

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(ORDER RESERVED ON 24.08.2016)

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Date of filing: 08.10.2014

O.A No. 060/00898/2014

Date of decision: 30.8.2016

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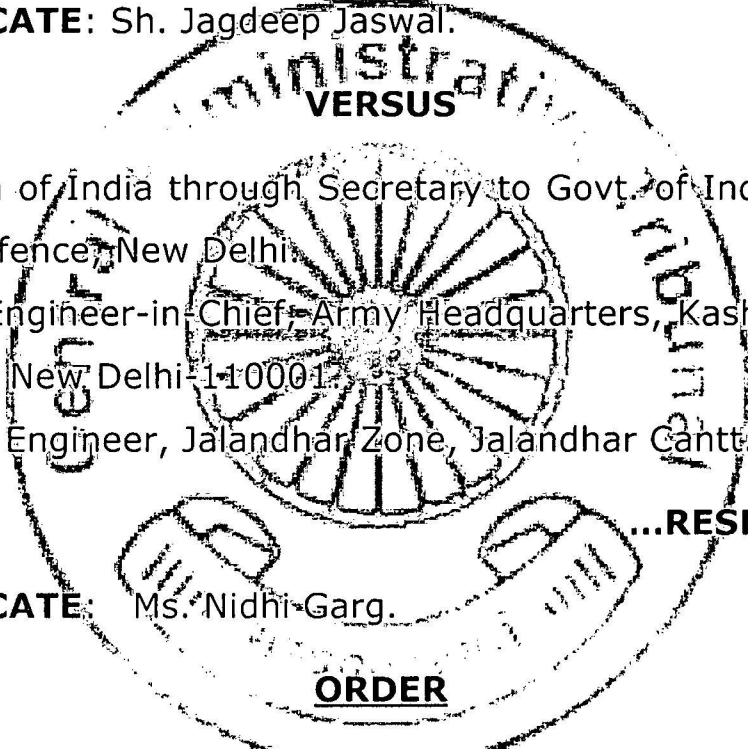
**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

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Malook Chand, Administrative Officer-I (Retd.), from office of Commander Works Engineer, Jalandhar Cantt. now R/o Village Oladni, Tehsil Balachaur, District Shahid Bhagat Section Nagar.

...APPLICANT

BY ADVOCATE: Sh. Jagdeep Jaswal.

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- VERSUS**
1. Union of India through Secretary to Govt. of India, Ministry of Defence, New Delhi.
 2. The Engineer-in-Chief, Army Headquarters, Kashmir House, DHQ, New Delhi-110001.
 3. Chief Engineer, Jalandhar Zone, Jalandhar Cantt.

...RESPONDENTS

BY ADVOCATE: Ms. Nidhi Garg.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A):-

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8. (i) Quash and set aside the impugned order dated 10.06.2014 (A-1) being passed by the respondent no.2, with complete non-application of mind and also being illegal and arbitrary besides being discriminatory and violative of Articles 14 and 16 of Constitution of India.

(ii) Direct the official respondents to consider the applicant for promotion to the post of Senior Administrative Officer against the 1992-93 vacancy

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against which his junior Sh. Mam Raj was promoted, if not earlier.

(iii) Direct the respondents to refix the pay of the applicant and release the arrears etc. with interest @ 18% per annum with all consequential benefits.

(iv) Further direct the respondents to recompute the pension and pensionary benefits with effect from 01.10.2000 and to release the arrears along with interest at the rate of 18% per annum till actual payment."

2. It is stated in the OA that the applicant joined service as LDC on 29.12.1961 and was promoted as UDC on 01.12.1969.

Thereafter, the channel of promotion is as Office Superintendent Grade-II, Office Superintendent Grade-I, Administrative Officer Grade-II, Administrative Officer Grade-I, and thereafter, Senior Administrative Officer. After much litigation, All India Seniority List of Office Superintendent Grade-II was circulated by the respondents on 29.01.1983.

3. The applicant had earlier filed OA No.503/PB/2001, which was allowed vide order dated 18.02.2003 (Annexure A-1/1). Ultimately, in pursuance of the order dated 18.02.2003, confirmed by the Hon'ble High Court vide order dated 20.12.2003, Director General MES, Engineer-In-Chief Branch, Army Headquarters, New Delhi considered the case of Pal Singh and the applicant vide order dated 01.03.2004 (Annexure A/3). The applicant as well as Pal Singh had already retired when these orders were passed. Revised select panels dated 27.02.2004 are attached herewith as Annexure A/4. Pal Singh challenged common order dated 01.03.2004 and 27.02.2004 vide which previous revised panels were affirmed. However, this OA was

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dismissed by the Tribunal vide order dated 07.09.2007. Aggrieved against the order dated 07.09.2007 passed by this Hon'ble Tribunal, Pal Singh filed CWP No.6712-CAT of 2008. The writ petition was decided by the Hon'ble High Court vide judgment dated 04.07.2011 (Annexure A-5). Direction was issued that a fresh seniority list be prepared on the principle that seniority of the officers in the grade of Office Superintendent Grade-II shall not be affected so long as they attained the benchmark of 'good' and further classification on the basis of grading of 'very good', 'excellent' and 'outstanding' shall not be given effect because it lacks any statutory flavour. Further, it was held that the private respondents in the petition would be treated as junior and the case of said Pal Singh has to be considered for promotion to the post of Senior Administrative Officer from the date any person junior to him was promoted. After receipt of copy of the order passed by the Hon'ble High Court, the applicant sent a number of representations dated 03.08.2011, 07.10.2011 and 03.02.2012 alongwith copy of the judgment, but nothing was done by the respondents. Ultimately, legal notice dated 04.04.2012 was served upon the respondents.

4. In view of no response by the respondents, applicant was compelled to file OA No.693-PB-2012 which was ultimately disposed of vide order dated 20.12.2013 (Annexure A-6) directing the respondents to take into consideration fact and effect of order dated 04.07.2011 passed in the case of Pal Singh Vs. UOI. Respondents again rejected the claim of applicant vide

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impugned order dated 10.06.2014 (A-1) stating that he did not challenge CAT's order dated 18.02.2003 and speaking order dated 01.03.2004 and therefore, he cannot be granted the benefit claimed by him. Hence this OA.

5. In the grounds for relief it has, interalia, been stated as follows:-

- a) A bare perusal of judgment dated 04.07.2011 passed in the case of Sh. Pal Singh shows that it was a judgment in rem and common order dated 01.03.2004 in respect of the applicant and Sh. Pal Singh was quashed and set aside by the Hon'ble High Court. The relevant extract of judgment dated 04.07.2011 is reproduced as hereunder:-

"In view of the above, the writ petition succeeds. The order of the Tribunal, dated 07.09.2007 (P-1) and order dated 01.03.2004 (A-1) are hereby quashed. It is further directed that the official respondents shall prepared a fresh seniority list on the principle that the seniority of the officers in the grade of Office Superintendent Grade-I shall not be affected as long as they have attained the benchmark of 'Good'."

Since after judgment of Hon'ble High Court dated 04.07.2011, benefit has been granted to Sh. Pal Singh, the same benefit cannot be denied to the applicant who is similarly situated.

- b) Hon'ble High Court had noticed that Pal Singh as well as private respondents have retired from service and would only earn benefit of higher scale after he is given promotion of Senior Administrative Officer. Thus, the case of the applicant, who has also retired, is also to be given promotion to the post of Senior Administrative Officer as has been given to Pal Singh in pursuance of the order passed by the Hon'ble High Court. The applicant is seeking indulgence of this Tribunal that the respondents may be directed to consider the case of the applicant as per the decision dated 04.07.2011 passed by the Hon'ble High Court as the case of the applicant is also covered.

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6. In the written statement filed on behalf of the respondents, it has been stated that the applicant earlier filed the Original Application no.503/PB/2001 in the CAT Bench, Chandigarh. The same was disposed of by the Hon'ble Tribunal vide order dated 18.02.2003 (Annexure A-1/1) with the direction to respondents to prepare fresh seniority list as per the seniority assigned to the applicants. In compliance of the order of CAT Bench, Chandigarh, dated 18.02.2003 the Review DPC was conducted for considering promotion to Admin Officer-II from Office Superintendent Grade-I and also for promotion to Adm. Officer-I from Adm. Officer-II on 26.02.2004. As per recommendations of Review DPC, there is no change in the seniority position of the applicant, circulated vide E-in-C's Br./E1(DPC letter no.B/43008/R-DPC/AOII/83/PS&MC/E1 DPC dated 27.02.2004 and B/43008/R-DPC/AOI/87/PS&MC/E1 DPC dated 27.02.2004 (Annexure R-1 & Annexure R-2). Further, a speaking order was also sent to the applicant by respondent no.2 vide E-in-C's Br. Letter no.A/41299/PS/E-1 DPC dated 01.03.2004 (Annexure A-3).

7. Now, after 09 years have elapsed since the Tribunal passed order dated 18.02.2003 (Annexure A-1/1), the applicant had filed OA no.693/PB/2012 on the same grounds. This was disposed of by the Tribunal vide its order dated 20.12.2013 (Annexure A-6) with the following direction to the respondents:-

"We dispose of this OA, with a direction to the respondents to take a decision on the legal notice dated 04.04.2012 (Annexure A-6) in the light of what we have observed hereinabove. While deciding the

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legal notice; the respondents shall take into consideration the fact and effect of the order dated 04.07.2011 (Annexure A-5) passed in the case of Pal Singh Vs. UOI & Others (supra). Needless to say, we have not expressed any opinion on the merits of the case".

In compliance of the order of the CAT Bench, Chandigarh dated 20.12.2013 in Original Application no.693/PB/2012, a comprehensive speaking order was passed and sent to the applicant by respondent no.2 of the OA vide E-in-C's letter no.44005/Court Case/Malook Chand/E1 DPC (PP&SUB) dated 10.06.2014 (Annexure A-1). The applicant had unnecessarily raked up the whole issue again.

8. When the matter was taken up for hearing on 09.09.2015, the Bench directed the respondents to file a specific affidavit clarifying the factual scenario with regard to the fact whether after quashing the order dated 07.09.2007 and 01.03.2004 any fresh seniority list had been prepared and benefits had been extended to the applicant. In response to this direction, affidavit was filed on 30.11.2015 stating as follows:-

"The applicant had earlier filed OA no.503/PB/2001, seeking promotion to the post of SAO with all consequential benefits including the pensionary benefits from the date any person junior to him was promoted. The said OA was disposed of by this Hon'ble Court with direction to the respondents to prepare fresh seniority list. The directions given by this Hon'ble Court were duly complied with and a review DPC was conducted for considering his promotion from the post of AO II from the post of OS Gde I and also for promotion for the post of AO I from the post of AO II on 26.02.2004. As per the review DPC, there was no change in the seniority list and the applicant is junior to Pal Singh. Revised Consolidated Panel to the Grade of Administrative Officer Grade-I on Account of Review DPC against vacancies for the year 1987 in the MES dated 27th Feb., 2004 is already

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annexed with the written statement as Annexure R-2. It is clear from Annexure R-2 that MES-307870 Sh. Pal Singh is shown at Sr. No.108 and Sh. Malook Chand has been shown at Sr. no.112 in the seniority list. The applicant retired on attaining the age of superannuation on 30.06.2003. The seniority list of AO-I w.e.f. 2004-2005 to Jan. 2015 is annexed herewith as Annexure R-3. The name of the applicant Malook Chand does not find mention in the seniority list."

9. In a counter affidavit filed on behalf of the applicant, it has been stated that the different seniority lists from 2004-2015 that had been placed on record by the respondents, neither carry the name of applicant or Sh. Pal Singh as applicant as well as Sh. Pal Singh had retired w.e.f. 30.06.2003 and 30.09.2000 respectively. Respondents have also not clarified which seniority list is prepared on the basis of judgment dated 04.07.2011 (Annexure A-5) and only that seniority list was required to be produced. Respondents should have placed on record the promotion orders of Sh. Pal Singh after judgment dated 04.07.2011 (A-5). It is further clarified that the applicant is not claiming himself senior to Sh. Pal Singh, but is only claiming himself to be similarly situated like Pal Singh and the junior employees impleaded by Sh. Pal Singh in CWP no.6712-CAT-2008 were also junior to the applicant i.e. Malook Chand. A copy of the memo of parties in CWP No.6712-CAT-2008 is enclosed as Annexure A-7.

10. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicant narrated the background of the case and stated that the applicant wanted the benefit of the judgment of Hon'ble High Court in Pal Singh's

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case. The promotion of one Sh. Mam Raj took place in 1992 and since Sh. Mam Raj was junior to the applicant, the applicant was entitled to future promotions atleast from the date when Sh. Mam Raj was promoted. While this had been conceded by the respondents in the case of Sh. Pal Singh and he had finally got this benefit in 2012, the respondents were still resisting the claim of the applicant. The order dated 01.03.2004 (Annexure A-3), which was common to both Sh. Pal Singh and the applicant had been struck down by the Hon'ble High Court. Hence, the claim of the applicant was required to be decided in terms of the Hon'ble High Court's order and the benefit allowed in the case of Sh. Pal Singh. Regarding promotion as Senior Administrative Officer, same should be allowed in the case of the applicant also. Regarding limitation, learned counsel for the applicant stated that the claim in the OA related also to revision of pension which was continued cause of action, as the applicant's pension was being affected adversely. He had to be promoted as Senior Administrative Officer from the date when his junior was promoted and consequentially the applicant's pension would be revised.

11. Learned counsel for the respondents pressed that the OA was barred by limitation as the claim of the applicant had initially been rejected by the respondents on 01.03.2004 and this order was upheld by the C.A.T. Chandigarh Bench. The applicant was not party to the CWP No.6712/CAT/2008 filed by Sh. Pal Singh, and order dated 01.03.2004 continued to be valid in the

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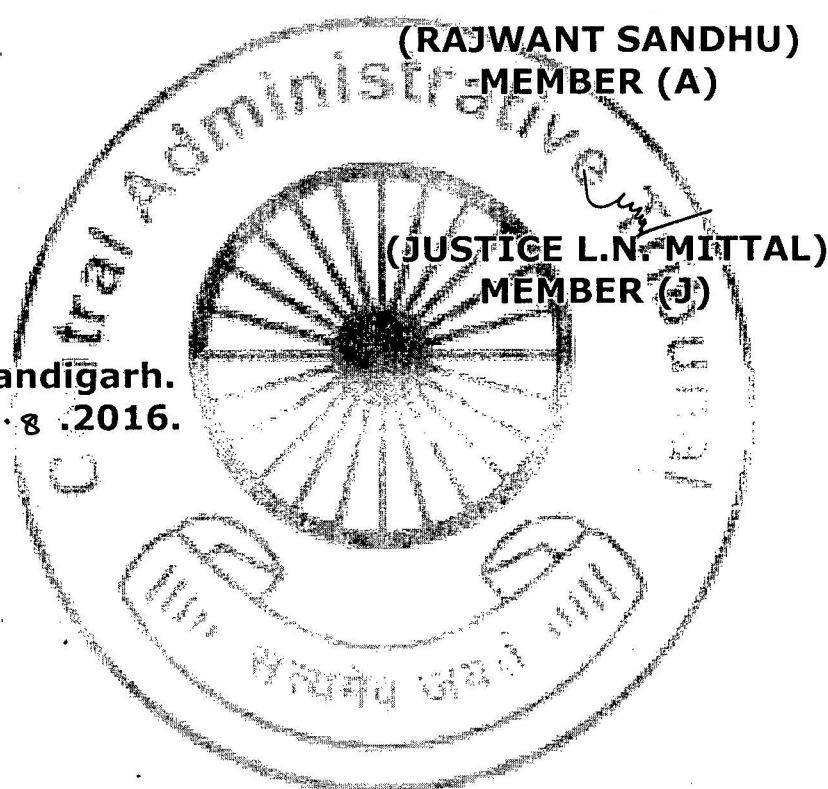
case of the applicant, as he had not impugned the same, and hence, there was no merit in the present OA.

12. We have given our careful consideration to the matter. The contention of the respondents that order dated 01.03.2004 continued to be in force qua the applicant as we was not party in CWP No.6712/CAT/2008 is unacceptable. The Hon'ble High Court has quashed this order and issued certain directions to the respondents vide its judgment of 04.07.2011. The respondents have implemented this, in the case of Sh. Pal Singh, but are denying similar benefit to the applicant. The fact that the private respondents in the CWP who were junior to Sh. Pal Singh were *also* junior to the applicant has not been denied by the respondents. Hence, the applicant would be entitled to similar benefit as allowed to Sh. Pal Singh while implementing Hon'ble High Court's order dated 04.07.2011. Sh. Mam Raj's case has been specifically referred by the applicant. Sh. Mam Raj was junior to both Sh. Pal Singh and the applicant. If Sh. Pal Singh has got his promotion as Sr. AO from the date when his juniors were promoted, the applicant is similarly entitled. The respondents have taken a hyper technical view of the matter in the impugned order dated 10.06.2014 and the same deserves to be set aside.

13. Accordingly, the OA is allowed to the extent that order dated 10.06.2014 (Annexure A/1) is quashed. The respondents are directed to review the case of the applicant accepting that Hon'ble High Court's order dated 04.07.2011 applies in his case also and decide the matter accordingly. The applicant will be

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entitled to consequential benefits notionally as per his seniority as allowed in the case of Sh. Pal Singh, but actual arrears shall be restricted to the period commencing from 18 months preceding the filing of previous OA no.693/PB/2012 by the applicant. Action in this matter may be completed within a period of three months from the date of a certified copy of this order is served upon the respondents. No costs.



Place: Chandigarh.
Dated: 30.8.2016.

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