

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

CLAIM PETITION NO. 39/DB/2014

Swaroop Singh Negi S/o Shri Lal Singh, Presently posted as Electrician
collectorate District Office, New Tehri, District Tehri.
.....Petitioner.

VERSUS

1. State of Uttarakhand through Secretary, Revenue, Secretariat
Government of Uttarakhand, Subhash Road, Dehradun.
2. Commissioner/Secretary Rajashava Parishad Uttarakhand, Dehradun.
3. District Magistrate, New Tehri, District Tehri Garhwal.
4. State of U.P. through Secretary Revenue, Secretariat State of U.P.
Lucknow.

.....Respondents

Present: Sri B.B.Naithani, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. P.O.
for the respondent Nos. 1to 3.
Ex-parte against O.P. No.4 on 10.09.14

JUDGMENT

DATED: FEBRUARY 20,2015.

(Justice J.C.S. Rawat, (Oral)

1. This petition has been filed for seeking following relief:-

“It is therefore most respectfully prayed that this Hon'ble Tribunal may kindly
be pleased to

- (i) Issue an order or direction quashing the rejection orders dated
08.07.2013 (Annexure No. A-1) and 15.07.2013 (Annexure No.A-2)
passed by Respondent Nos. 1 & 2.

- (ii) Issue an order or direction directing the respondents to pay a revised pay scale of Rs. 950-1500/- w.e.f. 01.01.1986 along with arrears and consequential benefits to the petitioner.
 - (iii) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."
2. It is the admitted case of the parties that the petitioner was appointed as Tube well Operator-cum-Electrician in the establishment of District Magistrate, Tehri and he was granted the pay scale of Rs.175-250/- before the implementation of the 4th Pay Commission i.e. 1.1.1986. Thereafter he was granted a pay scale of Rs. 330-495/- according to service book. The Central Government appointed the Pay Commission regarding the fixation of salaries of their employees w.e.f. 1.1.1986 and the Pay Commission report was also implemented through Samta Samiti report in the State of U.P. The District Magistrate granted him only the pay scale of Rs.330-495/-.
3. The petitioner has claimed in his claim petition that he has served as an Electrician for a period of 32 years but he has been discharging and working as Electrician in the Collector establishment only almost to the satisfaction of his superiors. The petitioner has further claimed that the Samta Simiti sanctioned the post of Tube well Operator-cum-Electrician in the erstwhile State of U.P. and the similarly situated other employees of the State Government like Jeep Driver, Electrician, Tube well Operator-cum-Electrician who were initially paid a pay scale of Rs. 175-250/- as had been granted by the 4th Pay Commission as a pay scale of Rs. 825-1200/- and later on in the year 1993 that was revised to the tune of Rs. 950-1500/-. The petitioner has claimed parity with other similarly situated persons who had been granted the pay scale of Rs. 950-1500/- in the establishment of the District Magistrate. The petitioner has further alleged that Sri Sudesh Kumar, who had already been working as Tube well Operator-cum-Electrician in the Collector's establishment, Saharanpur, U.P., has been granted the pay scale of Rs.950-1500/- in the year 1993 when the State of U.P. was undivided State. Apart from that the petitioner has also alleged that after the implementation of the recommendations of Samta Samiti in the year 1989, the post viz as Roller

Driver, Truck Driver, Jeep Driver, Tractor Driver, Electrician, Photo Assistants were granted the pay scale of Rs. 950-1500/- in other departments like Public Works Department under the same State Government. The petitioner has further claimed that the competent authority has not given any reason as to why the petitioner is not entitled to get the said pay scale , while it has been granted by the Samta Samiti. The petitioner made a representation, which was rejected by the competent authority and thereafter he has filed this claim petition before the Tribunal.

4. Respondents in their written statement/ counter affidavit have denied the averments made in the claim petition and stated that the petitioner is not entitled to get the pay scale of Rs. 950-1500 which was granted in the year 1993 in accordance with the Samta Samiti report of 1989. It has further been alleged that the petitioner is not entitled to the relief claimed because the petitioner has no sufficient work as an Electrician in the department as such he cannot claim parity with other departments also It is further alleged the petitioner has no technical qualification and has not furnished any certificate so far, whereas the Drivers of the Collectorate are required to have the technical qualification for the said post. Respondents have also alleged that the petitioner's responsibility is not equivalent that of the Drivers as alleged by the petitioner. Ultimately, the respondents have prayed that the petition of the petitioner may be dismissed.
5. We have heard learned counsel for the parties and perused the record.
6. Ld. Counsel for the petitioner contended that the employees like Jeep Driver, Electrician have been fitted with one and same pay scale in the year 1982. They cannot be subjected to any discrimination by putting them in different pay scales without there being any reason for the same after the implementation of the recommendations of the Samta Samiti as there is no change in the duties of these posts before or after the revision of the pay scales and all the employees fitted in one pay scale are discharging the same duties what they have been discharging prior to the enforcement of the report. The petitioner and the other employees viz.

Drivers etc. were appointed in the pay scale of Rs.175-250/- in the year 1982 and have been performing the same duties and functions and their functions have not been changed so far. The pay scale of the Drivers has been put in the revised pay scale of Rs.950-1500/- in the Revenue Department and the same pay scale has to be granted to the similarly situated employees as Tube well Operator-cum-Electrician as both of these sets of employees were fitted in the pay scale of Rs. 175-250/- before the revision of the pay scale. It was further contended that Sri Sudesh Kumar, who has been discharging same function, has already been granted the pay scale of Rs. 950-1500/- in the year 1993 in the State of U.P. when the State of Uttarakhand had not been carved out. Ld. Counsel for the petitioner further contended that the respondents had made a hostile discrimination against the petitioner.

7. Ld. A.P.O. has refuted the contentions and contended that the Pay Commission and the Samta Samiti had not given the said pay scale to the establishment of the Collectors.
8. It is admitted fact that the State of U.P. has taken a decision in the year 1988 that the State Government agrees to grant its State employees the pay parity of Central Government. The pay parity has to be determined according to the designation of the post in the establishment of both the Governments. It was also decided at that time, if any post is not available in the Central Government or additional post is available in the State Government, then the Samta Samiti constituted by the State Government, would decide the pay parity of such employees and the employees would get the salary accordingly. Pursuant to the said decision, a Samta Samiti was constituted and they gave their recommendation to the State Government regarding pay parity of the posts in the State of U.P. Before proceeding further we would like to mention that equation of posts and equation of pay are matters primarily for the executive Government and expert bodies like the Pay Commission and not for the Courts/Tribunals. In catena of decisions, Hon'ble Supreme Court has held that where all things are equal i.e. where all relevant considerations are same, persons holding identical

posts and identical pay scales, may not be treated differently in the matter of their pay merely because they belong to different departments or in the same department they belong to different categories. Now the principle of equal pay for equal work is not expressly declared by our Constitution but where the equal pay for the equally fitted persons had not been granted, it would amount to a discrimination under Article 14 of the Constitution. Equality Clauses must have been similar to everyone but the vast majority of the people, the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get.

9. Before proceeding further, Hon'ble High Court while relegating this petition has made the following observations in Para 5 of its judgment in **writ petition No. 1318(SS) of 2013 Swaroop Singh Vs. State of Uttarakhand & others :-**

"The writ petition is, therefore, disposed of with the direction to the petitioner to approach the State Public Services Tribunal, who shall examine as to whether the work of electrician-cum-tube well operator and that of electrician are the same or not? If the work of both the posts is the same and entails same amounts of duties etc., it will pass appropriate order, as there is already a determination of this Court that the electrician are liable to be given the pay scale which is being given to the Truck Drivers, Electricians, Tractors etc."

10. In view of the above observation it is to be adjudicated as to whether the petitioner had been discharging the work of the Electrician or not?

11. The petitioner has alleged in Para 4.3 & 4.4 of his claim petition as under:-

"That about 32 years have gone since his appointment but no Tubewell has ever been established in the campus of the Collectrate Tehri Garhwal or in any other office of the Revenue Department situated in the District Tehri. As such the petitioner has been perennially; regularly substantially and essentially had been discharging duty as electrician since 1st day of appointment and has been entrusted with the work which are entrusted to and discharged by the electrician to the utmost satisfaction of authorities as it is evident from the following letters and the petitioner had also been rewarded by Hon'ble Governor of the State of Uttaranchal for discharging duty as electrician in

Uttaranchal Festival as it is evident from the Annual character roll entry for the year 2000-2001 a copy of the same has been filed as Annexure No.30 here with this petition:-

- (i) Letter No. 483/22-6 dated 26.12.1990 addressed to commissioner & Secretary Rajashva parishad U.P. through which the recommendation was made to grant the petitioner pay scale of 950-1500 in following words

“-----कलेक्ट्रेट में कार्यरत इलैक्ट्रीसियन अपने कार्य के साथ साथ कलेक्ट्रेट में स्थापित इंटरकाम,डुप्लीकेटिंग आपरेटर , फोटोस्टेट मशीन , ध्वनी प्रसारण यंत्रों की देखरेख का कार्य भी करता है।”

A copy of this letter dated 26.12.1990 has been filed as Annexure-No. A-9 herewith this petition

- (ii) Letter No. 389/22-6 dated 10.02.1992 addressed to commissioner & Secretary Rajashava Parishad U.P. through which the recommendation was made to grant the petitioner pay scale of 950-1500 to the petitioner in following words

“-----कलेक्ट्रेट में कार्यरत इलैक्ट्रीसियन को अपने कार्य के अलावा डुप्लीकेटिंग मशीन, फोटोस्टेट मशीन , ध्वनी प्रसारण यंत्रों आदि की देखभाल भी करनी पड़ती है।”

A copy of this letter dated 10.02.1992 has been filed as Annexure-No. A-10 herewith this petition.

- (iii) Letter No. 68/22-6(90-91) dated 19.07.95 and Letter No. 1865/22-6 dated 6.8.1996 addressed to commissioner Garhwals a similar recommendation was made a copy of the order dated 19.07.1995 and dated 6.8.1996 is being filed as Annexure No.A-11 & A-12 here with this petition. A copy of the order dated 19.07.1995 and dated 06.08.1996 is being filed as Annexure-No. A-11 & A-12 herewith this petition.

- (iv) Letter No. 890/नौ-6 dated 15.2.2013 addressed to Upper Mukhya Rajashava Ayukt Rajashava Parishad by Zila Adhikari Tehri Garhwal has made the following recommendation:-

“----- जिला कार्यालय नई टिहरी में कार्यरत इलैक्ट्रीसियन द्वारा जिला कार्यालय/परगना/तहसील कार्यालयों में भी समय समय पर बिजली, जनरेटर फोटोस्टेट मशीन, इन्टरकॉम रिपेयरिंग कार्य विशेष प्राथमिकता के आधार पर किये जाते हैं। प्रदेश के कलेक्ट्रेट में कार्यरत , ट्यूबवैल आपरेटर कम इलैक्ट्रीसियन को 850-1200 में स्थिर रखा गया है। तत्क्रम में श्री स्वरूप सिंह नेगी के प्रकरण पर विचार करने की कृपा करें।”

A copy of same letter dated 15.02.2013 has been filed as Annexure-No. A-13 herewith this petition.

4.4 That it is also made clear that the petitioner had been performing only those work which were related with maintenance of electric supply and electric appliances only and no other work was being under taken from him since his initial appointment. In fact he had been discharging duties of electrician since his appointment on 7.1.1982 not only in his own office but in other establishments and during fairs and General elections also as it is evident from the following orders by which the petitioner was directed to perform duty of electrician:-

(i) Letter No. Memo/Mu Pra/dated 06.04.1985

(ii) Letter No. Memo/Mu Pra/dated June 1985

(iii) Letter No. Memo/Mu Pra/dated 17.04.1985

(iv) Letter No. 60/1/29-6-91dated 8.5.1991

(v) copy of order sheet dated 12.5.92

(vi) Letter No. Memo / सं० प्र० -90dated 13.07.1990

(vii) Order no.58/29-14/99 dated 13.09.99

(viii) Order no.474/आ०ले० 94 dated 13.06.1994

Copies of the above said order/letters have been filed as Annexure No.A-14, to A-21 respectively herewith this petition."

12.Reply thereof has been made in Para 8 & 9 of the W.S. by the respondents as under:-

“8— यह कि याची का कथन स्वीकार नहीं है। याचिका के प्रस्तर-4.3 वर्णित तथ्य अभिलेखीय होने से किसी प्रकार की टिप्पणी की आवश्यकता नहीं है।

9— यह कि याची का कथन स्वीकार नहीं है। याचिका के प्रस्तर-4.4 में वर्णित तथ्य अभिलेखीय होने से किसी प्रकार की टिप्पणी की आवश्यकता नहीं है।

13.Respondents have not denied that any such letters, which have been filed along with Annexure-14 to Annexure-21, has been given to him. These letters pertain to discharge the work of the Electrician. It is settled position of law that if a fact is said to have not been admitted or it has not been specifically denied with details, the fact would be deemed to have been admitted. In view of the above legal position, this fact clearly proves that the petitioner has been discharging the work of Electrician. The petitioner was appointed vide Annexure-7 to the claim petition as

Tube well Operator-cum-Electrician. Annexure-A-14 to Annexure-21 clearly denote that the petitioner had been discharging the functions of the Electrician as the name of the post denotes. Apart from that it is alleged in Para-4.4 of the claim petition that the petitioner had been performing the work related with the maintenance of the electricity supply and electrical appliances and no other work has been taken from him since his initial appointment and he had been discharging the duties of Electrician since his appointment from 7.1.1982. The respondents have dealt this para in their written statement in which they have stated that the fact is not admitted. But this fact, in view of the above legal position is said to have been admitted to the respondents. Ld. A.P.O. could not demonstrate that the petitioner had not been discharging the work of the Electrician in the respondents' establishment. The above letters as well as the annexures and the pleadings clearly reveal that the petitioner had been discharging the work of the Electrician since his appointment and his post is also of the Electrician.

14. Apart from that it is specifically alleged by the petitioner in his claim petition in Para 4.3 that the Collector of Tehri has sent the recommendation to the Commissioner and Secretary, Board of Revenue, to grant him the pay scale of Rs. 950-1500/- and this fact has also not been denied. Annexure-9 to Annexure-13 reveal that the recommendations had been made by the Collector to grant him the pay scale of Rs. 950-1500/- a higher pay scale which is payable to the Jeep Drivers.

15. In support of his contention the petitioner has shown Annexure-27 at pg. 68-A in which it is clearly written that the Samta Samiti has made recommendation that the Jeep Driver and Electrician would get the pay scale of Rs.950-1500/-. This letter was issued by Sri D.K., Gupta, Chief Engineer, U.P. to his subordinate officers. This letter is based upon a Government order dated 30.12.1989. The contents of this letter are as under:-

“लोक निर्माण विभाग
व्यय“ग” वर्ग

संख्या 4244 व्यय/ 715 व्यय /91

लखनऊ दिनांक 8 – 11793

समस्त क्षेत्रीय मुख्य अभियन्ता ,लो० नि० वि०, उ०प्र०
 समस्त अधीक्षण अभियन्ता ,लो० नि० वि०, उ०प्र०
 समस्त अधिशासी अभियन्ता , लो० नि० वि०, उ०प्र०
 समस्त कार्य अधिकक, वि० नि० ई०, लो० नि० वि०, उ०प्र०
 निदेशक, अन्वेशणलय / क्वालिटी प्रमोशन सेल, लो० नि० वि०, उ०प्र०, लखनऊ।
 विषय- समता समिति उ० प्र० (1989) की संस्तुतियों पर लिये गये निर्णयानुसार लो०
 निर्माण विभाग, उ० प्र० में विभिन्न पदों पर पनरीक्षित वेतनमान की स्वीकृति ।

उपरोक्त विषयक लोक निर्माण विभाग अनुभाग-5 उ०प्र० शासन लखनऊ के आदेश संख्या 5483 श्रेणी /23 सा०नि०-5-149 श्रेणी /89 दिनांक 30-12-89 द्वारा वाहन चालकों तथा अन्य समकक्षीय पदों पर समता समिति की संस्तुतियों के आधार पर वेतनमान रू०950-20-1150-द०रो०-25-1500 स्वीकृत किया जाता है। प्रश्नगत प्रकरण में यह संशय उठाया जा रहा है कि समकक्षीय पदों पर किसी श्रेणी के कर्मचारी माने जायें। इस सम्बन्ध में यह स्पष्ट करना है कि समता समिति की रिपोर्ट दिनांक 8.12.89 द्वारा क्रमांक 469 से 59 तक विभिन्न श्रेणी क कर्मचारियों का वेतनमान रू० 825-1200 स्वीकृत किया गया है। अतः उन्हें वाहन चालकों के समकक्ष मानते हुए 950-1500 का वेतनमान देय है।

ह०

(डी०के०गुप्ता)
 प्रमुख अभियन्ता

अग्रसारित
 ह०/सुरेन्द्र पाल
 वैयक्तिक सहायक (ई-3)
 कृते प्रमुख अभियन्ता
 लोक निर्माण विभाग।
 सत्यापित /सत्य प्रतिलिपि
 ह०
 17/11/93
 सहायक अभियन्ता
 पर्वतीय समन्वय

- 16.The annexed document clearly reveals at serial number 48 & 50, the Jeep Drivers and Electrician respectively had been shown at the pay scale of Rs. 625-15-900/- and whose scale has been upgraded by the said letter to Rs.950-1500/-. Thus, it is apparent that the Samta Samiti has given its recommendation that all the Jeep Drivers as well as Electrician in the State would get the pay scale of Rs. 950-1500/- pursuant to G.O. dated 30.12.1989. Thereafter, the revised pay scale would automatically will be revised by the next Pay Commission. It further shows that this letter has been issued by the Chief Engineer, P.W.D.. Ld. A.P.O. contended that this letter has been issued by the Chief Engineer of the P.W.D., which is not applicable to the Revenue Department. Ld. A.P.O. in support of his contention could not produce any document which supports the contention of the respondents. The Jeep Driver as well as the Electricians were getting the pay scale of Rs. 175-250/- prior to 1.1. 1986. After

1.1.1986 both were getting a pay scale of Rs. 825-1200/- till 1993. The pay scale of Jeep Drivers and the Electricians were increased from Rs. 825-1200/- to Rs. 950-1500/-. The P.W.D. granted the pay scale of Rs. 950-1500/- to Jeep Drivers as well as Electricians vide Annexure-27. Thereafter the Government of U.P. clarified in the year 1998, the pay scale of Rs. 950-1500/- granted to Jeep Drivers, would only be available to Truck Drivers, Roller Drivers, Tractor Drivers and the rest employees like Electricians would not be eligible for the said (Rs.950-1500) pay scale vide G.O. dated 16.3.1998. The real controversy arose from the Government order of 1998. It is apparent from Annexure-29 of the petition. The respondents have filed a letter from Secretary, Board of Revenue to all the Commissioners dated 8.12.1995. This letter indicates that the Collectors and the Commissioners have recommended to grant the pay scale of Rs.825-1200/- to 950-1500/- to the Tube well Operators-cum-Electricians and the matter was referred to the Government and the State Government in the year 1995 has rejected the proposal on the ground that in case the Central Government's principle of equivalence of posts is accepted, then the qualification and other responsibilities become material for the same.

17. This fact further fortifies that the petitioner has filed a letter of District Magistrate dated 30.6.1993 Saharanpur by which the pay scale of Rs.950-1500/- had been given to the Tube well Operators-cum-Electrician in the establishment of Collactorate of Saharanpur. This letter coupled with the letter of the Chief Engineer, stated above, clearly fortifies the contention of the petitioner that the Jeep Drivers as well as the Electricians, Tube well Operators-cum-Electricians have been fitted on one scale of Rs. 950-1500/-. Thus, it is apparent from the record that the pay scale of Electricians and the Jeep Drivers w.e.f. 1.1.1986 was increased to Rs. 825-1200/-. On 8.12.1989, it was decided that the persons listed against item No. 46 (Jeep Driver) to 59(Electrician) in the order of the Government stated above, directing the revision of pay scale w.e.f. 1.1.1986, shall be entitled to the pay scale of Rs. 950-1500/- instead of Rs. 825-1200/-. It is also clear that while passing the said order it was mentioned that the pay

scale of Rs. 825-1200/- will also be available to all those, who were in equivalent posts. There cannot be any dispute that the Electricians cannot be equated with Drivers. The Government order dated 1998 was challenged before the Hon'ble High Court and the Division Bench of the Hon'ble High Court held that the Government order 1998 depriving the Electricians to the pay scale of Rs. 950-1500/- was inconsistent to the recommendations of the Samta Samiti. The aforesaid position as stated above has been considered by the Hon'ble High Court in Division Bench judgment delivered in writ petition **No. 55/SB/2004 Tilak Raj Verma and others Vs. State and others** connected writ petitions. Hon'ble High Court while allowing the writ petition No. 55/DB/2004 Tilak Raj Verma (supra) of the Electricians, has held as under:-

“ Before 1.1.1986 the pay scale of Electrician and the pay scale of Jeep Driver, Truck Driver etc was Rs.330-495/- With effect from 1.1.1986 it was decided that persons listed against item No. 46,47,48 & 53 in the order of the Government dated 8.12.1989 directing revision of pay scale with effect from 1.1.1986 shall be entitled to the pay scale of Rs. 950-1500/- instead of Rs. 825-12000/-. While, however, passing the said order, it was mentioned that pay scale of Rs. 825-1200 will also be available to all those who were in the equivalent posts. The persons listed against item Nos. 46,47, 48 & 53 were Roller Driver, Jeep Driver, Truck Driver and Tractor/ Tanker Driver. There cannot be any dispute that an Electrician cannot be equivalent to them. However, in the matter of pay scale, Electrician as well as Roller Driver, Jeep Driver, Truck Driver and Tractor Driver, immediately prior to 1.1.1986, were the same. Order dated 8.12.1989 did not indicate why Roller Driver, Jeep Driver, Truck Driver and Tractor Driver, who were entitled to same pay scale as that of Electrician, will get a better pay scale from 1.1.1986. Then again while increasing the pay scale of Roller Driver, Jeep Driver, Truck Driver and Tractor Driver, in the said letter dated 8.12.1989, it was held out that similar higher pay scale would be available to similar people, who are equivalent to Roller Driver, Jeep Driver, Truck Driver and Tractor Driver . The matter was put to rest by a clarification issued by the

Government on 8.11.1993, where it was held out that, amongst others, Electricians are also equivalent. Subsequently, it was purported to be held out in the order dated 16.3.1998 that electricians are not equivalent. No reason, however, in support thereof was furnished. While Roller Driver, Jeep Driver, Truck Driver and Tractor Driver were equivalent to electrician immediately before 0.1.1986 in the same matter of pay scale, how they could become unequal with effect from 1.1.1986 had not attempted to be explained either in the orders referred to above or in the objection filed before the Tribunal or in the counter affidavit filed to the present writ petition. Petitioners approached the Tribunal to obtain a declaration that equality of the petitioners, who are Electricians, with Roller Driver, Jeep Driver, Truck Driver and Tractor Driver, which existed since prior 1.1.1986, could not be ignored suddenly without any reason."

18. The petitioner has further claimed that the respondents be directed to pay a revised pay scale of Rs.950-1500/- w.e.f. 1.1.1986 along with arrears and consequential benefits to the petitioner.
19. Ld. A.P.O. pointed out that this claim is time barred. Ld. Counsel for the petitioner refuted the contention. After going through the entire controversy, the petitioner, though is entitled to get the amount from the period of 1.1.1986 and his pay fixation has to be made with the above date; ;now we have to analyze as to whether the petitioner has any continuing cause of action to get the increased salary or it is a single cause of action which arose in the year 1986. If it is held that it was a single cause of action which arose only on the year 1986, then the petition would be time barred due to the laches because it is a settled principle of law that the petitioner should be aware of his rights well within time; if he sleeps over his rights, he cannot claim the equitable claim from the Court of law. Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps

not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy. In the above formula we have to analyze as to whether the second circumstance exists in the matter or not. If it would have been a case of promotion, several persons would have been promoted and several persons would have been affected by a long silence; on the part of the petitioner this would amount to justify to dismiss the petition in limine. In the present case the respondents have only to pay the money to the petitioner, hence there can be no loss to any other person except the respondents, who are responsible for the wrong doing. The next principle which governs the delay and laches as pointed out earlier, if the cause of action actually continues from month to month,. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If there is a continuing cause of action, then the Court can mould the relief to the petitioner. Hon'ble Supreme Court in Para 10 in the case of **Shiv Dass Vs. Union of India (2007)2 SCC (L&S)395** has held as under:-

“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. It would depend upon the fact of each case. 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. The High Court did not examine whether on merit appellant had a case. If on merits it

would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

20. A similar controversy arose before the Hon’ble Apex Court in the case of **M.R.Gupta Vs. Union of India and others 1995 SCC (L&S) 1273** in which the Hon’ble Supreme Court has held that if an employee remains in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of wrong computation made contrary to the Rules. The Hon’ble Supreme Court also held if the employee’s claim for the recovery of the 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 the Rules and to cessation of continuing wrong if on merit his case is justified. The Hon’ble Apex Court holding the above principle of law observed in Paragraph Nos. 5 &6 as under:-

“5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. 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 since it is based on a recurring cause of action.

6. 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.”

21. In view of the above judgments, the arrears can only be granted for three years not beyond that. In view of the above discussion the petitioner's pay would be fixed in accordance at the pay scale of Rs.950-1500/- instead of Rs.825-1200/- from the date when that Government order of 1.1.1986 was applicable but he will get the actual arrears and the benefits of the salary only for three years from the date of the filing of the petition.

ORDER

Impugned orders dated 08.07.2013 (Annexure No. A-1) and 15.07.2013 (Annexure No.A-2) passed by Respondent Nos. 1 & 2 respectively are hereby quashed. Petitioner's pay will be fixed in accordance with the pay scale of Rs. 950-1500/- instead of Rs. 825-1200/- from 1.1.1986. The petitioner would get the actual arrears of difference of pay for the three years from the date of filing of the petition. The petitioner's claim for rest of the period, being time barred is hereby disallowed. In view of the above, the petition is disposed of accordingly. No order as to costs.

D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATED: FEBRUARY 20, 2015
DEHRADUN

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