

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/00951/2014 Date of order:- 2.12.2015.

**Coram: Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A).**

MES No.408258 – Om Parkash s/o Sh. Hari Shanker, resident of House No.241, Kendarya Vihar, Sector 48-B, Chandigarh.

.....Applicant.

(Mr. Om Parkash, applicant in person)

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110 011.
2. Engineer Chief, Army Headquarters, Kashmir House, DHQ, New Delhi-11.
3. Chief Engineer, MES, Chandigarh Zone, Chandigarh.
4. P.C.D.A.(P) Dropati Ghat, Allahabad.

...Respondents

(By Advocate : Mr. V.K.Arya).

ORDER



Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant has filed the present OA praying for quashing the order dated 14.8.2013 (Annexure A-1) with further prayer that the

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respondents be directed to re-fix the seniority of the applicant on the post of Surveyor Assistant on the basis of his date of assuming appointment as Surveyor Assistant-I (Superintendent-B/R-I) with all consequential benefits.

2. Facts as projected by the applicant are that the applicant joined the service of the respondent department as Superintendent B/R Gr.II on 19.12.1960 and thereafter was promoted as Superintendent B/R Gr.I on 6.5.1965. The respondents decided to merge the Surveyor cadre of MES cadre upto the grade of Assistant Surveyors of works with the corresponding grade of engineering cadre vide letter dated 24.3.1964. Thereafter, vide letter dated 31.3.1978, the respondents demerged the surveyor cadre and engineering cadre as two and wholly independent cadres. Respondent no.2 vide its letter dated 23.10.1978 published the seniority list of Surveyor Assistant Gr.I wherein the name of the applicant figured at sr.no.193 and the names of Shri F.S.Verma and Shri A.D.Sawale who are claimed to be juniors to the applicant appears at sr.no. 212 & 322 respectively. Even in the revised seniority list issued on 6.2.1978, the name of the applicant was mentioned at sr.no.193. Subsequently, another seniority list dated 26.12.1980 was issued wherein the name of the applicant was mentioned at sr.no.179 whereas the name of Shri F.S.Verma finds mention at sr.no.198 and the name of Shri

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A.D.Sawale did not find place as he was beyond sr.no.262. On 19.4.1982, respondent no.2 approved the panel of 105 Surveyor Assistant Gr.I for adhoc promotion to the post of Assistant Surveyor of Works for one year and Shri A.D.Sawale was also given ad hoc promotion and regular promotion w.e.f. 1982 as Shri Sawale belonged to separate class of SA-1 even after the merger in 1964 and demerger in 1978. On 14.4.1986, a panel was published grouping the vacancies occurred during 1982 to 1985 for holding regular selection for the post of Assistant Surveyor of Works. As the name of one Shri Krishan Chander was not found in the said panel, he approached the Principal Bench of the Tribunal by filing OA No.1037 of 1986 by challenging the said action. The Tribunal in its order has held that the seniority of Shri Krishan Chander be based on his total length of service as Superintendent Gr.I commencing from 19.1.1963. The applicant has stated that he is also entitled to the seniority in the grade of SA-1 based on the total length of service as Superintendent Gr.I from 6.5.1965, but the same was not granted to him. Similarly, one Shri Fateh Singh Verma was also promoted as Assistant Surveyor of Works on 26.8.1982 and Surveyor of Works in September, 1987 on the basis of the orders passed by the Ernakulum Bench of the Tribunal in O.A.No.1548/1991. Again, one Shri Trilochan Singh, who was immediate senior to the applicant, was also deprived the promotion and he also filed OA No.331 of 1993 before the Ernakulum Bench of

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the Tribunal which was decided on 18.2.1994 in his favour. The applicant made a number of representations for granting him the said benefits, but to no avail.

3. Feeling dis-satisfied for not promoting him, the applicant also filed OA No.252/CH/1995 before Chandigarh Bench of the Tribunal for seeking a writ of mandamus directing the respondents to respondents to re-fix the seniority of the applicant on the post of Surveyor Assistant Gr. I on the basis of his date of assuming appointment as SA-1/Supdt.B/R-I with all consequential benefits. The said OA was dismissed by the Tribunal 7.9.2001. After the decision passed by the Principal Bench of the Tribunal in the case of Krishan Chander(supra), another employee namely Shatanand Sharma also filed OA No.652 of 1990 before the Principal Bench which was decided on 23.9.1994 contrary to the law enunciated in the case of Krishan Chander. Thereafter, full Bench was constituted and the Full Bench vide its order dated 18.1.1999 has held that on the demerger of the engineering cadre and constitution of two separate cadres of Engineering and Surveyor of Works pursuant to letter dated 31.3.1978, optees were entitled to be inducted in Surveyor of Works cadre w.e.f. 1978 and they would be entitled to other reliefs granted in the case of Krishan Chander unless they succeed in showing their such ancillary reliefs to be within time. The applicant filed Review



Application No.33 of 2012 before this Bench for modification of order dated 7.9.2001 in view of order passed in Full Bench. The said RA was disposed of vided order dated 12.12.2012 with direction to the competent authority to have a relook on the grievance of the applicant in the light of the order passed by the Full Bench. However, the respondents have passed order dated 14.8.2013 by rejecting the case of the applicant for re-fixation of his seniority from 28.6.1982. Hence the present OA.



4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that the present OA has been filed after a delay of about 50 years for claiming seniority with effect from 6.5.1965 and promotion with effect from 28.6.1982. They have stated that an order passed in case of other employee does not give any cause of action to another employee when the matter is time-barred. Even Section 21 of the Administrative Tribunals Act, 1985 clearly stipulates that a Tribunal shall not admit an application unless the application is made within one year from the date on which such final order has been made. They have relied upon a judgment passed by the Hon'ble Apex Court in the case of **Nadia District Primary School versus Sristidhar Biswas & Ors** (2007(3) R.S.J. Page 659), wherein the Hon'ble Court has held that persons who had not approached Court in time and

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waited for the result of decision of other cases cannot stand to benefit and the Court gives benefits to the persons who are vigilant about their rights and not who sit on fence. Even in the case of **U.P.Jal Nigam & Another versus Jaswant Singh & Ors.** (2007(1) S.C.C.(L&S) Page 500), the Hon'ble Supreme Court has held that "laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution, when a person is not vigilant of his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years on the ground that same relief should be granted to him as was granted to a person similarly situated, who was vigilant about his rights".



5. Even the present OA is hit by the principle of res-judicata as the applicant had already filed OA 252/CH/1995 for the same cause of action which was dismissed by the Tribunal on 7.9.2001. They have thus prayed for dismissal of the OA.

6. The applicant has filed a rejoinder by generally reiterating the averments made in the OA.

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7. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

8. This case has a chequered history of litigation and the issue involved for adjudication had come before this Tribunal in previous OA No.252/CH/1995 which was dismissed on September 7, 2001. Review of the said order dated 7.9.2001 was sought by the applicant, over a decade later, on 27.3.2012 by filing RA No.33/2012. The said review application was disposed of vide order dated 12.12.2012 with a direction to the competent authority to have a re-look at the grievance of the applicant in the light of the view obtained by a Full Bench of the Tribunal in the case of Kr. Gajendra Singh (OA No.3126 of 1991) decided on 18.1.1999. The impugned order dated 14.8.2013 is in pursuance of the order dated 12.12.2012 passed in the review application to consider the case of the applicant in the light of the order passed by the Full Bench of the Tribunal.

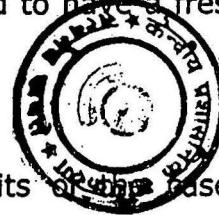
9. It is important to take note of the sequence of other orders passed by various Benches of the Tribunal related to this case which reads as follows :-

i) O.A.No.1037 of 1986 (Krishan Chander vs. UOI) decided by the Principal Bench decided on 28.8.1987;



- ii) O.A.No.331 of 1993 (Trilochan Singh vs. UOI) decided by the Ernakulum Bench of the Tribunal on 18.2.1994;
- iii) O.A.No.652 of 1990 (Shatanand Sharma vs. UOI) decided by the Principal Bench decided on 23.9.1994;
- iv) O.A.No.3126 of 1991 (Kr. Gajendra Singh vs. UOI) decided by Full Bench of the Principal Bench on 18.1.1999.

However, we find that the applicant had earlier filed OA in the year 1995 that was dismissed on 7.9.2001 and the review application with respect to the original order was moved in 2012 i.e. almost after a decade. The review of course was considered and allowed to the extent that the respondents were directed to have a fresh look on his case.



10. Before we consider the merits of the case, it may be significant to note that the applicant joined the service in December, 1960 as Superintendent B/R Gr.I and subsequently retired as Surveyor of Works on 31.5.1997 on attaining the age of superannuation and he is claiming relief which goes back to 1965 by fixing his seniority and arrears of pay between 1982 to 1987. There is an apparent issue of limitation but the same, however, has been ignored by the Tribunal while deciding the review application.

11. A few facts are not disputed. Firstly, that the applicant had not opted for Surveyor cadre when the first merger took place during the year 1964. Secondly that when the demerger Scheme was introduced in 1978, the applicant had opted for Surveyor cadre.

However, the options exercised in 1978 had become invalid due to its cancellation in 1979 and vide Ministry of Defence letter dated 5.9.1980. Following which, fresh options were exercised and accepted by the competent authority and the optees were taken into Surveyor cadre w.e.f. 5.1.1981. Further, in case of Krishan Chander which is the basis for applicant's claim, the Principal Bench of the Tribunal had quashed the earlier order in the light of the fact that the DPC had considered the cases for promotion enblock i.e. not preparing DPC select panel on the basis of year-wise vacancies. The respondents were further directed to hold a review DPC against the vacancies pertaining to the years 1981 to 1985 year-wise.

12. It is the respondents contention that the applicant's name did not figure in the DPC select panel for earlier years. However, the applicant was promoted on the post of Assistant Surveyor of Works against the vacancies pertaining to the year 1986 and was assigned the seniority as ASW with effect from December, 1986.

13. Notwithstanding the discussion above, the fair question that needs to be settled is whether the respondents, in pursuance of the Tribunal's order dated 12.12.2012 in the applicant's Review Application, passed a speaking and well reasoned order. The direction of the Tribunal is reproduced below :-

"1. While conceding that the claim raised by the applicant came to be negative vide order dated 07.09.2001 of a learned Co-ordinate Bench of this Tribunal, the learned



counsel for the applicant states that the situation which has presently surfaced is fairly unenviable inasmuch as the likes of the applicant and their similarly situated colleagues have been compartmentalized into two categories. One category is of the likes of the applicant who raised a challenge but did not succeed; while the other category is of those who raised a challenge and that came to be allowed by the orders on the judicial side in OA 3126/1991 (Annexure RA-1) granted by a learned Full Bench of Principal Bench of this Tribunal on 18.01.1999 and by a DB of the Principal Bench vide order dated 14.07.1999 (RA-III). The view obtained by the Full Bench had been followed by the Lucknow Bench of the Tribunal in the cases filed by the similarly circumstanced employees (RA-IV and RA-V).

2. On that averred factual scenario, learned counsel for the applicant would argue that the interests of justice would be served, if a direction is issued to the competent authority to take a view afresh in the light of the allowance of the plea of the similarly circumstanced employees on the judicial side.
3. The plea made would appear to be just. In the absence of any justified reasons, service jurisprudence would not conceptualize the averred compartmentalization.
4. RA shall stand disposed of, with a direction to the competent authority to have a re-look at the grievance of the applicant in the light of view obtained by a Full Bench of the Tribunal and followed by the Lucknow Bench in the cases filed by similarly circumstanced employees".

The Tribunal had directed the respondents to specifically take into account the full Bench order of the Principal Bench as well as another order passed by the Lucknow Bench of the Tribunal.

14. A perusal of the speaking order reveals that this aspect has not been touched by the respondents. In fact, there is not a whisper about these two orders anywhere in the speaking order. This is in breach of the directions of the Tribunal.



15. The respondents could have taken any view of this issue, but they cannot completely omit the reference to these two orders followed by a detailed and reasonable discussion on the grounds of accepting or rejecting the applicability of the said orders to the case of the applicant. In view of this, the OA is partially allowed by quashing the impugned order dated 14.8.2013 and the case is remitted back to the respondents with a further direction to the respondents to revisit the speaking order in the light of the directions given by this Tribunal in RA No. 33/2012. This exercise may be done within a period of three months from the date of receipt of a copy of this order. The applicant may be apprised of the outcome of this exercise and take follow-up action, if needed.

16. The OA stands disposed of with the above directions. No costs.



(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- 2.12.2015.

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अनुपाल शुक्लारी (न्या.) / Section Officer (Adm.)
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