

5

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH,  
CHANDIGARH.**

O.A.No.1140/CH/2013,  
O.A.No.1141/CH/2013 &  
O.A.No.060/00263/2014

Date of Decision : 23.7.2014  
Reserved on : 18.07.2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER  
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

OA.No.1140/CH/2013

Dr. A.K. Sharma son of Sh. Jawahar Lal, aged about 46 years, presently working as Assistant Professor in Applied Art, Government College of Arts, Sector 10, Chandigarh (U.T.)

...  
Versus

1. Administrator, Union Territory, Chandigarh through Advisor to Administrator, U.T. Secretariat, Sector 9, Chandigarh.
2. Secretary, Technical Education, U.T. Administration, Sector 9, Chandigarh.
3. Head of Department, Govt. College of Art, Sector 10, Chandigarh through Principal Govt. College of Art, Sector 10, Chandigarh.



....

Respondents

Present: Mr. S.S.Pathania, counsel for the applicant  
Mr. Aseem Rai, counsel for the respondents

OA.No.1141/CH/2013

✓ Anand C Shende son of Sh. Chandershekher Shende, aged 40 years, presently working as Assistant Professor in Applied Art, Government College of Arts, Sector 10, Chandigarh. u

Applicant

Versus

1. Administrator, Union Territory, Chandigarh through Advisor to Administrator, U.T. Secretariat, Sector 9, Chandigarh.
2. Secretary Technical Education, U.T. Administration, Sector 9, Chandigarh.
3. Head of Department, Govt. College of Art, Sector 10, Chandigarh through Principal, Govt. College of Art, Sector 10, Chandigarh.

....

Respondents

Present: Mr. S.S.Pathania, counsel for the applicant  
Mr. Rakesh Verma, counsel for the respondents

OA.No.060/00263/2014

1. Dharmender Kumar son of Suresh Chandra Prasad, Aged 40 years, resident of House No.5025-A, PEC Campus, Sector 12, Chandigarh presently working as Assistant Professor, Chandigarh College of Architecture, Sector 12, Chandigarh (U.T.).
2. Gaurav Gangwar son of Sh. Hari Nandan Singh Gangwar, Aged 42 years, resident of House No.5022, PEC Campus, Sector 12, Chandigarh presently working as Assistant Professor, Chandigarh College of Architecture, Sector 12, Chandigarh (U.T.).

....

Applicants

Versus

1. Administrator, Union Territory, Chandigarh through Advisor to Administrator, U.T. Secretariat, Sector 9, Chandigarh.
2. Secretary Technical Education, U.T. Administration, Sector 9, Chandigarh.
3. Principal, Chandigarh College of Architecture, Sector 12, Chandigarh (U.T.).

....

Respondents

Present: Mr. S.S.Pathania, counsel for the applicant  
Mr. Rakesh Verma, counsel for the respondents

O R D E R

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

1. These three OAs taken up together as the facts, issues and claim made therein are similar and hence they are disposed of through a common order. However, for convenience the facts are taken from OA No.1140/CH/2013 titled "Dr. A.K. Sharma Vs. UOI & Ors."

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

- "8 (ii) That the impugned order (Annexure A-1) be set aside / quashed and respondent be ordered to implement the order dated 26.03.2012 (Annexure A-2) with all consequential benefits in a time bound manner.
- (iii) That the applicant be awarded interest at the rate of 12% PA with monthly rests from the date of accrual till its actual disbursement."

3. Averment has been made in the OA that the cause of action arose on 28.04.2003 when the applicant was selected by UPSC for the post of Lecturer (now re-designated as Assistant Professor) in the Government College of Art, Chandigarh. At that time, appointment was denied to the respondents on the pretext of non-submission of OBC Certificate issued by the Chandigarh Administration because he belonged to the State of UP. The applicant got the appointment only when the stand taken by the respondent Administration was negatived by the C.A.T. in OA

u —

No.893/CH/1999, was upheld by the Hon'ble Punjab and Haryana High Court vide judgment dated 04.09.2000 in CWP No.8319-C of 2000 and by the Hon'ble Supreme Court of India vide its judgment dated 27.11.2003 SLP No.4684 of 2000, consequent upon which the applicant joined on 16.01.2004. Since the applicant could only join the present post on 16.01.2004, that is after more than ten and half months after the selection and recommendations by the UPSC, he submitted a representation to the respondents for grant of benefits of increments, pension, gratuity, GPF, GIS etc from the date of recommendation by UPSC which otherwise as a consequence was denied due to late joining.

4. Order dated 26.03.2012 (Annexure A-2) was issued granting date of seniority 02.09.2003, i.e. the date on which the immediate senior of the applicant had joined. Consequential benefits such as increments, pension, gratuity, GPF, GIS etc from the deemed date of seniority of year were also allowed. This order was passed after obtaining the advice of the ~~Finance Department and approval of the Administrator, Chandigarh.~~ (Annexure A-3 and A-4).

5. Similarly circumstanced employees of Department of Medical Education and Research, Government Medical College, Chandigarh and Education Department of Chandigarh Administration were granted similar

AS \_\_\_\_\_

benefits as per orders dated 30.06.2009 and 12.11.2009 (Annexure A-5 and A-6).

6. In pursuance of order dated 16.03.2012 (Annexure A-2) passed by respondent no.1, the respondents fixed the salary / pay notionally from the deemed date of seniority but did not disburse the arrears so worked out to the applicant from the date of joining. Disbursement of arrears has been made selectively in that one Sh. Sanjeev Kumar was disbursed the arrears but the applicant was denied the same and till date no arrears have been paid (Annexure A-8). The denial of disbursal of the arrears of pay and allowances for the period from the notional date of joining till date of actual joining is discriminatory. Despite having passed the orders vide Annexure A-2, duly approved by respondent no.1, Administrator Chandigarh, respondents no.2 and 3 modified that order vide impugned order dated 16.01.2013 on their own without the approval from the competent authority i.e. respondent no.1. Now the impugned order is sought to be implemented which will further delay the disbursement of arrears. Hence this OA.

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

- i) The order passed by the Administrator as competent authority in the case of the applicant being Group 'A' employee cannot be modified or superseded either by respondent no.3 or for that matter respondent no.2 being not competent to do so.

- ii) Benefits in terms of money have been disbursed to similarly situated employees in terms of the order dated 16.03.2012 passed by respondent no.1 but being denied to the applicant which is discriminatory.
- iii) Similarly circumstanced two employees of Govt. Medical College and fifteen employees of Govt. General Science and Arts Colleges have been given the same benefits under similar circumstances by the same authority. Denial of disbursal of arrears of pay and allowances and unilateral withdrawal in the name of modification of the order passed by superior authority amounts to superseding the orders of higher authority by lower authority apart from being discriminatory in nature.

8. In the written statement filed on behalf of the respondents, it has been stated that the Administrator had approved on file (Annexure A-4) the granting of benefits of services on notional basis from deemed date of joining subject to the condition that no financial benefit for notional fixation of their pay shall be admissible as per the rules. However, while issuing the orders (Annexure A-2) it was inadvertently mentioned at the subordinate level that the Administrator is pleased to allow all consequential benefits such as increments, pension, gratuity, GPF, GIS etc from the deemed date of seniority. Later on, this error was detected when a case for granting senior scale to a similarly situated faculty member came up for consideration since in this case the mandatory five years service as Lecturer was counted from deemed date of joining i.e. 02.09.2003 instead of actual date of joining i.e. 16.01.2004. The intervening period during which the similarly situated faculty member did

As —

not actually perform any duty as Lecturer could not in any case be considered for granting senior scale. On re-examining the whole issue the error had been corrected by passing a modification order dated 16.01.2013 (Annexure A-1) in which the benefit of Deemed Date of Joining had been allowed for pension purpose only. Neither in the advice of Finance Department (Annexure A-3) nor in the office note approved by the Administrator granting of increments GPF, GIS etc had been mentioned since these benefits cannot flow to the applicant without actually performing duty as Lecturer. The concerned official when asked to explain as to how the Annexure A-2 was issued has submitted in reply that the Annexure A-2 was issued on the pattern of the orders issued by Secretary / GMCH and Secretary Education. It has now been ordered on file that the office order should be issued on the basis of order on the file and not on the basis of order of some other department. A copy of the relevant noting pages 69, 70 and 71 are annexed as Annexure R-1.

9. When the matter came up for hearing, learned counsel for the applicants reiterated the facts and grounds taken in the OA and stated that the order dated 26.03.2012 (Annexure A-2) had been passed after the approval of the Administrator, U.T. Chandigarh but the order modifying the same passed on 16.01.2013 (Annexure A-1) had been issued on the directions of the Secretary, Technical Education. The Secretary, Technical

*AS —*

Education, was not competent to modify the orders passed by the Administrator in the matter. He further stated that in case of the similarly situated persons listed in order dated 12.11.2009 (Annexure A-6), no such order for withdrawal of benefits was passed as had been done in the case of the applicant. Hence the applicant had been treated in a discriminatory manner.

10. Learned counsel for the respondents stated that it had seen that the initial approval of the Administrator related only to allow the deemed date of joining to the applicants from the date when their immediate seniors were appointed and there was no mention in the note dated 06.03.2012 recorded by FS / Secretary, Technical Education and approved by the Administrator regarding other benefits claimed by the applicant viz. increments, pension, gratuity etc. and hence the order dated 26.03.2012 (Annexure A-2) had been wrongly passed and was therefore modified through order dated 16.01.2013 (Annexure A-1). Learned counsel however admitted that in case of some persons of the Education Department benefits of increments, pension, gratuity, GPF, GIS etc were allowed although they were similarly circumstanced to the applicants in these OAs.

11. Learned counsel fairly submitted that the matter probably required to be considered afresh so that uniform treatment was meted out

As —

to the similarly circumstanced Lecturers whose appointments were delayed inspite of selection by the UPSC on account of the dispute regarding the OBC Certificates having been submitted from other States.

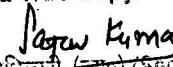
12. In view of the submissions made by the learned counsel for the respondents, order dated 16.01.2013 (Annexure A-1) is quashed and matter is referred for reconsideration to the Chandigarh Administration with the direction that similarly situated employees of the Administration should be treated in a similar manner and such consideration in respect of the applicants in the present OAs may be completed within two months from the date of receipt of a certified copy of this order being served upon the respondents. No costs.

  
**(RAJWANT SANDHU)**  
**ADMINISTRATIVE MEMBER.**

  
**(DR. BRAHM A. AGRAWAL)**  
**JUDICIAL MEMBER**

Place: Chandigarh  
Dated: 23.7.2014  
SV:

Certified True Copy/प्रमाणित सत्य प्रतिलिपि

  
अनुभाग अधिकारी (राज.) / Section Officer (Jud.)

30714  
केंद्रीय प्रशासनिक अधिकारी  
Central Administrative Officer  
चंडीगढ़ पीठ/ Chandigarh Pith  
चंडीगढ़ / Chandigarh

