

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00416/2014

Date of decision- 16.10.2014

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

Man Mohan Malik son of Late Sh. Santosh Kumar Malik, age 59 years retired as Senior Assistant, Estate Office, Union Territory, Chandigarh and resident of House No. 1606, Sector 23-B, Chandigarh.

...APPLICANT

BY ADVOCATE : Sh. D.R. Sharma

VERSUS

1. Chandigarh Administration, Chandigarh through its Administrator, Punjab Raj Bhawan, Sector-6, Chandigarh.
2. The Finance Secretary, Chandigarh Administration, U.T. Secretariat, Sector 9, Chandigarh.
3. The Estate Officer, Estate Office, Union Territory, Sector 17, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Anil Sharma, Advocate vice Sh. Amit Jhanji, counsel for the respondents.

ORDER (ORAL)

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

By means of the present Original Application, the applicant has sought following relief:-

"(i) That the impugned order dated 08.05.2014 (Annexure A-1) and 30.12.2013(Annexure A-2) be quashed and set-aside in the interest of justice.

(ii) That the respondents be directed to take back the applicant in service by granting further extension in service beyond the date of superannuation 31.12.2013 for one and half year in the light of Government of Punjab Notification dated 08.10.2012, dated 20.09.2013, granting extension in service beyond the age of superannuation for two years to those employees who attain the age of superannuation on or after 31.10.2012 and Chandigarh Administration Notification dated 07.12.2012, dated 20.05.2013, dated 31.07.2013 and dated 19.12.2013.

(iii) That the Hon'ble Tribunal may also pass any other order in favour of the applicants which it may deem fit in the peculiar facts and circumstances of the case."

2. Parties are ad idem that a similar controversy, as raised in the instant O.A. with regard to the grant of further extension in service beyond the date of superannuation for two years, has already been put to rest by this Tribunal in case of K.L. Sodhi Vs Union Territory, Chandigarh & Ors., In OA No. 854/CH/2013 decided on 27.08.2014

and after considering the entire instructions, the above O.A was allowed in favour of the applicant therein, and as such this O.A may be decided in the same terms.

3. Considering the consensual agreement reached between parties and without going into the merits of the case, the instant Original Application is disposed of in the same terms as in the case of K.L. Sodhi(supra), the relevant part of which reads as under:-

"12. From the narration of the aforesaid facts it is clear that after deletion of the condition qua pending or contemplated departmental or vigilance enquiry being pending against the concerned employee, the

Chandigarh Administration has to grant the benefit on exercise of an option by the employee in terms of the above notifications issued by the Chandigarh Administration dated 07.12.2012, 20.05.2013, 31.07.2013 and 19.12.2013 without looking to the conduct of an employee and they cannot turn down the request of an employee solely for the reason that there are complaints against him/her. There is yet another reason that the respondents cannot look into the service record of an employee because vide circular dated 22.01.2013 issued by the Government of Punjab, they have clarified that extension in service is to be given to an officer/officers against whom any type of enquiry or case has been conducted or contemplated. In similar fashion Chandigarh administration issued circular on 19.2.2013. Therefore, as per the settled law, the clarification has to relate back to the original notification whose clarification has been given, i.e., of 08.10.2012 by the Punjab Government, adopted by the Chandigarh Administration on 07.12.2012. As per the averment, not denied by the respondents, the applicant exercised his option in terms of the above notification on 11.12.2012 for considering his case for extension w.e.f. 01.07.2013 to 31.12.2013 well in time.

13. The action of the respondents in rejecting the claim of the applicant is also violative of Articles 14 and 16 of the Constitution of India. Although executive instructions do not have the force of law in the sense of not having legislative character, but the Administration is not entitled to act in contravention of or ignore such instructions at its sweet will or whims or fancies, for that would amount to arbitrariness, violative of Articles 14 and 16 of the Constitution of India. It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on the pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Vitarelli v. Seaton, (1959) 359 US 535: 3 L Ed 2d 1012]" where the learned Judge said:- "An executive agency must be rigorously held to the standards by which it professes its action to be judged Accordingly, if dismissal from employment is based on a defined procedure, even though

generous beyond the requirements that bind such agency, that procedure must be scrupulously observedThis judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword' It has been further held that:

"It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimum requirement'. This principle has been applied to myriads of cases involving violation of administrative instructions or guidelines covering not only tenders but other fields."

14. Similar views were expressed by his Lordship P.N. Bhagwati in **Dr. Amarjit Singh Ahluwalia v. State of Punjab & Ors.**, (1975) 3 SCC 503. Thus, once the instructions provide for extension of service in a particular situation and manner, the Administration is bound to act in that particular manner only and not deviate from the same.

15. In the above background, we are left with no other option but to accept the OA. Accordingly the OA is allowed the impugned order dated 11.06.2013 is quashed and set aside. The matter is remitted back to the respondents to re-consider his claim in the light of what we have held above.

No other point argued.

16. Let the above exercise be carried out within a period of one month from the date of receipt of a certified copy of this order. No costs."

4. No costs.

Uday Kumar Varma
(UDAY KUMAR VARMA)
MEMBER (A)

Banjeev Kaushik
(BANJEEV KAUSHIK)
MEMBER (J)

Dated: 16.10.2014,

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