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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No.060/00646/2014
MA No.060/01155/2015 &
MA No.060/01040/2014

Date of decision: 4.11.2015

**Coram: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. JUDAY KUMAR VARMA, MEMBER (A)**

Krishan Dass son of Kirpa Ram,
age 65 years,
(retired as Assistant Engineer,
Department of Hospital Engineering,
Bio-medical Division),
resident of H.No. 738,
Sunny Enclave, Sector: 125,
SAS Nagar, Mohali.

-Applicant

(By Advocate Shri P.M. Kansal)

-Versus-

1. Union of India through Secretary to
Govt. of India,
Ministry of Health & Family Welfare,
Department of Health & Family Welfare,
New Delhi.
2. Postgraduate Institute of Medical Education & Research,
Sector-12,
Chandigarh
through its Director.

-Respondents

(By Advocates Shri Atul Arya)

ORDER
Mr. Sanjeev Kaushik, Member (J):

Challenge in this Original Application is to an order dated 26.05.2014, whereby request of applicant for grant of Punjab pay scale on his appointment as Junior Engineer (Mechanical) has been rejected. Further he has sought a direction from this Tribunal to direct the respondents to grant Punjab pay scale and its revision from time to time from the date of his joining as Junior Engineer, i.e., w.e.f. 18.05.1990 as per the decision taken by the Governing Body in the year 1984.

2. The facts, which led to filing of the Original Application, are that name of applicant was recommended by the Selection Committee for appointment as Assistant Mechanic (Generation) (Work Charged) in the pay scale of Rs.140-300 vide appointment letter dated 19.08.1972. Vide another appointment letter dated 15.09.1973 he was appointed as Assistant Mechanic (CSSD) in the same very pay scale and his services were regularized as such w.e.f. 29.05.1975. Thereafter on the recommendation of a Committee he was appointed as Technician Grade-VI (Mech.) vide letter dated 24.10.1975. However, vide office order dated 24.02.1977 he was selected on deputation as a Fine Mechanic in the pay scale of Rs.300-600 under the Institute's Research Scheme called 'Remote after loading of Intracavitary Radiation Therapy. On completion of his deputation period he was repatriated to his parent division, i.e., Engineering Department vide order dated 19.07.1989 and was posted in Bio-Medical

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Division of Engineering Department and was promoted as Foreman Grade-II. Thereafter a vacancy was notified by the Post Graduate Institute of Medical Education & Research (PGIMER, for short) of Junior Engineer (Mechanical) to be filled up by direct recruitment in the pay scale of Rs.1400-2300, against which applicant applied. He was declared successful and was offered appointment as such vide order dated 17.05.1990.

3. The sole grievance of the applicant in this Original Application, as borne out from the pleadings, is that since he was working with the PGIMER from 1972 and was getting the pay scale on Punjab pattern, therefore on his appointment as Junior Engineer (Mechanical) he be also given the pay on Punjab Pattern instead of Central pattern against which he submitted various representations. He was also promoted as Assistant Engineer (Mechanical) vide order dated 17.12.2008 in the pay scale of Rs.6500-10500 and retired from service on attaining the age of superannuation on 30.04.2009. His representations, which were forwarded by the DPGI dated 22.01.2014, came to be rejected by the impugned order dated 26.05.2014. Hence the Original Application.

4. The respondents contested the claim of the applicant by filing written statement wherein they have taken a preliminary objection that the Original Application deserves to be dismissed on the ground of delay and laches, as applicant has filed this Application after a delay of more than five years from the date of his retirement. On merits, it is submitted that since applicant was appointed as Junior Engineer (Mechanical) by way of a

selection process against a direct recruitment post therefore his request for grant of Punjab pattern pay scale cannot be acceded to. It is also submitted that both the cadres, i.e., Technical as well as Engineering departments are two independent distinct cadres and being a fresh appointee in the Engineering Department applicant cannot claim that whatever benefit attached to the earlier post be made available to him while functioning on the post of Junior Engineer in terms of Regulation-40 of the Postgraduate Institute of Medical Education and Research, Chandigarh, Regulations, 1967 (hereinafter referred to as 1967 Regulations').

5. The applicant has filed rejoinder, contradicting the averments made in the written statement.

6. We have heard Shri P.M. Kansal, learned counsel on behalf of the applicant and Shri Atul Arya, learned counsel for the respondents.

7. Shri Kansal submitted that the Regulations permit a person, who has been appointed in the service with the PGIMER on being selected on a higher post, to get the same pay scale which he was getting on the earlier post. Since applicant was getting Punjab pay scale while working with the PGIMER, therefore on being appointed as Junior Engineer he be also given the pay scale on Punjab pattern instead of Central pattern. He relied upon a decision taken by the Governing Body of the PGIMER annexed at Annexure A-25 colly.

8. Per contra, Shri Arya reiterated what has been stated in the written statement.

9. We have given our thoughtful consideration to the entire matter and perused the material placed on record with the able assistance of the learned counsel appearing for the parties.

10. The solitary question at the hands of the applicant, which is to be answered, is whether he is entitled for grant of pay on the pattern of Punjab or he be given the pay scale on Central pattern being a fresh appointment in terms of the advertisement and cannot be extended the benefit under the Act/Regulations. The Postgraduate Institute of Medical Education & Research (PGIMER) was conceived and planned in 1960 to create in Chandigarh an "ISLAND OF EXCELLENCE" providing physical and intellectual milieu for young scientists working in multiple disciplines of medicine, to advance the frontiers of knowledge to render humane service to sick and suffering and to train medical and paramedical manpower. The Institute was established in 1962 under the erstwhile state of Punjab. It was declared as an Institute of National Importance by an Act of Parliament (Sr. No. 51 of 1966) w.e.f. 1st April, 1967. Section 28 of the Act, being relevant is reproduced as under :-

"28. Transfer of service of existing employees:

Subject to the provisions of this Act, every person who is employed in the Postgraduate Institute of Medical Education and Research, Chandigarh, immediately before the commencement of this Act, shall, on and from such commencement, become an employee, of the Institute and shall hold his office or service therein by the same tenure, at the same remuneration and

upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of commencement of this Act if this Act had not been passed, and shall continue to do so unless and until his employment is terminated or until such tenure, remuneration and terms and conditions are duly altered by regulations. Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government."

11. Perusal of the above makes it clear that the employees who were in employment on or before the aforesaid Act came into force, were allowed to hold their office or service by the same tenure, with the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as he would have held the same on the date of commencement of this Act. Such terms and conditions were to continue until same were to be altered by a regulation and in any case such alternation could not be to their disadvantage without the previous approval of the Central Government. However, such protection was given to employees who had been drawing pay and allowances on Punjab pattern to keep on drawing the

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same. But the subsequent appointments were ordered to be made in the Central Pay scales.

12. In this case the applicant had joined service as Assistant Mechanic (CSSD) on 15.09.1973 and had opted to have Punjab pattern scale, which he continued to get till he was selected and appointed against a direct recruit post of Junior Engineer on 17.05.1990 in the pay scale of Rs.1400-2300 on Central pattern. The facts are quite obvious. The applicants cannot claim that his fresh appointment in 1990 should be related back to his previous service which started on 15.9.1973 so as to enable him to draw Punjab Pay scale in new employment. Since it was a fresh appointment through a positive act of selection in 1990, therefore, it does not lie in the mouth of the applicant to suggest that his appointment as Junior Engineer (Mechanical) was in furtherance of his earlier appointment and thus he will continue to get the Punjab pay scale even on fresh appointment as Junior Engineer (Mechanical). His fresh appointment done under Central Rules cannot be related back to his initial appointment in Punjab Rules for the purpose of grant of higher pay scale under Punjab Rules as that is not provided for in the rules itself. Even the appointment letter suggests that his appointment was a fresh appointment and not in continuation of earlier appointment and in a particular pay scale, i.e., Rs.1400-2300.

13. We are also in agreement with the submission made on behalf of the respondents that the reliance placed by the applicant on Agenda item no.7 of the Governing Body meeting held on 14.11.1984 is also misconceived because a conscious

decision had been taken by the Governing Body that if a person gets promotion even though by way of selection in a particular cadre he will continue to get the same pay scale which he was drawing at the time of entry in service with the PGIMER and cannot switchover to Central pattern where in clause 'b' of Agenda item no.7 it is made clear that if a person is appointed through an open selection then that cannot be said to be continuity in service for grant of the pay scale, which an employee was getting prior to open selection to a particular post. Decision to agenda No 7 cannot be read in isolation. Moreover the decision itself suggests that if a person is selected and promoted in a particular cadre then he will get the benefit of the pay scale which he was getting on the lower post. Since the applicant was appointed to another cadre by way of a positive act of selection to a new post, therefore it cannot be said from any angle that his appointment as Junior Engineer (Mechanical) is in the same cadre.

14. In the light of the above, we are left with no option but to dismiss the OA being devoid of merit.

15. No costs.

Sanjeev Kaushik

(SANJEEV KAUSHIK)
MEMBER (J)

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

Chandigarh

Dated: 4.11.2015

'San.'