

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A. No. 316 OF 2015

CORAM:

THE HON'BLE MR. PRADEEP KUMAR, MEMBER (ADMN.)
THE HON'BLE MR SWARUP KUMAR MISHRA, MEMBER(J)

1. Prafulla Kumar Sahani, aged about 62 years, S/o. Late Dhaneswar Sahani, Retd. J.E. Communication, O/o Executive Engineer, Central Water Commission, Eastern River Division, Bhubaneswar, Dist. Khurda, residence of HIG S 86, Phase-I, Maitri Vihar, Bhubaneswar, Dist. Khurda, Odisha.
2. Suryakanta Ghose, aged about 62 years, S/o. Late Rajanikanta Ghose, Retd. J.E. Communication, O/o. Executive Engineer, Upper Yamuna Division, Central Water Commission, New Delhi residence of Plot No. K-9-A, M.I.G-325, PO. Patrapada, Bhubaneswar, Dist. Khurda.
3. Subal Charan Khatua, aged about 61 years, S/o. Late Brundaban Khatua, Retd. Technical Asst. Communication, O/o Executive Engineer, Central Water Commission, Mahanadi Division, Burla, At/Po. Burla, Dist. Sambalpur, residence of LP-110, Prasanti Vihar, PO. KIIT, Bhubaneswar, Dist. Khurda.
4. Ram Sankar Patnaik, aged about 64 years, S/o. Late M.V.R. Patnaik, Retd. J.E. Communication, O/o. Executive Engineer, Central Water Commission, At/Po. Burla, Dist. Sambalpur, residence of Plot No. 6/F-1137, Sector-9, CDA, Cuttack-753014, Odisha.
5. Nirupam Kumar Dutta, aged about 66 years, S/o. Late Surya Kumar Dutta Retd. J.E. Communication, O/o Executive Engineer, Central Water Commission, Eastern River Division, At/Po. Rourkela, Dist. Sundergarh, Odisha, resident of Plot No. 35/10, Madhusudan Nagar, Unit-IV, Bhubaneswar, Dist. Khurda, Odisha.
6. Durga Prasad Mishra, aged about 65 years, S/o. Late Jayakrushna Mishra, Retd. J.E. Communication, Central Water Commission, Eastern River Division, Bhubaneswar, Dist. Khurda, Resident of Khuntia Sahi (Bali Sahi), PO. Puri, Town/Dist. Puri, Odisha.
7. Jyoti Prakash Basa, aged about 62 years, S/o. Late Bhabatosh Basa, Retd. J.E. Communication, Central Water Commission, Damodar Division, Asansol, West Bengal, resident of Ward No.19, Balarampur, Bagheda Road, PO/Ps. Baripada, Dist. Mayurbhanj, Odisha.
8. Snehalata Mohapatra, aged about 61 years, W/o. Braja Kishore Dash, Retd. A.E. Communication, O/o. Executive Engineer, Central Water Commission, Damodar Division, Asansol, West Bengal resident of N-6/438, IRC Village, Bhubaneswar, Dist. Khurda, Odisha.

9. Pramod Kumar Das, aged about 61 years, S/o. Late Krushna Prasad Das, Retd. J.E. Communication, O/o Executive Engineer, Central Water Commission, Damodar Division, Asansol, West Bengal resident of BediNivas behind RameswarSiba Mandir, At-NuaSahi, PO. Balia, Dist. Baleswar, Odisha.
10. Asim Kumar Chakrabarty, aged about 63 years, S/o. Late Amarendra Kumar Chakrabarty, Retd. J.E. Communication, O/o. Executive Engineer, Central Water Commission, Eastern River Division, Bhubaneswar, Dist. Khurda, resident of At/Po. Aparna Nagar behind Sita Devi School, Po Nua Bazar, Dist. Cuttack, Odisha.
11. Surendra Kumar Joshi, aged about 61 years, S/o. Late Basant Kumar Joshi, Retd. J.E. Communication, O/o. Executive Engineer, Central Water Commission, Damodar Division, Asansol, West Bengal, resident of At-Maji Palli, Siba Mandir, Asram Road, PO. Burla, Dist. Sambalpur, Odisha.

.....Applicants

For the Applicants :M/s. N.R.Routray, J.Pradhan,
T.K.Chowdhury,
S.K.Mohanty,
Counsel.

-Versus-

1. Union of India represented through its Secretary, Ministry of Water Resources, Srama Shakti Bhawna, Rafi Marg, New Delhi-110001.
2. Chairman, Central Water Commissioner, Govt. of India, Seva Bhawan, R.K.Puram, New Delhi-110066.
3. Under Secretary, CWC, East VI Section, Room No. 525 (N), Seva Bhawan, R.K.Puram, New Delhi-110066.
4. Superintending Engineer (C) MERO (Mahanadi & Eastern River Organization), Mahanadi Bhawan, Plot No. A/32/4, Bhoi Nagar, Bhubaneswar, Dist. Khurda-751022.
5. Superintending Engineer, Damodar Valley Reserve Regulatory and Hydrological Observation Circle (DVRR & HO Circle), Central Water Commission, At/Po-Mythan Dam, Dist-Dhanbad, Jharkhand.

.....Respondents

Through Legal practitioner :Mr.D.K.Mallick, Counsel

Reserved on: 12 /01 /2021

Pronounced on: 16 / 03 /2021

O R D E R

MR.SWARUP KUMAR MISHRA, MEMJBER (JUDL.)

The Applicants have filed this Original Application inter alia praying for the following reliefs:

- “(a) To quash the order of rejection dated 23.12.2014 under Annexure-A/8;
- (b) And to direct the Respondents to grant 2nd/3rd financial up gradation w.e.f. 01/09/2008 under MACP Scheme in PB-III with GP of Rs. 5400/- instead of in PB-II with GP of Rs. 4800/- as granted vide order dated 24.06.2011 by extending benefit of order dated 31.5.2011 and 26.11.2012 passed in OA No. 1038/CHH of 2010 and OA No. 904/2012;
- (c) And to direct the Respondents to pay the differential financial benefits i.e. Arrear Salary & Superannuation benefits by fixing the pay of applicants in PB-III with GP off Rs. 5400/- w.e.f. 01.09.2008.”

2. Respondents have filed their counter opposing the prayers of the Applicant. The Applicants have also filed rejoinder.

3. Heard learned Counsel for both sides and perused the records.

4. According to the Applicants according to the hierarchy of promotion the Applicants were entitled to GP Rs. 5400/- towards 3rd financial up gradation under MACP whereas, the Respondents vide order dated 24.6.2011 under Annexure-A/3, placed the Applicants in PB II with GP Rs.4800/- with effect from 01.09.2008. It is the case of the Applicants after decisions of various Courts holding that an employee is entitled to financial up gradation according to hierarchy of promotion, the Applicants submitted representations in the year 2014 but the Respondents have rejected the same vide order dated 23.12.2014 under Annexure-A/8 which is bad in law and, therefore, the order of rejection is liable to be quashed with direction to the Respondents to grant 2nd/3rd financial up gradation w.e.f. 01/09/2008 under MACP Scheme in PB-III with GP of Rs. 5400/- instead of in PB-II with GP of Rs. 4800/- by extending the benefit of order dated 31.5.2011 and 26.11.2012 passed in OA No. 1038/CHH of 2010 and OA No. 904/2012.

5. On the other hand, it is the case of the Respondents DoP&T OM No.35034/3/2008-Estt.(DD) dated 19.5.2009 envisages merely placement in the

immediate next higher grade pay in the hierarchy of the recommended revised Pay Bands and Grade Pay as given in the Section I Part A of the first schedule of the CCS (Revised Pay) Rules, 2008. The GP at the time of financial up gradation under the successive grades is different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post on the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. In terms of the DoP&T OM 3rd financial up gradation was granted to the Applicants in PB II GP Rs. 4800/- in scale of Rs. 9300-34800/-. Thus, there was no illegality committed in granting the benefits to the Applicants.

6. We have considered the submissions of the respective parties and perused the materials placed on record. It is not in dispute that the Applicants were allowed 3rd financial up gradation in PB II GP Rs.4800/- which was the next grade pay as per the structure provided in the Rules vide order dated 24.6.2011 under Annexure-A/3 in terms of the existing provision which inter alia provides that the benefit of financial up gradation under MACP be granted in the immediate next higher grade pay in the hierarchy provided in CCS (RRP) Rules 2008 and not in the promotional hierarchy and the next grade. It is also not in dispute that all the Applicants retired from service and raised their claim based on various judgments of Hon'ble Supreme Court, Hon'ble High Courts and of different Benches of the Tribunal. Therefore, the basic question arises in this case as to how far the grievance of Applicants is justifiable based on the judicial decisions thereby unsettling a settled position after long lapse of time.

7. In this regard, it may be stated that law is well settled that rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in individual actions, and Court/Tribunal naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which legal remedies can be enforced. Thus, in the present case it is thought wise to deal with the point of limitation before proceeding to decide on the merit of the matter as per the decision of the Hon'ble

Apex Court in the case of **D.C.S.Negi v Union of India & Ors**, Special Leave to Appeal (Civil) No. 7956/2011 wherein it has categorically held by the Hon'ble Apex Court that provisions of Section 20 and 21 of the A.T. Act regarding limitation cannot be overlooked and it is the duty of the Tribunal to consider the point of limitation even if the plea of limitation has not been raised by the Respondents in their reply.

8. Admittedly the Applicants were granted the benefit of 3rd financial up gradation under MACP in the year 2011 and they have submitted representations in the year 2014 (Annexure-A/7 series). The representations were rejected dated 23.12.2014 under Annexure-A/8 and they have filed this OA on 21.05.2015. The Hon'ble Apex Court in the case of **Union of India and Others Vs. M.K. Sarkar**, (2010) 2 SCC 59 have been pleased to hold as under:-

“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.” (emphasis supplied)

9. Again, the Hon'ble Apex Court in the case of **State of Uttaranchal and Another Vs. Shiv Charan Singh Bhandari and Others**, (2013) 12 SCC 179 had occasion to consider question of delay and laches. The Hon'ble Apex Court has been pleased to hold that representations relating to a stale claim or dead grievance do not give rise to a fresh cause of action. In Paragraph Nos. 19 and 23 following was laid down:-

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

23. In State of T.N. v. Seshachalam, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and

laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16) “16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

10. We have also gone through those cases relied on by the Applicants and it may be stated that law is well settled in the case of **SSBalu v. State of Kerala** dated 13 January, 2009 in CIVIL APPEAL NO. 104 OF 2009 (Arising out of SLP (C) No. 8586 of 2006) as under:

17. It is also well-settled principle of law that delay defeats equity. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.

11. Further in the case of **Jagdish Lal & Ors v State of Harayana & Ors** reported in (1997) 6 SCC 538, the Hon'ble Supreme Court reaffirmed the rule if a person chose to sit over the matter and then woke up after the decision of the Court then such person cannot stand to benefit. The above view has also been reiterated by the Hon'ble Apex Court in the case of case of **M/s. Rup Diamonds & Ors v Union of India and others** reported in (1989) 2 SCC 356.

12. We also find that during the pendency of this OA, the DoP&T issued OM No. 22034/4/2020-Estt.(D) dated 23.03.2020 taking into consideration the decisions even based on which the Applicants claim the benefit, denying grant of financial up gradation under MACP in accordance with promotional hierarchy. The Applicants have not challenged the conditions stipulated in the MACP to be arbitrary in any manner nor the order of the DoP&T dated 23.03.2020.

13. Further, there is no merit in the pleas put forth by applicants. In this context, it is also noted that the grievance raised by applicants regarding MACP, has been adjudicated by Hon'ble Apex Court in UOI and Ors Vs M.V. Mohanan Nair, Civil Appeal No. 2016 of 2020 arising out of SLP(C) No. 21803 of 2014,

and judgement was pronounced on 5.3.2020. Various aspects of MACP policy were questioned. Hon'ble Apex Court upheld the MACP policy as issued by Govt. This MACP policy envisages upgradation as per hierarchy of pay scales and not in the pay scale of next higher post in departmental hierarchy. Therefore, even on merit, there is no force in the contentions of applicant.

14. In view of the above, since financial upgradation was granted to the Applicants as per the extant provision, we see no illegality on the same so as to unsettle the matter which was settled way back in the year 2011. Hence this OA is dismissed. No costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(PRADEEP KUMAR)
MEMBER (ADMN.)

CS/CM