [Grade Pay of Rs.5,400/-] *vide* an order dated 18th November, 2015.

i. The respondent, indubitably, received the benefits of second and third financial upgradation under the MACP Scheme without raising any demur.

j. On 4th October, 2016, the respondent submitted a representation to the Director General, Doordarshan, 3rd appellant (5th respondent in the original application), to grant her benefit of second financial upgradation under ACP Scheme with Grade Pay of Rs.6,600/- w.e.f. 11th March, 2009 and the benefit of the third financial upgradation under the MACP Scheme with Grade Pay of Rs.7,600/-, w.e.f. 11th March, 2015.

k. Such representation was rejected on 5th November, 2016 by the Dy. Director (S.II).

l. Challenging rejection of her representation, the respondent approached the Tribunal which, as noted above, allowed her original application[8] *vide* the judgment and order dated 1st August, 2017[9], which later came to be affirmed by the High Court *vide* the impugned order.

4. The Tribunal proceeded to allow the O.A. of the respondent relying on a judgment and order of the High Court dated 5th June, 2017 in ***B. D. Kadam & ors. v. Union of India & ors.***[10].

5. The impugned order recorded its concurrence with the decision in ***B. D. Kadam*** (supra) and, thus, held that the Tribunal was not in error in upholding the respondent's challenge to the order dated 5th November, 2016 rejecting her representation. The High Court also noticed that the decision in ***B.D. Kadam*** (supra) had been challenged before this Court by the Union of India in SLP (Civil) D No. 29605 of 2017 but no order had been passed. Accordingly, the challenge in the writ petition was spurned. Submission advanced on behalf of the respondent that the Tribunal's order had been complied with was, however, recorded.

6. Incidentally, SLP (Civil) D. No. 29605 of 2017 stands dismissed *vide* an order of this Court dated 27th January, 2020.

7. Up to this stage, it would seem to be an open and shut case. The Tribunal having proceeded to allow the O.A. on the basis of ***B. D. Kadam*** (supra), which it was bound to follow, the Tribunal's order having been complied with by the

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[8] O.A.
[9] Tribunal's order
[10] 2017 SCC OnLine Kar 4772

appellants by granting to the respondent the benefit she had claimed, and the SLP (Civil) D. No. 29605 of 2017 against the decision in ***B. D. Kadam*** (supra) having been rejected, nothing further would survive for consideration. However, certain subsequent developments including decisions of this Court have been drawn to our notice by the appellants and it has been urged that this Court may examine the issue of the respondent's entitlement in the light of such developments and notwithstanding that compliance with the Tribunal's order has been secured.

8. After SLP (Civil) D. No. 29605 of 2017 came to be dismissed by this Court on 27th January, 2020, a review petition[11] was filed before the High Court. *Vide* its order dated 7th March, 2023, the High Court rejected the review petition. Challenging such rejection, SLP (Civil) D. No. 45401 of 2023 has been filed, whereupon a coordinate Bench of this Court on 8th December, 2023 has issued notice in view of the decisions in ***Union of India & ors. v. S. Ranjit Samuel & ors.***[12] and ***Vice Chairman, DDA v. Narendra Kumar & ors.***[13].

9. The appellants, therefore, contend that the issue is still at large as to whether the respondent was entitled to succeed in her claim before the Tribunal and the High Court.

10. Since SLP (Civil) D. No. 45401 of 2023 is pending, the same has to be decided on its own merits. However, for reasons more than one (which we need not express here, lest it has any effect on the pending *lis*), we are really

[11] R.P. No.345 of 2022
[12] 2022 INSC 340 = 2022 SCC OnLine SC 368
[13] 2022 INSC 276 = (2022) 11 SCC 641

not impressed by the contention advanced on behalf of the appellants based on the fact of issuance of notice referred to above.

11. Though not cited by the appellants, we have looked into a decision of recent origin of a coordinate Bench of this Court in ***Union of India v. N.M. Raut***[14], wherein, upon thorough consideration of the MACP scheme and the decisions referred to therein, financial upgradations granted in favour of the respondents-employees were interdicted and the appeals were allowed. However, we have noticed a factual dissimilarity which is of some significance. The respondents-employees were granted financial upgradations under the MACP Scheme despite grant of non-functional upgradation after two or four years of service while functioning as Pharmacist and Superintendent, respectively, and thus had not stagnated. This Court in ***N.M. Raut*** (supra) held that such grant of non-functional upgradation and thereafter financial upgradation under the MACP Scheme would be contrary to the intent and purpose of the MACP scheme. This position is evident from what was observed in paragraph 20, reading as follows:

> "20. In view of the aforesaid position of the MACPS, we fail to understand how we can ignore the financial upgradation, which was granted upon completion of two or four years of service in the posts of Pharmacist or Superintendent, as the case may be, for the purpose of deciding as to whether or not the Government employee would be entitled to the next financial benefit under the MACPS. To ignore the financial upgradation granted on completion of two or four years of service as Pharmacists or Superintendents, would be contrary to the intent and purpose of the scheme, the language employed as well as the examples/illustrations which have been given. …"

12. It is, therefore, apparent that financial upgradations granted under the MACP Scheme despite grant of non-functional upgradation to the respondents-

[14] 2024 INSC 1042 = 2024 SCC OnLine SC 3873

employees upon completion of two or four years of service, as the case may be, was not found by this Court to be in accord with the MACP scheme and while, however, not ordering recovery from those who had retired and those who were due to retire within a year of pronouncement of such judgment, the Court clarified that their pension and pay scale be redetermined w.e.f. 1st January, 2025. The respondent before us had claimed benefits of financial upgradation on completion of 24 years of service with effect from the date of grant of financial upgradation to her was due in terms of the ACP Scheme, which got delayed and, in the interregnum, the MACP Scheme intervened. The reason why this Court held against the respondents-employees in ***N.M. Raut*** (supra) is, therefore, quite distinct, whereas this appeal calls for a different perspective.

13. Be that as it may, non-interference with the order impugned is the logical conclusion based on our understanding that issuance of notice on SLP (Civil) D. No. 45401 of 2023 is of no relevance and that the decision in ***N.M. Raut*** (supra) does not operate to the detriment of the respondent; however, the reason why we propose not to end our judgment here but to say a few more words is because of an objection that the appellants had raised in their counter statement as regards maintainability of the O.A. According to the appellants, the O.A. was time-barred and ought to have been dismissed as such.

14. The respondent had pleaded in paragraph 3 of the O.A. as follows:

> "3. LIMITATION:
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> The Applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985 as the Applicant is challenging the orders passed by the 5th Respondent at Annexure A-11 dated 5.11.2016 against the claim of the Applicant."

15. Since the O.A. was verified on 21st December, 2016, the respondent was confident and, accordingly, declared that it was within the period of limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985[15].

16. Both the Tribunal as well as the High Court did not rule on the objection of maintainability though, for the reasons and the observations that follow, such objection appears to us to be fairly sound.

17. ***C. Jacob v. Director of Geology and Mining***[16]***, Union of India v. M.K. Sarkar***[17]***, State of Uttaranchal v. Shiv Charan Singh Bhandari***[18] *and* ***Union of India v. Chaman Rana***[19] are decisions of this Court on belated approaches with stale grievances in service related disputes having a material bearing on this appeal.

18. In ***C. Jacob*** (supra), this Court observed that the case before it was a typical example of "representation and relief". The employee kept quiet for 18 years after termination of service. A stage was reached of no record being available regarding his previous service. In the representation which the employee made in 2000, he claimed that he should be taken back in service. On rejection of the said representation by an order dated 9th April, 2002, he filed a writ petition before the jurisdictional high court claiming service benefits, by referring the said order of rejection as the cause of action. The learned Judge examined the claim, as if it was a live claim made in time, found fault with the employer for not producing material to show that termination

[15] 1985 Act
[16] 2008 INSC 1133 = (2008) 10 SCC 115
[17] 2009 INSC 1288 = (2010) 2 SCC 59
[18] 2013 INSC 560 = (2013) 12 SCC 179
[19] 2018 INSC 230 = (2018) 5 SCC 798

was preceded by due enquiry and declared the termination as illegal. But as the employee already reached the age of superannuation, the learned Judge granted the employee the relief of pension with effect from 18th July, 1982, by deeming that he retired from service on that day. This Court expressed its inability to understand how the learned Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005 as well as how fault could be found with the Department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in proceedings initiated after 22 years, when the department in which the employee had worked was wound up long back in 1983 itself and the new department had no records of his service.

19. The facts in ***M.K. Sarkar*** (supra) would reveal that more than 22 years after his retirement, and after receiving his dues under the Provident Fund Scheme, the retiree-respondent had made a representation requesting that he may be extended the benefit of the Pension Scheme while, at the same time, expressing willingness to refund the amount received under the Provident Fund Scheme (by way of adjustment against the arrears of pension that would become payable to him on acceptance of his request for switch over to the Pension Scheme). The said request was not accepted. The retiree-respondent therefore approached the Central Administrative Tribunal[20] by filing an application under Section 19 of the 1985 Act seeking a direction to the Railway Administration to permit him to exercise an option to switch over to the Pension Scheme. The application was disposed of by the CAT by directing a decision to

[20] CAT

be taken on the representation of the retiree-respondent by passing a reasoned order, making it clear that it did not examine the claim on merits. The claim of the retiree-respondent was rejected by the Chairman, Railway Board whereupon a second original application was filed before the CAT. CAT allowed this second application and directed the Railways to permit the retiree-respondent to opt for the pension scheme and also inform him the amount that was required to be refunded in case he exercised the option. The relevant high court having jurisdiction was unsuccessfully approached by the Railways, whereafter this Court's jurisdiction under Article 136 of the Constitution was invoked. It is in the aforenoted facts and circumstances that this Court had the occasion to observe in paragraphs 15 and 16 as follows:

> **15.** When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.
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> **16.** A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.

20. ***Shiva Charan Singh Bhandari*** (supra) and ***Chaman Rana*** (supra) arose out of belated claims for grant of promotion. In ***Chaman Rana*** (supra), it was held that a subsequent pronouncement of a judgment by this Court

could not enthuse a fresh lease of life or furnish a fresh cause of action to what was otherwise clearly a dead and stale claim. The following passage from ***Shiv Charan Singh Bhandari*** (supra) was quoted:

> "*29*. … Not for nothing, has it been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

This was followed by the observation that caution has to be exercised by the Court with regard to the modus operandi of the representation syndrome to revive what are clearly dead and stale claims, as discussed in ***C. Jacob*** (supra).

21. One of us (Rajesh Bindal, J.), speaking for the coordinate Bench in ***State of Orissa v. Laxmi Narayan Das***[21], had the occasion to consider the effect that unexplained delay and laches would have in availing remedies. The Court in that case was concerned with a challenge to finally published record of rights. Taking note of multiple precedents in the field on the subject of delay or laches disentitling a party to relief, it was held that a writ petition filed 46 (forty-six) years after final publication was grossly belated and that no relief could have been made available to the respondents/writ petitioners.

22. Although in ***C. Jacob*** (supra) and ***M. K. Sarkar*** (supra) the law was declared keeping in mind that there were directions for consideration of the "stale" or "dead" claims by the orders of the high court and the CAT, respectively, and thereafter, rejection of the claims gave rise to the second

[21] 2023 INSC 619 = (2023) 15 SCC 273

round of litigation, here no such order of the Tribunal admittedly intervened. There is, thus, a factual dissimilarity; yet, nothing much turns on it.

23. In the facts of the present appeal, we find that the respondent had received the second benefit of financial upgradation under the MACP Scheme in August, 2010 and even the third benefit thereunder sometime in November, 2015. She claimed grant of the second benefit of financial upgradation under the ACP Scheme, due to her in March, 2009, as late as in October, 2016 by making a representation. Fortuitously for the respondent, she did not have to approach the Tribunal for getting her representation decided, because within 32 days of receipt thereof, the Dy. Director (S.II) rejected such representation on 5th November, 2016. The due diligence exercised by a conscientious officer, [who thought it to be his duty to decide the representation but otherwise could well have elected not to examine the same because (i) a "stale" or "dead" claim had been raised and (ii) the respondent, while in service, had accepted the benefits of financial upgradation without raising any demur] cannot be taken undue advantage by the respondent by urging that the law declared in the aforesaid decisions would not be applicable in her case because of factual dissimilarities.

24. The self-imposed restrictions in the exercise of writ jurisdiction under Article 226 of the Constitution, which have evolved from judicial precedents of this Court, need not be restated here. Suffice to say, unexplained delay or laches is considered one of the factors which could assume significance in denying relief when the discretionary writ remedy is invoked. In an appropriate case, a writ court may refuse to invoke its extraordinary powers if the

applicant's negligence or omission to assert his right combined with undue delay or laches and prejudice to the other party warrants such refusal.

25. However, although limitation laws do not apply to writ jurisdiction, in relation to service disputes triable under the 1985 Act the laws of limitation traceable in Section 21 read with Section 20 thereof do apply. Sections 20 and 21 (to the extent relevant) read as follows:

> *"**20. Application not to be admitted unless other remedies exhausted**.—(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the **remedies** available to him **under the relevant service rules** as to redressal of grievances.*
> *(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the **remedies** available to him **under the relevant service rules** as to redressal of grievances,—*
> *(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or*
> *(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.*
> *(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."*
>
> (emphasis supplied)

> *"**21. Limitation**.—(1) A Tribunal shall not admit an application,—*
> *(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;*
> *(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.*
> *… ".*

26. A Constitution Bench of this Court in ***S.S. Rathore v. State of Madhya Pradesh***[22], upon noting Section 20, had the occasion to observe as follows:

> **15.** In several States the Conduct Rules for government servants require the administrative remedies to be exhausted before the disciplinary orders can be challenged in court. …
> **16.** The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for government servants of the Centre and several States have already set up such Tribunals under the Act for the employees of the respective States. The law is soon going to get crystallised on the line laid down under Section 20 of the Administrative Tribunals Act.
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> (emphasis supplied)

27. As noted in ***S.S. Rathore*** (supra) and as is still the present position, service rules (rules relating to conduct, discipline and appeal, leave, pension, etc.) governing public servants do have provisions providing for first appeals, second appeals (not ordinarily), revisions against original/appellate orders, or memorials (not ordinarily). In rare cases, such rules may also provide for representations against actions which affect the public servants and are perceived by them to be not in accordance with law. In any event, even though service rules may not provide for a representation, there could be cases (to be discussed hereafter) where omission or failure to consider and dispose of a representation could give rise to a claim to move the CAT.

28. We may, at this juncture, clear the position that the CAT does have, in exceptional cases, the power to entertain an original application under Section 19 of the 1985 Act even if the applicant before it has not exhausted the remedies available to him under the service rules applicable to him as to

[22] 1989 INSC 268 = (1989) 4 SCC 582

redressal of grievances. If any authority on the point is required, one may profitably refer to the decision in ***D.B. Gohil v. Union of India***[23].

29. Coming back to Section 20, the purport of the opening words of sub-section (2) read with sub-section (1) thereof, which we have highlighted above, leaves no manner of doubt that the word "remedies" referred to therein, used as a noun, mean the "remedies" that are statutorily available as to redressal of grievances under the relevant service rules. However, in a case where the service rules do not provide any scope for representation to be made, the aggrieved public servant without making an unprovided for representation, i.e., a non-statutory representation, and without waiting for its disposal, may approach the CAT directly challenging the order/action that has prejudicially affected his right and left him aggrieved; and, if any objection as to non-exhaustion of remedy before the departmental authorities is raised before the CAT by the authorities, the same can well be countered by urging that the service rules do not provide any statutory remedy by way of a representation to the departmental authorities against the order/action under challenge.

30. There could, however, be innumerable cases where formal orders may not exist affecting the rights of public servants covered by the 1985 Act but affectation of their rights could arise out of silence or inaction of the employer to confer an otherwise legitimate benefit. What is the recourse available in such a case? In such cases, it is eminently desirable that steps be first taken by the public servant to invite the attention of the employer to such affectation

[23] (2010) 12 SCC 301

of rights for the same to be addressed by the employer. Suppose, a public servant is due for promotion or is due for a pay raise or claims entitlement to any service benefit which, according to him, is due but the employer has remained silent or inactive in not giving the public servant what is due to him. In such cases, the only way of espousing one's grievance is through a representation bringing to the notice of the employer that grant of the service benefit, though due, has not been considered and that the grievance be redressed. If the grievance is not redressed despite receiving the representation and despite expiry of the period mentioned in sub-section (2) of Section 20 of the 1985 Act, in such cases, the CAT cannot throw out an original application by holding that the remedy by way of a representation is not provided in the service rules. However, the public servant has to be cautious and take care not to wait indefinitely for espousing his grievance from the date affectation of his right begins. If he does wait indefinitely, he does so at his own peril.

31. Or, take a case where there is no employer-employee relationship yet, viz., the case of an aspirant for public employment who participates in the selection process but turns out to be unsuccessful. Should he have any grievance in relation to the process and seeks to challenge the same, he may do so immediately before accrual of third party rights; or, he may first represent and if there be no response or any response which does not address his grievance, he may apply before the CAT under Section 19 of the 1985 Act within the prescribed period of limitation. However, if there is delay and third party rights accrue, the delay has to be explained and condonation sought.

32. Reading Section 20 as we have interpreted it above with the guiding light provided by ***S.S. Rathore*** (supra) and ***M.K. Sarkar*** (supra), we need to consider whether the O.A. filed by the respondent before the Tribunal was within time or not.

33. The respondent did not in the O.A. plead and indicate the specific provision in the service rules in terms whereof she sought relief from the 3rd appellant by filing the representation dated 4th October, 2016. In the absence of such pleading, one has to proceed on the premise that she had made the representation on her own without the same being provided under any service rules applicable to her and, in that sense, it was a non-statutory representation. The period of limitation could not have been stretched by the respondent by asserting that rejection of her non-statutory representation resulted in accrual of the cause of action for moving the Tribunal.

34. To summarise the legal position, what assumes cruciality in cases, such as these, is whether the representation that has been made and rejected, whereafter the jurisdiction of the CAT is invoked, is statutorily provided in the service rules governing the applicant-public servant. Bare reading of the opening words of Section 20 of the 1985 Act with sub-section (1), which requires exhaustion of other available remedies as a general precondition for entertaining original applications under Section 19, refers to remedies that are available under the relevant service rules as to redressal of grievances against final orders. If the relevant service rules do not provide for making of a representation against final orders, by reason of absence of such a provision, the remedy of the aggrieved applicant-public servant would lie directly before

the CAT in challenging the order/action of the authorities adverse or prejudicial to his interest; and, in such a case, an original application ought not to be rejected mechanically on the ground that all "remedies" have not been exhausted. However, it cannot be gainsaid that if the relevant service rules do provide for making of a representation, the remedy made available has to be exhausted unless an exceptional case is set up. Provision made in the service rules, if at all, for making of a statutory representation, timing of such representation and whether the representation raises a "stale" or "dead" claim – all these are relevant for deciding the question of limitation under the 1985 Act. The opening words of Section 20 read with sub-section (2) thereof would, however, call for a nuanced approach. As observed earlier, a representation though not provided in the relevant rules governing service could yet be necessary and imperative when a legitimate service benefit is not conferred on the aggrieved applicant-public servant by the employer on his own either due to inaction or otherwise. In such a case, the representation inviting attention to what the aggrieved applicant-public servant perceives is deprivation of a legitimate benefit has to be made expeditiously and before accrual of third-party rights, if any. Such a representation could be made even after accrual of third-party rights, but within a reasonable time of the same coming to the notice of the aggrieved applicant-public servant. What would constitute reasonable time would necessarily depend on the facts of each particular case and decided accordingly.

35. We hold that except in cases where final orders are passed on appeals/revisions/memorials/representations which are statutorily provided,

limitation for the purpose of filing an original application under Section 19 of the 1985 Act, in view of the above-referred decisions and Sections 21 and 20 thereof, has to be reckoned keeping in mind the date of accrual of the cause of action and the proximity of the date of the representation, and the period of one year for filing an original application has to be counted from the date of expiry of six months from date of such a representation if no order were passed thereon. Needless to observe, the cause of action cannot be deferred by making a highly belated representation and awaiting its outcome. We also make it clear that different considerations would arise in a case of a continuous wrong, which has to be decided in the light of the decision of this Court in ***Union of India v. Tarsem Singh***[24].

36. On such premise as explained above, the respondent should have, if she felt aggrieved by the action of the appellants of granting her benefits of financial upgradation under the MACP Scheme instead of the ACP Scheme, availed the remedy before the Tribunal immediately after her rights were affected. She ought not to have waited for so long for ventilating her grievance through a belated representation. Filing of such belated representation, which was rejected in no time, did not have the effect of postponing the cause of action and stretching the period of limitation so as to render the O.A. as filed within time.

37. Both fora, i.e., the Tribunal as well as the High Court, did not rule on the objection of maintainability of the O.A. despite such objection being sound. The reasons that we have assigned would lead to the irresistible conclusion

[24] 2008 INSC 930 = (2008) 8 SCC 648

that the O.A. was time-barred and should not have been entertained by the Tribunal. The High Court too erred in law by failing to entertain the challenge to the Tribunal's order on the specious ground that the decision in ***B.D. Kadam*** (supra) covered the issue without, however, examining whether the O.A. was maintainable.

38. Having ruled thus, we cannot ignore a vital fact. The respondent has retired in 2018. The Tribunal's order has been implemented and she has received certain financial benefits. During the winter years of her life, financial support will become essential to ensure that she can live a life of dignity and purpose, exercising her right to a fulfilling existence. Regard being had to the same and bearing in mind the provision contained in Article 15(3) of the Constitution enabling the State to make special provisions *inter alia* for women and that Article 41 thereof provides guidance for the policy of the State to be aimed at providing assistance in cases of *inter alia* old age, we, in due exercise of our power under Article 142 of the Constitution of India and considering this case as a very special case, refrain from directing the respondent to refund any surplus amount received by her over and above her entitlement.

39. The appeal, accordingly, stands disposed of without interfering with the impugned order.

.....J
(DIPANKAR DATTA)

.....J
(RAJESH BINDAL)

NEW DELHI;
APRIL 24, 2025.