

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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ORIGINAL APPLICATION NO. 0/00295/2014

Chandigarh, this the 23rd day of January, 2017

**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE SMT. RAJWANT SANDHU, MEMBER (A)**

...

Dr. A.S. Sethi, resident of House NO 164, Sector 20, Chandigarh.

....APPLICANT

(Argued by: Shri B.S. Aggarwal, Advocate)

VERSUS

1. Union of India through Secretary, HRD, New Delhi.
2. Chandigarh Administration, through Education Secretary (College Wing), U.T. Secretariat, Sector 9, Chandigarh.
3. Centralized Pension Processing Centre through AGM, State Bank of India, Sector 5, Panchkula.

....RESPONDENTS

(By Advocate: Shri Aseem Rai for respondents no. 1 & 2.
None for respondent no. 3.

ORDER (Oral)

JUSTICE M.S. SULLAR, MEMBER(J)

The crux of facts and material, which needs necessary mention, for the limited purpose of deciding the core controversy, involved in the instant Original Application (OA), and expository from the record, is that, applicant Dr. A. S. Sethi was appointed on the post of Lecturer in the College Cadre of U.T., Chandigarh Administration. He was asked to look after the work of Principal, Government College of Commerce and Business Administration, Sector 19, Chandigarh (hereinafter referred to as 'College') vide

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order dated 7.4.2007 (Annexure A-1), in his own pay scale with immediate effect till further orders. Having completed tenure of posting, he retired on 31.12.2008, on attaining the age of superannuation.

2. Now, he has filed the instant O.A. in this Tribunal on 31.3.2014, after long delay of more than 5 years of his retirement, claiming pay and allowances of the post of Principal and retiral benefits.

3. The case set up by the applicant, in brief, insofar as, relevant is that although he was senior, but wrongly shown as junior, as per seniority list (Annexure A-6). That is why he was asked to look after the work of Principal, of College. Since, he had worked on the post of Principal, so, he was entitled to the pay and allowances and other retiral benefits to be calculated on the basis of the post of Principal. On the strength of the aforesaid grounds, the applicant has preferred the instant O.A., seeking a direction to respondent no. 2 to release the pay and retiral benefits in the regular pay scale of the post of Principal, in the manner, indicated herein above.

4. The respondents have refuted the claim of the applicant and filed the reply, wherein it was pleaded that the applicant was asked to look after the work of Principal of Govt. College, in his own pay and scale only as an emergent stop gap arrangement, and no permanent rights could have flowed therefrom. A regular post of Principal in the said College has yet not been created by the Competent Authority i.e. Govt. of India. The four sanctioned posts of Principals, in other colleges, were occupied by Lecturers, who are senior to the applicant, in their own pay and scale and as such

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neither the applicant was senior most Lecturer nor he was working against a regular sanctioned post of Principal at the relevant time so he cannot claim pay and allowances of regular pay scale of the Principal.

5. It was also alleged, that applicant retired from service w.e.f. 31.12.2008, whereas the present O.A. was filed in the year 2014, and, since no application for condonation of delay has been moved, explaining delay of almost 6 years, so the applicant is not entitled for relief at this belated stage and the O.A. is liable to be dismissed. Virtually acknowledging the factual matrix, and reiterating the validity of their action, the respondents have stoutly denied all other allegations and grounds contained in the O.A. and prayed for its dismissal.

6. Having heard the learned counsel for the parties, on the point of limitation, having gone through the record with their valuable help, and after considering the entire matter, we are of the firm view that the instant O.A. deserves to be dismissed for the reasons and in the manner, mentioned herein below.

7. As is evident from the record, that the applicant is claiming that he was senior most Lecturer when he was asked to look after the work of Principal of College, which was vehemently denied by the respondents. The case of the respondents is that even the post of Principal of the pointed college was not sanctioned and the applicant was asked to look after the work of the Principal as a stop gap arrangement, vide order (Annexure A-1) 7.4.2007, which reads as under:-

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"ORDER"

Sh. A.S. Sethi, Lecturer in Chemistry, Govt. College for Girls, Sector 11, Chandigarh will look after the work of Principal, Govt. College of Commerce and Business Administration, Sector 19, Chandigarh in his own pay scale with immediate effect till further orders. He will not claim any benefit for the post of Principal.

Dated Chandigarh, the
7th April, 2007

Krishan Mohan
Education Secretary,
Chandigarh Administration."

8. Meaning thereby, he was asked to look after the work of the Principal in his own pay scale with immediate effect till further orders. There was a clear stipulation that he will not claim any benefit for the post of Principal. In that eventuality, applicant is not at all entitled for the benefit of regular pay scale of the post of Principal at this belated stage. This matter is no more res integra and is now well settled.

9. An identical question came to be decided by Hon'ble Apex Court in case of **A. Francis Vs. The Management of Metropolitan Transport Corporation Ltd., Tamil Nadu, Civil Appeal NO. 7692 of 2014** decided on 13.08.2014. Having considered the similar cases, it was ruled as under in (para 8) by Hon'ble Apex Court:

"8. The order dated 28th February, 2001, by which the appellant was allowed to discharge duties in the post of Assistant Manager had made it clear that the appellant would not be entitled to claim any benefit therefrom including higher salary and further that he would continue to draw his salary in the post of Assistant Labour Welfare Officer. If the above was an express term of the order allowing him to discharge duties in the higher post, it is difficult to see as to how the said condition can be overlooked or ignored. The decision of this Court in Secretary-cum-Chief Engineer, Chandigarh (supra) was rendered in a situation where the incumbent was promoted on ad hoc basis to the higher post. The aforesaid decision is also distinguishable inasmuch as

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there was no specific condition in the promotion order which debarred the incumbent from the salary of the higher post. Such a condition was incorporated in an undertaking taken from the employee which was held by this Court to be contrary to public policy."

10. Sequelly, it is not a matter of dispute that that the applicant had retired w.e.f. 31.12.2008, on attaining the age of superannuation, whereas he has filed the instant O.A. on 31.3.2014, after a gap of more than 5 years. Section 3 of the Limitation Act, 1963 postulates that subject to the provisions contained in section 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Similarly, Section 21 of the Administrative Tribunals Act, 1985 postulates that a Tribunal shall not admit an application, in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within 1 years from the date on which such final order has been made. No doubt this Tribunal has the power to condone the delay, if applicant satisfies sufficient cause for not making application within such period. Be that as it may, what to talk of explaining the sufficient cause even the applicant has not filed any application for condonation of delay in this case.

11. Likewise, the contention of learned counsel, that the applicant is also entitled to the same relief on the basis of parity with other similarly situated person and the delay of 5 years would not come in his way to deny the same benefit, is not only devoid of merits, but misplaced as well. A similar question of delay

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came to be decided by Hon'ble Apex Court in case of **State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Others** (2015) 1 SCC 347 wherein it was ruled that principle of parity is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reasons that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

12. Therefore, thus seen from any angle, neither the O.A. is maintainable, being time barred, nor applicant is entitled to any relief, at this belated stage, in the obtaining circumstances of the case.

13. In the light of the aforesaid reasons, as there is no merits, so the O.A. is hereby dismissed as such. However, parties are left to bear their own costs.

Rs
(RAJWANT SANDHU)
MEMBER (A)

'SK'

Mehmood Singh Sullar
(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 23.01.2017