

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.No.060/01077/2014

Decided on: 01.12.2014

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

P. K. Khanna s/o Sh. Madan Lal Khanna, Aged 63 years, R/o 121-C, Defence Colony, Ambala Cantt (Haryana) Ex-Divisional Personnel Officer, Northern Railway Ambala Cantt.

Applicant

By: Mr. Karnail Singh, Advocate.

Versus

1. Union of India through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. General Manager, Northern Railway, New Delhi.
3. Divisional Railway Manager, Northern Railway, Ambala Cantt.

By: None.

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Respondents

O R D E R (oral)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 for grant of proforma promotion to him from the date juniors to him were promoted as DPO/SPO, Group Officer in the JAG Grade i.e. from 2010 etc.

2. The learned counsel for the applicant submitted that the applicant has submitted a representation dated 28.7.2014 followed by legal notice dated 15.9.2014 to the respondents claiming the relief aforesaid and finding no response, he is before this Tribunal. Apparently,

the applicant has not cared to wait for at least six months from the date of submission of representation / legal notice and has rushed to this Tribunal and as such the Original Application is premature and cannot be entertained by us.

3. We may notice here that if an effective departmental remedy is available to an aggrieved person, he or she should avail of the same instead of rushing to this Court. As per Section 20 of the Administrative Tribunals Act, 1985, there is a bar on entertaining an Original Application if departmental remedy is not exhausted by the applicant. Hon'ble Supreme Court of India in the case of S.S Rathore v. State of M.P., AIR 1990 SC 10 (rendered by Seven Judges Bench), has made it clear that availing of remedies available under the Service Rules is the condition precedent to maintenance of Original Applications under the Administrative Tribunals Act.

4. It is settled proposition of law that when a legal notice is sent by an employee for claiming his right, the claim has to be considered objectively by department by passing a reasoned and speaking order. In this context, our own jurisdictional High Court in the case titled **Satbir Singh Versus State of Haryana** reported as 2002 (2) SCT, 354 issued directions for disposal of such notices/representation. The said directions are prescribing the manner in which State should react and respond to the legal notice, which are reproduced hereunder:-

"18. Further, we are of the considered view that the State must react and respond to a legal notice/representation served by a person, particularly its employee, within a reasonable time. There are two obvious advantages of such action. Firstly the employee would know how and for what reasons he is being denied the benefit/relief, and secondly, the reasoned version of the State would be on judicial record before the Courts for its judicial scrutiny at the very initial hearing. We must notice with appreciation that the learned Advocate General, Haryana, not only supported the issuance of such directions but also brought to the notice of the Court

that the Advocate General's office had already taken up the matter with the Government and the Government is expected to deal with the same effectively and expeditiously."

19. Be that as it may, particularly in the afore-referred premises, we still feel that it is the bounden duty of the Court to issue the following directions to the Stat in the larger public interest and for proper administration of justice: -

(i) Wherever the right of the parties have been settled by a judgment of the Court, the State has taken all remedies available to it in law against the judgment even upto the highest Court of the land and the judgments has attained finality, then the State must accept the judgment and implement it in its true spirit and command. There is implicit obligation on the part of the State to grant same relief to other members of the cadre whose claim was based upon identical facts and points of law.

(ii) The State Government shall as expeditiously as possible in any case not later than four months re-act and respond to a legal notice/representation served upon it by any of its employees in redressal of his grievance/grant of relief, which has been granted to his co-employee similarly situated, in furtherance to the judgment of the Court unless for reasons to be indicated in the reply, the State feels compelled to deny such relief. Needless to point out that denial must neither be evasive nor intended to circumvent the orders of the Court.

(iii) in the event such an employee is compelled to approach the Court of law, whereupon the court awards interest and/or costs while allowing such a petition, then the expenditure incurred by the State including the costs/interests paid in furtherance to the orders of the Court should be recovered from the erring officer(s).

(iv) The concerned quarters of the Government are expected to work out the details in furtherance to the above directions and issue pervasive but definite instructions to all its departments forthwith to ensure compliance."

5. No doubt the aforesaid instructions were issued to concerned states but the same would apply to the respondents as well as the

underline theme of direction was to minimize litigation and to at least offer a response on grievances of employees.

6. In any case since the applicant has not waited for a period of six months from the date of submission of representation / legal notice, this O.A. is dismissed as pre-mature.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh
Dated: 01.12.2014

HC*