

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

**OA. 060/00476/2014
(Reserved on 09.02.2015)**

Chandigarh, this the th /3 day of February, 2015

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)**

Renu Aggarwal wife of Sh. Kamlender Aggarwal age 53 years working as Pharmacist in Government Industrial Training Institute, Sector 28-C, Chandigarh, resident of 1254, Sector 22-B, Chandigarh.

.....Applicant

BY ADVOCATE: **MR. D.R. SHARMA**

VERSUS

1. The UT Chandigarh through its Finance Secretary-cum-Secretary Technical Education, Chandigarh Administration, UT Secretariat, Chandigarh.
2. The Director, Technical Education, Union Territory, Chandigarh.
3. The Principal, Government Industrial Training Institute, Sector 28, Chandigarh.

.....Respondents

BY ADVOCATE: **MR. ARVIND MOUDGIL**

Arvind Moudgil

ORDER

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

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

- “(i) That the impugned decision dated 21.06.2011 (Annexure A-1) be quashed and set aside in the interest of justice.
- (ii) That the respondents be directed to grant the benefit of ACP Scheme on completion of 4, 9,14 years service from the due dates 01.11.2006 in the pay scale of Rs. 3800/- to Rs. 10300 -34800 plus Grade Pay of Rs. 4400/- as has been granted to similarly placed Pharmacist holding single post.
- (iii) That the applicant be held entitled to all consequential benefits and reliefs including the refixation of pay etc. and release of arrears thereto alongwith interest.”

2. The background of the matter is that the applicant joined as Pharmacist on 10.12.1979. She was placed in Senior Scale of Rs. 1640-2925 w.e.f. 10.12.1987 which was revised to Rs. 5800-9200 w.e.f. 1996 and Pay Band-3 Rs. 10300-34800 plus Grade Pay of Rs. 3800/- w.e.f. 01.01.2006. In pursuance to the recommendations made by the 4th Punjab Pay Commission, Assured Career Progression Scheme was implemented by the Government of Punjab vide I.D. No. 7/37/98-5PPI/12852 dated 25.09.1998, according to which on completion of 8/16/24/32 years of service, employees were entitled to the grant of increments/scales. Copy

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of ACP Scheme dated 25.09.1998 is annexed as Annexure A-2. Vide Notification dated 03.11.2006 (Annexure A-3), another Assured Career Progression Scheme was formulated by the respondents according to which on completion of 4/9/14 years of service in a post or posts in the same cadre an employee was entitled to the grant of the benefit as per the Scheme. This Scheme was optional and applicable w.e.f. 01.11.2006. The existing employees were to give an option for the Scheme within a period of two months. The applicant did not give option at that time as at that time the Scheme of 08/16/24/32 was beneficial to her.

3. Averment has been made in the OA that at the time of fixing the pay under Punjab Civil Services (Revised Pay) Rules, 2009 the pay of senior employees was in some cases less than the junior employees because of the reason that junior employees had opted for 4/9/14 ACP Scheme and senior employees had opted for 8/16/24/32 ACP Scheme. The Government of Punjab vide letter No. 7/70/09-SPP1/748 dated 03.02.2010 (Annexure A-5) therefore granted opportunity to such employees to exercise fresh option for 4/9/14 ACP Scheme within three months from the date of issue of this letter. The 4/9/14 ACP Scheme was adopted by the Chandigarh Administration vide letter No. 28/43-IH(7)-2010/3414 dated 24.02.2010 w.e.f. 01.11.2006 (Annexure A-4). After

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fixation of pay w.e.f. 01.01.2006, 4/9/14 ACP Scheme found to be more beneficial to the applicant. On 04.03.2010, the applicant submitted option for 4/9/14 ACP Scheme alongwith undertaking etc. (Annexure A-6/Colly). The applicant submitted reminders dated 13.10.2010 (Annexure A-7), 17.05.2011 and represented for grant of benefit of 4/9/14 ACP Scheme and brought into notice that another employee Mrs. Pushpa Chopra who was working as Pharmacist in Government CCIW, Sector 11, Chandigarh in the same department i.e. DTE, UT, Chandigarh who applied alongwith her had already been granted the benefit. Copies of documentation with regard to grant of benefit of 4/9/14 ACP Scheme to Mrs. Pushpa Chopra (Pharmacist) are annexed as Annexure A-8/Colly.

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

- (i) The applicant is being discriminated in the matter of grant of benefit of 4/9/14 ACP Scheme as similarly situated Pharmacist working in the same department i.e. DET, UT Chandigarh has already been granted the benefit and she is also holder of solitary post.
- (ii) One more opportunity to opt for the 4/9/14 ACP Scheme was granted by the Government of Punjab vide letter dated 03.02.2010 in order to provide equal and better pay to all. The applicant is suffering adversely with non-grant of the benefit of the 4/9/14 Scheme. If she had opted for ACP Scheme in the year 2006 then her Grade pay would have been Rs. 4400/- instead of Rs. 3800 (Present).

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(iii) In the year 2006 when 4/9/14 Scheme was introduced, the new pay scales w.e.f. 01.01.2006 were not notified. The revised pay scales were notified w.e.f. 01.01.2006 and were implemented in 2009. It is thereafter that anomaly had arisen and finding that there is disparity in the pay scales when senior employees started getting less pay, the Punjab Government gave fresh option to switch over to 4/9/14 Scheme. As applicant was also getting less pay she gave option as per letter dated 03.02.2010 adopted by Chandigarh Administration vide letter dated 24.02.2010.

(iv) It is settled law that a beneficial legislation/policy framed by the Government has to be given effect in favour of the employees and the case should not be rejected. The fact that on mere technicality, applicant did not opt in 2006 for 4/9/14 Scheme, cannot disentitle her to opt again as fresh cause of action arose in 2009 when the pay scales were notified from 01.01.2006 and fresh options asked in 2010.

5. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed. It has further been stated that in many cases, the pay of the senior employees had been fixed less than the junior employees while fixing their pay under the Punjab Civil Services (Revised Pay) Rules, 2009. The reason for that was opting for 4/9/14 years ACP Scheme by the junior employees and 8/16/24/32 years ACP Scheme by the senior employees. For removal of anomaly in the case of pay fixation of senior employees under the Punjab Civil Services (Revised Pay) Rules, 2009, order No. 7/70/09-5PPI/7480 dated 3.2.2010 was issued by the Government of Punjab whereby the employees were given three months time for giving their option for 4/9/14 years ACP

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Scheme. The applicant submitted affidavit (Annexure A-8) for fresh option as per notification dated 3.2.2010 making comparison with Smt. Pushpa Chopra, Pharmacist of Government ITI (W), Sector 11-C, Chandigarh as Pharmacist on 27.9.1973, who was senior to the applicant and has since retired. The notification of 3.2.2010 is applicable only in cases where the pay of the senior employees had been fixed less than that of junior employees while fixing their pay under the Punjab Civil Services (Revised Pay) Rules 2009. Thus, the present OA filed by the applicant is legally misconceived and deserves to be dismissed on this ground as well.

6. Preliminary objection has also been taken that the case of the applicant is hopelessly time-barred as the applicant is impugning order dated 21.6.2011 (Annexure A-1) and the present OA has been filed in May, 2014 and is hence barred by limitation. Moreover, no application for condonation of delay has been filed by the applicant.

7. Arguments advanced by the learned counsel for the parties were heard when both counsel reiterated the facts and grounds taken in the OA.

8. We have given our careful consideration to the matter. The applicant has claimed that she be allowed to exercise her option for the

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4/9/14 Scheme as per Government of Punjab's letter dated 3.2.2010 as she is suffering adversely due to non-grant of the benefit of 4/9/14 ACP Scheme. If she had opted for the ACP Scheme in 2006, then her Grade Pay would be Rs. 4400 instead of Rs. 3800 and it has also been pressed that one Smt. Pushpa Chopra, Pharmacist in Government ITI (W), Sector 11-C, Chandigarh was allowed the benefit of 4/9/14 Scheme while Smt. Chopra was also posted on an isolated post like the applicant. It does appear anomalous that Smt. Pushpa Chopra who was working as Pharmacist on an isolated post in Government ITI (W), Sector 11-C, was allowed to exercise fresh option as per Notification dated 3.2.2010, but similar consideration has not been allowed to the applicant. Although it is true that the fresh options were allowed to employees of the Chandigarh Administration in accordance with the circular dated 3.2.2010 only where the pay of senior employees had been fixed less than the junior employees while fixing their pay under the Punjab Civil Services Revised Pay Rules, 2009, but there is no explanation regarding different treatment being meted out to Smt. Pushpa Chopra and the applicant. Hence, this OA is disposed of with direction to the respondents to re-consider the claim of the applicant for being allowed to exercise her option for the grant of benefit of ACP Scheme on completion

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of 4/9/14 years' service from the due date of 1.11.2006 as per Circular dated 3.2.2010 if in identical circumstances Smt. Pushpa Chopra, Pharmacist has been allowed to exercise such option. Such consideration may be completed within a period of two months of a certified copy of this order being served upon the respondents. No costs.

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(RAJWANT SANDHU)
MEMBER(A)

Sanjeev
(SANJEEV KAUSHIK)
MEMBER(J)

Dated: February 13, 2015.

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