

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No. 060/00560/2014

**Pronounced on- 17.7.2015
Reserved on - 21.05.2015**

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

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Dr. Abha Sudarshan aged 51 years W/o Sh. Ravi Lakhanpal, presently working as Assistant Professor, Public Administration, Post Graduate Government College for Girls, Sector 42, Chandigarh.

...APPLICANT

BY ADVOCATE : Sh. R.K. Sharma

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi.
2. Union Territory, Chandigarh through its Administrator.
3. Education Secretary, Union territory, Chandigarh, Sector 9, Chandigarh.
4. Director, Higher Education, U.T, Chandigarh.
5. Principal, Post Graduate Government College for Girls, Sector 42, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. A.L. Nanda.

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ORDER

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

Challenge in this O.A is to memo dated 18.02.2014 vide which claim of the applicant for pay protection, which she was getting in the State of Haryana before joining the Chandigarh Administration, has been rejected. She has further sought quashing of para 2 of the instruction dated 18.06.2001, which were adopted by the Chandigarh Administration vide letter dated 16.10.2002 to the extent that benefit of pay protection has been given only to the employees appointed on or after 01.01.1996. She seeks issuance of further direction to the respondents to consider her claim of pay protection as Lecturer (now re-designated as Assistant Professor), before joining Chandigarh Administration, with all consequential benefits including arrears of pay and revision of pay etc. from the date of her joining.

2. The facts which led to filing of the present application are that initially the applicant joined as Lecturer in Public Administration with the State of Haryana vide letter dated 07.10.1985 and accordingly, she joined in Pandit J.L.N. Government College, Faridabad on 14.10.1985. Subsequently, she was transferred to Government College at Kalka as Lecturer in Public Administration on 29.07.1986. While working with State of Haryana, she got her name registered with

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Employment Exchange, U.T, Chandigarh for the post of Lecturer and her name was sponsored by the employment exchange for appointment to the post of Lecturer in Public Administration, U.T, Chandigarh and she was interviewed by the selection committee and was offered appointment vide letter dated 18.02.1988. She joined thereafter on new assignment giving resignation to earlier employer. Subsequently, as per the judgment rendered by the Hon'ble Supreme court, all the Lecturers, who were appointed as Class III on adhoc basis, were regularized by the Chandigarh Administration w.e.f. initial date of their appointment and conferred Group 'B' status and then Group 'A' status w.e.f. 2000 on the basis of instructions issued by the State of Punjab, as applicable to the Chandigarh Administration. It is case of the applicant that while working with the State of Haryana, she was drawing the pay scale of Rs. 700-1600 and her pay was at the stage of Rs. 780/- as on 01.11.1987 and after the revision of pay scale w.e.f. 01.01.1986, the pay of the applicant was fixed as 2350/- w.e.f. 01.11.1987 in the pay scale of Rs. 2200-75-2800-100-4000. When applicant joined Chandigarh Administration in the year 1988, her pay was initially fixed @ Rs. 700/- pre revised pay scale. When she came to know that one Dr. Harmeet Sethi, who joined the U.T from Punjab State, as Lecturer of the same college, his pay was protected vide order dated 09.12.2002, she submitted representation on 25.09.2007.

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Thereafter, matter remained under correspondence between state of Haryana and Chandigarh Administration but when nothing came out, she was compelled to submit various reminders. She was asked to submit certain information which she supplied to the concerned quarters. She also informed the respondents that there are Lecturers working with the Chandigarh Administration, who are similarly situated like her, who had been granted the pay protection, therefore, she may also be extended same benefit being similarly situated persons. But her claim was rejected vide impugned order dated 18.02.2014 by placing reliance upon instruction dated 16.10.2002 whereby Chandigarh Administration had decided to adopt the instructions dated 18.06.2001 issued by the Nodal agency, DoPT by imposing the condition to protect the pay of only those employees who joined the department, from other services, on or after 01.01.1996 only. Hence, the present O.A.

3. Sh. R.K. Sharma, learned counsel for the applicant vehemently argued that instruction dated 16.10.2002 issued by the Chandigarh Administration adopting the DoPT instruction dated 18.06.2001 restricting the benefit of pay protection to the employees who joined the services on or after 01.01.1996, is illegal, arbitrary and discriminatory in nature as it amounts to creating a class within a class and inequality amongst the equals. He submitted that once it has been

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decided by the Government of India to grant pay protection to the employees who joined from other states, therefore, they cannot fix a cut off date to deprive those who joined the services prior to the cut off date. He submitted that denial of the same benefits to her while extending it to persons junior to her, is discriminatory in nature and cannot be sustained. To support his argument, he placed reliance upon the decision of the Hon'ble Supreme Court in case of **T.S. Thiruvengadam Vs. Secretary to Govt. of India & Ors.**, 1993 SCC (L&S) 495 & **D.S. Nakaraand & Ors. Vs. Union of India & Ors.** 1993 SCC (L&S) 145.

4. Pursuant to notice, the respondents contested the claim of the applicant by filing a detailed reply wherein they have taken a preliminary objection with regard to her pay protection which she was getting in Haryana State before joining service in U.T. Chandigarh in the year 1988, as being barred by limitation, therefore, benefit of pay protection after a considerable delay cannot be granted to the applicant and accordingly, the present petition be dismissed on the ground of delay and laches.

5. In support of the above, Sh. A.L. Nanda, learned counsel for the respondents submitted that this court cannot interfere in the policy decision taken by the Chandigarh Administration as it is the prerogative of executive to fix a cut off date by looking into their

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financial condition. With regard to the grant of benefit given to the similarly situated persons, he submitted that since they were appointed through UPSC, therefore, the case of the applicant is entirely different from them like Dr. Harmeet Sethi.

6. The applicant has also filed rejoinder wherein she has submitted that though she was appointed on adhoc basis but by a positive act of selection by a Selection Committee and then regularized, therefore, the respondents cannot deprive her of the benefit as granted to the similarly situated persons, on the ground that she was not appointed through UPSC as source of recruitment is immaterial for protection of pay.

7. We have given our thoughtful consideration to the entire matter and perused the pleadings as available on record with the able assistance of the learned counsel for the parties.

8. We are conscious of the fact that in the policy decisions, a court cannot interfere unless the decision taken by the executive is biased, arbitrary and creates artificial discrimination amongst the equals. But in this case, there is no denial by the respondents that vide OM dated 18.06.2001 issued by the nodal agency DoPT, they have decided to protect the pay of the employees who were working with state Government and joined the Chandigarh Administration but it was restricted only to those who joined the service on or after 01.01.1996.

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The O.M dated 18.06.2001 makes it clear that the respondents have recognized the services rendered by an employee prior to joining the Central Government and decided to protect one's pay but they have chosen 01.01.1996 as cut off date. The applicant who joined the Chandigarh Administration on 18.02.1988, was appointed through recognized positive act of selection at that time. Before that she was working with the State of Haryana where she was appointed by the selection committee. So it cannot be said from any angle that her entry in service is back door. Merely because she was not appointed through UPSC, cannot take away her right to take benefit of pay protection which was made available to other similarly situated person like Dr. Harmeet Sethi, more so when she was regularized from the initial date of appointment. Though we do not find any fault with the cut off date fixed by the respondents but in the interest of justice, the persons who were appointed earlier cannot be deprived from the same benefit which was made available to the persons who are junior to them and joined on or after 01.01.1996. To our mind, it is to be made available to the applicant from the date when it was made applicable i.e. 01.01.1996 notionally and the authorities have to refix her pay as per the OM dated 18.06.2001 and actual payment may also be made from the date of filing of the O.A.

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9. Now dealing with the Preliminary Objection as raised by the respondents that present petition is hit by limitation. Considering that this is a case for fixation of pay / protection of pay which is a continuous cause of action and squarely covered by the decision of the Hon'ble Supreme Court in **M.R. Gupta & Ors. Vs. Union of India**, 1995 (2) SC SLJ 337, therefore, the present petition is held to be not barred by limitation and accordingly, the objection is rejected. O.A is, accordingly, allowed with above directions.

10. Needful be done within a period of three months from the date of receipt of certified copy of this order.

11. No costs.


(UDAY KUMAR VARMA)
MEMBER (A)


(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 17.7.2015.

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