

17

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

**ORIGINAL APPLICATION NO.060/00212/2014 &
M.A. No.060/00336/2014**

**Order Reserved on 16.02.2015
Pronounced on 25.02.2015**

...

**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

...

Ved Parkash son of Sh. Hari Ram, resident of Village Ladhot, Tehsil and District Rohtak.

... Applicant

Versus

1. Indian Red Cross Society, Rohtak, District Rohtak through its Secretary/President.
2. Principal, Red Cross Institute, Mentally Handicapped Children, Rohtak.

... Respondents

Present: Sh. Kartar Singh Malik, counsel for the applicant.
None for the respondents.

ORDER

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

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

- "8 (i) For payment and fixation of pay as per grade or DC Rates for the post of Chowkidar and granting interest with 24% P.A. from the date of entitlement.
- (ii) Further, direct the respondents to fix pay and release pay from the date of entitlement i.e. claim in Civil Suit of present O.A."

As ———

2. M.A. No.060/00336/2014 has also been filed seeking condonation of 372 days delay in filing the O.A.

3. The case of the applicant is that he was appointed as Gate Keeper in the Respondent Society on 02.11.1998 and thereafter was appointed as Chowkidar on 16.08.2000 vide letter dated 14.08.2000. The work and conduct of the applicant remained satisfactory and at present, the respondents are paying fixed amount of Rs.4550/-p.m. to the applicant whereas another employee Sh. Deepak who is also working as Chowkidar is getting pay in the scale. The remuneration of the applicant is even lower than the DC rates and hence the applicant is being treated in a discriminatory manner. The applicant submitted several representations in this regard, the last being on 23.03.2009 (Annexure A-2) and the applicant also served legal notice on the respondents on 05.6.2009 but no action was taken in this regard. Hence this O.A.

4. It has further been stated that the applicant filed Civil Suit regarding his claim but the same was dismissed. The appeal filed by the applicant before the competent court of law was dismissed as withdrawn on account of lack of jurisdiction (Annexure A-4 and A-5).

5. In the counter reply filed on behalf of the respondents, it has been stated that the applicant was engaged as Gate Keeper at fixed consolidated monthly honorarium of Rs.1000/- p.m. (Annexure A-1). Since District Red Cross Society is running various projects namely Drugs

W —

De-addiction Centre, Arpan Institute for Mentally Handicapped Children and Hostel for Working Women etc; for providing various services, persons are engaged on consolidated monthly honorarium and the applicant has been engaged as Gate Keeper in similar fashion. It is further stated that the applicant filed a suit for declaration and mandatory injunction before Civil Judge (Senior Division), Rohtak on similar footing alleging therein that he was entitled to pay fixation in the pay scale of Deepak, Chowkidar and was entitled to get consequential benefits along with interest. He alleged in the suit that he was appointed as Gate Keeper on 02.11.1998 and his post was converted to Chowkidar on 16.08.2000. While he was being paid fixed salary of Rs.4550/- p.m., another Chowkidar namely Deepak was getting full pay scale despite the fact that he was junior to him. Notice of the suit was issued and on receipt of the same, the answering respondents filed their written statement and denied the allegations made in the suit. After careful perusal and consideration of evidence led by both the parties, the learned Civil Judge (Jr. Divn.), Rohtak vide judgment dated 03.3.2012 dismissed the suit of the applicant holding therein that Deepak was not junior to the applicant. The relevant findings recorded in this regard in para 14 of the judgment are as follows:-

"After considering the rival contentions of the parties, this Court is of the considered view that the contention of the plaintiff seeking equal pay as that of the pay of Deepak

As —

Chowkidar on the ground of pay parity is not tenable. It is evident from the document Ex.P5 that Deepak was first appointed on 27.8.1991. It is further evident from documents Exp2 to Ex.P4 that he was readjusted in Red Cross Office in January, 1995 as Chowkidar on D.C. rates. It is not disputed by the plaintiff that he was appointed on 02.11.1998. As such, the claim of the plaintiff that Deepak, Chowkidar is junior to him is not factually correct."

6. The applicant dissatisfied by the judgment by learned Civil Judge (Jr. Division), Rohtak, filed an appeal before the learned District Judge, Rohtak which was dismissed as withdrawn vide order dated 28.10.2013 (Annexure A-5). The appeal was simplicitor dismissed as withdrawn and no liberty whatsoever was granted to approach this Tribunal. In view of this, the present O.A. is liable to be dismissed as findings with regard to the status of the applicant and Deepak were not disturbed by the appellate Court and the appeal has been dismissed without liberty to approach this Tribunal. In view of the finding recorded by Civil Judge (Jr. Division) in the Suit filed for declaration, which stands dismissed vide Annexure A-4 dated 03.3.2012 also, the present O.A. is not maintainable being time barred.

7. It is also stated that the applicant was never appointed as Chowkidar and he was only appointed as Gate Keeper and was at present being paid Rs.4550/ as honorarium. Since specific finding has been recorded with regard to claim made by the applicant by the learned Civil Judge, (Jr. Division), Rohtak in judgment dated 03.3.2012 (Annexure A-

As —.

4), concluding therein that the applicant was not entitled to equal pay scale of Deepak, Chowkidar nor the principle of equal work equal pay applied in his case since Deepak had more experience than the applicant.

8. No rejoinder had been filed in the matter.

9. Learned counsel for the applicant has been heard. Learned counsel pressed that the applicant was only getting Rs.4550/- p.m. whereas he was entitled to minimum wages as per DC rate and in the case of Chowkidar, this was Rs.6545/- in the year 2013-14 and for the current year would be even higher. Learned counsel also cited judgment dated 05.07.2010 in Civil Appeal No.685 of 2005 (U.P. Land Development Corporation and Anr. Vs. Mohd. Khursheed Anwar and Anr.) to press that the principle of equal pay for equal work required that the applicant be paid at least as much as Sh. Deepak, Chowkidar whose case has been referred to in the O.A.

10. Since none was present to represent the respondents and this has been the position since last few hearings, Rule 16 of the CAT (Procedure) Rules, 1987 was invoked and we proceed to decide the matter also taking into account the written arguments subsequently filed by Sh. Dinesh Arora, counsel for the respondents.

11. From the perusal of the material on record, it is evident that the applicant filed Civil Suit before the Civil Judge (Jr. Division), Rohtak seeking declaration to the effect that he was entitled to pay fixation in the pay scale of Deepak, Chowkidar and was entitled to get the

As ——— .

consequential benefits along with interest. This suit was rejected through order dated 03.3.2012 (Annexure A-4). The applicant then filed appeal before the District Judge, Rohtak in the regard and on 28.10.2013, the statement of the applicant was recorded that he did not wish to proceed with the appeal and hence the appeal was dismissed as withdrawn vide order dated 28.10.2013. Now, the applicant has approached this Tribunal while seeking the same relief as was sought by him before the Civil Court and where he lost his case. The applicant cannot move from one legal forum to another to press his claim and since the claim filed by him before the Civil Judge (Jr. Division), Rohtak through Civil Appeal No.556/2009 has already has been rejected on 03.3.2012, the O.A. before the Tribunal is clearly not maintainable. Hence the same is rejected

12. M.A. No.060/00336 is also disposed of accordingly.

(DR. BRAHM A. AGRAWAL)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.
Dated: 25.02.2015.

KR*