

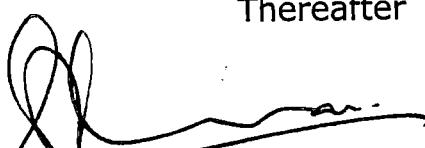
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filed a separate application for condonation of delay in filing the present O.A. by way of abundant precaution.

3. The applicant had made out his case in para 4.2 to 4.10 of the O.A., and the grounds in para 5.1 to 5.5 of the O.A. with a prayer in para 5.6 that he may be permitted to raise other grounds at time of arguments of the case. In para 6 of the O.A., it was submitted that the applicant does not have any other alternative, efficacious and other remedy except to invoke the jurisdiction of this Tribunal. In para 7 of the O.A., the applicant had stated as follows:-

"The applicant further declares that he has not previously filed any such other application, writ petition or suit regarding the matter in respect of which the application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them."

4. This O.A. was verified by the applicant on 13.04.2008, and was filed through his counsel on 15.04.2008. The respondents filed their reply written statement on 10.12.2008, and thereafter filed an additional reply to the O.A., on 09.02.2009. The applicant thereafter filed his rejoinder on 09.03.2009. The case was finally heard on 20.08.2010 and orders were reserved, and the written arguments alongwith copies of citations were also filed by the counsel of the applicant, and written submissions alongwith a copy of the order dated 28.05.1997 in O.A. No.129/1996 filed by the applicant earlier, were also filed by the respondents. But before the order of this O.A. could be pronounced, the Member Administrative of the Bench passed away on 18.09.2010. Thereafter hearing of the case started once again. Before



arguments were concluded once again on 13.04.2011, the applicant filed an additional affidavit in support of his application, on 04.03.2011, bringing on record through that additional affidavit Annexure-A/13 and Annexure-A/14 also.

5. On the basis of the judgment in the applicant's earlier O.A. No.129/1996 dated 28.05.1997, filed by the learned counsel for the respondents alongwith his written submissions, when the file was called for, from that file it was learnt that the applicant had earlier filed three OAs before this Tribunal i.e. O.A. No.184/1993, O.A. No.61/1994 and O.A. No.129/1996.

6. In O.A. No.184/1993, the judgment was categorized as a reportable judgment, which was delivered on 24.08.1999 by the Division Bench.

7. The judgment in O.A. No.61/1994 of this applicant was passed by the Concurrent Division Bench a week earlier than that, on 18.08.1999. The applicant had thereafter approached the Hon'ble High Court of Rajasthan, which through its order dated 27.07.2010 in D.B. Civil Writ Petition No.36/2000 quashed the order of the Tribunal, and remitted the matter back to the Tribunal for fresh adjudication in accordance with the observations made by the Hon'ble High Court in their judgment.

8. The applicant's fourth case No.129/1996 was decided first on 28.05.1997. It is surprising that in para 7 of the present O.A., as ^{in para 3} ~~reproduced~~ above, the applicant has declared that he has not previously filed any other application, writ or suit regarding the

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matter in respect of his present prayers, before any court or any other authority or any other Bench of the Tribunal. In this context, we have to examine the various requests made in the other three OAs of the applicant, ~~as~~ as recorded in those judgments, even though the files in respect of O.A. No.129/1996 and O.A.No.184/1993 have already been destroyed on 22.05.2003 (OA No.129/1996), and on 14.07.2006 (O.A. No.184/1993), and only the order sheet and copy of the judgments are available.

9. It is seen that in this first O.A. No.184/1993, the Bench has recorded the prayer of the applicant as follows:-

"Applicant, Mahendra Kumar Sharma has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents to place the applicant in the scale of Rs.700-1200 which he was drawing before redeployment and further fix the pay of the applicant in the pay scale of Rs.2000-3500 as per Revised Pay Rules, 1986 and pay the arrears accordingly. Applicant's case is that he was initially employed in the Beas Construction Board, Chandigarh as a Section Officer. On the completion of the project in 1985, the applicant alongwith other officials of Beas Construction project work declared surplus and the applicant was redeployed in MES Department as Superintendent E/M Grade II vide respondents letter dated 2nd July, 1985 in the scale of Rs.425-700. The contention of the applicant is that since he was drawing his salary in the scale of Rs.700-1200 in his parent department, the same scale should be allowed to him in the organization where he has been redeployed and further he should be allowed the scale of Rs.2000-3500 in terms of revised pay Rules, 1986 that came into existence on the recommendations of the 4th Pay Commission."

10. In O.A No.129/1996 the prayer and the brief facts of the case of the applicant were recorded in the first two paragraphs of the judgment/order dated 28.05.1997, which are as follows:-

"The applicant has filed this OA with the prayer that respondents may be directed to make payment of arrears of pay to the applicant with all consequential benefits including fixation in revised pay scale 2000-3500 in pursuance of the order passed by respondent No.3 dated 29.01.1995, with interest @ 24% p.a.

2. Briefly the facts of the case are that applicant was employed in Beas Construction Board, Chandigarh as Section Officer. On completion of the project, the employees of the Board including the applicant were declared surplus. A list of such employees was sent to the concerned department of Government of India and thereafter the applicant was absorbed in the respondent department w.e.f. 08.06.1985. It is alleged



by him that his pay was initially fixed in the pay scale of Rs.425-700 which was later on revised to 425-800 and when the New Pay Scales came in force, the applicant was fixed in the pay scale of 1400-2600 w.e.f. 01.01.1986. It is further alleged by the applicant that he was drawing pay @ Rs.850/- p.m. in the pay scale of Rs.750-1200 in the Beas Project, therefore, his pay ought to have been fixed in new pay scale 2000-3500. The applicant made representations and ultimately respondents fixed his pay at Rs.880/- in the pay scale of 700-1200 vide Annexure-A/4, but inspite of several representations the arrears accrued to the applicant, were not paid to him, hence this O.A."

11. The operative portion of the order of the Single Bench in the above mentioned O.A.No.129/1996 dated 28.05.1997, was as follows:-

"8. In view of the discussion made above, the applicant is entitled to arrears of pay as per the Part II Order Annexure-A/4 by which his pay has been fixed at Rs.880/- in the pay scale of Rs.700-1200 and consequent fixation in the next scale as described in Annexure-A/3 with admissible Dearness Allowance etc. The matter relating to applicant's claim about fixing him in pay scale Rs.2000-3500 is left open to be decided by the Division Bench. The O.A. deserves to be accepted partly.

9. The O.A. is partly accepted and the respondents are directed to make payment of arrears of pay etc., to the applicant with effect from 08.06.1985 onwards as per the pay fixation shown in the P.II Orders Annexure-A/4 and Annexure-A/3 respectively after adjusting the amount already drawn by the applicant, within a period of three months from today alongwith simple interest @ 12% p.a. on the amount of arrears.

10. The O.A. stands disposed of at the stage of admission. No costs."

12. This order was taken note of in the order dated 24.08.1999 passed in O.A. No.184/1993 by the Division Bench as follows:-

"The applicant also approached this Tribunal vide O.A. No.129/1996 for payment of arrears in the scale of Rs.700-1200 and also for fixation of pay in the scale of Rs.2000-3500 in terms of Revised Pay Rules, 1986. The said O.A. was disposed of by order dated 28.05.1997, with the following observations:-

"In view of the discussion made above, the applicant is entitled to arrears of pay as per the Part II Order Annexure-A/4 by which his pay has been fixed at Rs.880/- in the pay scale of Rs.700-1200 and consequent fixation in the next scale as described in Annexure-A/3 with admissible Dearness Allowance etc. The matter relating to applicant's claim about fixing him in pay scale Rs.2000-3500 is left open to be decided by the Division Bench. The O.A. deserves to be accepted partly."

Thus the first prayer of the applicant for allowing him the scale of Rs.700-1200 which he was drawing in his parent department stood decided by the above orders. The applicant's pay has accordingly been fixed at the appropriate stage in the scale of Rs.700-1200 from the date of his redeployment in the MES. It has also been admitted by the



applicant that his pay has been fixed in the scale of Rs.700-1200 and he has also been paid the arrears on that account."

13. Thereafter, the Bench had gone ahead to decide the remaining portion of the prayer regarding fixation of the applicant's pay as follows:-

"Now the question only remains about the fixation in the scale of Rs.2000-3500 as prayed for by the applicant. The question of fixation of pay of the redeployed surplus staff of Beas Construction Board has been specifically dealt with in Government of India decision No.6 below Rule 7 of the Revised Pay Rules, 1986 and the same is reproduced below:-

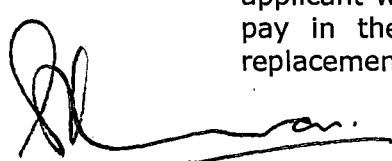
- "(6).....
- 2.....
- (a).....
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- 3.....
- 4.....
- (a)....
- (b)....
- (c)....
- (d).....

(G.I., Dept. of Per. & Trg., O.M. No.1/5/87/C.S.III, dated the 20th October, 1987)."

Since the applicant had opted for the Revised scale as recommended by the Fourth Pay Commission, his case would be covered by the above mentioned Government of India decision. Initially the applicant was redeployed in the scale of Rs.425-700 which was subsequently revised to Rs.425-800. The replacement scale as recommended by the Fourth Pay Commission for the existing scale of Rs.425-700 was Rs.1400-40-1600-50-2300-EB-60-2600. Thus in terms of Revised Pay Rules, 1986, the applicant was eligible for placement in the scale of Rs.1400-2600. In regard to pay fixation of the surplus staff of Beas Construction Project redeployed in other organizations, Government of India had issued further clarifications vide their letter dated 05.01.1988 (Annexure-A/7) which is reproduced below:-

- "1.....
- 2.....
- 3....."

This letter has been produced by the applicant himself in support of his contention. For the purpose of fixation of pay of the redeployed staff who were drawing their pay in the redeployed organization in the scale of pay which they were drawing in their parent organizations, they were first required to be brought on to the scale prevalent in the redeployed organization and their pay would then be fixed in the replacement scale recommended by the Fourth Pay Commission. It has already been mentioned, the applicant was initially redeployed in the scale of Rs.425-700 which subsequently was revised to Rs.425-800 and that he was allowed to draw pay in the scale of pay which he was drawing in his parent organization. Thus he was first required to be brought on to the scale of Rs.425-800 so as to be further fixed in the replacement scale of Rs.1400-2600 in terms of Revised Pay Rules, 1986. The case of pay fixation dealt with in Government of India letter dated 05.01.1988 Annexure-A/7 is exactly the similar to the case of the applicant. Thus the applicant would be entitled to basic pay of Rs.680+Rs.12.65 as personal pay in the scale of Rs.425-800 for the purpose of fixation in the replacement scale of Rs.1400-2600. The respondents have, however,



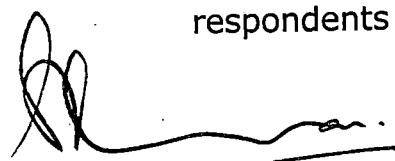
fixed the pay of the applicant in the scale Rs.1400-2300 considering this scale as the replacement scale of Rs.425-800 in terms of Revised Pay Rules, 1986.

In the light of above discussion, we are of the opinion that the applicant would be entitled to fixation of pay in the scale of Rs.1400-2600 with effect from 01.01.1986 in terms of Revised Pay Rules, 1986 and the claim of the applicant for fixation in the scale of Rs.2000-3500 is devoid of any merit.

The O.A. is accordingly disposed of with the above observations. The parties are left to bear their own costs."

14. In the present application while on the one hand the applicant has failed to mention in the O.A. about his having filed the three earlier cases, two of which, O.A. No.184/1993 and O.A. No.129/1996, specifically related to the same aspect of fixation of his pay as covered in this O.A., but also, on the other hand, apart from presenting his case in this O.A. in brief, through paragraphs 4.6 to 4.10, the applicant has chosen only to rely upon the cases of **S.K. Sachdeva & Ors. vs. Union of India** decided by the Delhi High Court, and Chandigarh Bench judgments in the cases of **Bharat Bhushan & Ors. vs. Union of India & Ors.** in O.A. No.253/CH/91, and **Mohinder Kumar Tandon vs. Union of India & Ors.** in O.A. No.889/2005, and **Rattan Chand Sharma vs. Union of India & Ors.** in O.A. No.127/1990, and **Karnail Singh Jandu vs. Union of India & Ors.** in O.A. No.431/2006 before the Chandigarh Bench of this Tribunal. He had also relied upon the case of **Hawa Singh** in O.A. No.784/PB 2001, and the pay fixation in respect of Shri Hawa Singh and Shri Subhash Chandra, which he had filed as Annexure-A/9 to the present O.A.

15. The applicant's own pay fixation was first ordered by the respondents through Annexure-A/13 dated 22.04.1988 (page 93 of



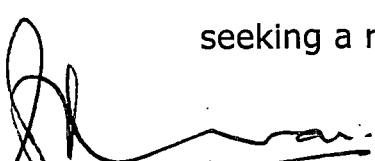
the additional affidavit in respect of the O.A.), which was later amended by the respondents themselves through Annexure-A/5 dated 30.01.1995, as communicated to the applicant through a covering letter dated 24.02.1995 (page 30 of the O.A.), which he has challenged in this O.A. But it is seen that this very fixation of pay order in his case on 29.01.1995/30.01.1995 was the subject matter of challenge in his earlier O.A.No.129/1996 also, and specific orders partly accepting the O.A. had been passed in that O.A., as reproduced in para 10 & 11 above. The prayer of the applicant in para 8 (i) of the present O.A., for fixation of his salary in the revised pay scale of Rs.2000-3500, itself was the subject matter before this Tribunal in O.A. No.129/1996, in which he had sought arrears also after such fixation of pay in the pay scale w.e.f. 01.01.1985. As reproduced in para 11 above, the Tribunal had while passing the final order in that O.A. on 28.05.1997 divided the periods of eligibility of the pay of the applicant into two portions, firstly from 01.01.1985 to 07.06.1985, when the applicant was borne on the surplus cell, and secondly w.e.f. 08.06.1985, the date when the applicant was absorbed in the respondent department, and had shaped the relief given to the applicant accordingly.

16. It therefore appears that the relief as prayed for by the applicant in this O.A. is hit by the principles of res judicata in his case, and just by suppressing the facts of the specific judgment in his case in O.A. No.129/1996, which has been pointed out by the respondents in their additional reply filed on 09.02.2009, the applicant cannot now be allowed to reopen this matter once again.



17. In their additional affidavit filed on 09.02.2009, the respondents had submitted that the order of pay fixation at Annexure-A/5 dated 30.01.1995, which the applicant has sought to challenge in the present O.A.. has since been superseded by the pay fixation carried out by the respondents in compliance of the judgment in O.A. No.129/1996, which was notified on 12.12.1998, vide special PTO 01st January, 1998, dated 12.12.1998. It was further submitted that in compliance of the order of this Tribunal in O.A. No.129/1996, the pay scale of the applicant had been fixed after fully protecting the pay drawn by him in the Beas Construction Board on the date of his redeployment in MES, as per the earlier orders of this Tribunal.

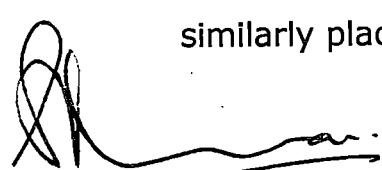
18. It was further submitted by the respondents that the prayer now made for grant of replacement scale of Rs.2000-3500 as on 01.01.1985 will go against the fixation of pay, which was done while implementing the order of this Tribunal in O.A.No.129/1996. It was further submitted that attempting to revise an earlier Court judgment in his specific case, by advertizing to other Court judgments in the case of similarly placed employees would be legally incorrect, as his case was specifically argued and decided by this Tribunal, and the decision given by the Tribunal has already been implemented. It was further submitted by the respondents that any revision of the earlier judgment has to be made only by citing the reference of the original judgment and order, and seeking a review thereafter.



19. However, it is seen that the applicant has nowhere in his pleadings or in the body of the O.A. adverted to the specific case decided in his case on 28.05.1997 in O.A. No.129/1996, and has not even produced or annexed or mentioned about the pay revision ordered on 12.12.1998 flowing out of that judgment. It has also not been mentioned anywhere that the applicant has filed any review against the order dated 28.05.1997 in O.A. No.129/1996.

20. The whole case of the applicant now is based only upon various judgments and orders passed in the cases of several other applicants before the Chandigarh Bench and before the Hon'ble Delhi High Court etc., and seeking equivalence and parity with those orders.

21. However, his specific prayer for the same relief having been already adjudicated upon by this Tribunal, and an order having been passed as far back as on 28.05.1997, and implemented on 12.12.1998, none of which were challenged by the applicant before the higher fora, which was the Hon'ble Supreme Court in the year 1997, before implementation of the judgment delivered in **L. Chandra Kumar's case**, which was delivered in the March, 1997, it appears to us that the respondents are correct in submitting that this applicant cannot now attempt to revise the earlier Court judgment in his specific case, just by referring to and citing the judgments in respect of other persons, with whom he claims to be similarly placed, as this would not be permissible in law.



22. The learned counsel for the applicant has produced and cited the following cases:-

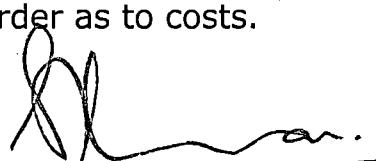
- (i) **S.K. Sachdeva & Ors. vs. Union of India;**
- (ii) **Bharat Bhushan & Ors. vs. Union of India & Ors.**
- (iii) **Mohinder Kumar Tandon vs. Union of India & Ors.**
O.A. No.889/2005.
- (iv) **Rattan Chand Sharma vs. Union of India & Ors.**
O.A. No.127/1990.
- (v) **Karnail Singh Jandu vs. Union of India & Ors.**
O.A. No.431/2006.
- (vi) **Shakti Sharan Das & Ors. vs. Union of India & Ors.**
O.A. No.759/2006.
- (vii) **Devendra vs. Union of India & Ors.**
- (viii) **Devi Singh & Ors. vs. Union of India & Ors.**
- (ix) **Kashmiri Lal & Ors. O.A. No.1315-PB-2002.**
- (x) **Gopal Krishna Sharma & Ors. v. State of Rajasthan;**
1993 Supp.(2) SCC Page 375.
- (xi) **B.D. Verma Vs. Union of India; 1997 (10) SCC Page 433.**
- (xii) **State of Haryana vs. Maruti Udyog Ltd. & Anr.**
2007 (7) SCC page 348.
- (xiii) **State of A.P. vs. Subbarayudu & Ors. 1998 (2) page 516.**
- (xiv) **M.R. Gupta vs. Union of India & Ors. (1995) 5 SCC 628.**
- (xv) **B.D. Verma vs. Union of India. (1997) 10 SCC 433.**
- (xvi) **Yamuna Shankar Sharma vs. State of Rajasthan & Ors.;**
1993 Supp.(2) SCC Page 375.
- (xvii) **Jaswant Singh & Ors. vs. Union of India & Ors.**
1979 4 SCC 440.
- (xviii) **Mahendra Kishore Sharma vs. Union of India & Ors.**
O.A. No.302/2000.

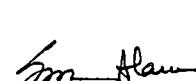
23. However, the case law cited by the applicant could have come to his benefit only if there had been no specific judicial orders

already passed and implemented in his own case. The applicant has not cited any case law to the effect that when a judgment in personem is passed by a concurrent Bench of the Tribunal or by any of the Hon'ble High Courts, or by ~~or~~ the Hon'ble Supreme Alam Court, such related judgments can be treated as judgments in rem, and can give rise to a reopening of the case already settled in the case of the applicant.

24. But in view of the fact that his prayer in the specific case has already been decided, and the judgment was filed by the respondents alongwith their reply written submission, the applicant is not entitled to any relief in this O.A., and the O.A. is therefore dismissed, as the prayer itself is hit by the principles of res-judicata, owing to the specific decision in his own case. It also appears that the applicant has committed an act of perjury, in suppressing the material fact of an existing decision of this very Bench of the Tribunal in his own case. However, we pardon him, and do not insist on ordering a case for perjury being registered against the applicant, as a gesture of benevolence by this Tribunal.

No order as to costs.


 [Sudhir Kumar]
 Administrative Member


 [Justice S.M.M. Alam]
 Judicial Member