

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4300 of 2016

This the 6th day of September 2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Girish Chandra S/o Late Sh. V.N. Lal, Aged 76,
C/o Smt. Renu, H.No.B-32, Kutub Vihar Phase-I,
Near Sector -19, Dwarka, Goyla, Najargarh, New Delhi.

....Applicant

(By Advocate : Shri Ajesh Luthra with Shri M.K. Gaur)

VERSUS

1. Union of India through the Secretary, Central Board of Excise & Customs, M/o Finance, North Block, New Delhi.
2. Principal Commissioner, Central Excise & Custom, Sarvodaya Nagar, Kanpur.
3. Commissioner, Central Excise Commissionerate, Allahabad
4. Joint Commissioner, O/o Central Excise Commissionerate, Allahabad.

.....Respondents

(By Advocate : Shri Vijendra Singh)

O R D E R (Oral)

By filing this OA, the applicant is seeking the following reliefs:-

- “(a) Directing the respondents to place the relevant records pertaining to the present O.A. before their Lordships for the proper adjudication in the matter in the interest of justice, and thereafter;
- (b) Quash and setting aside the impugned order dt. 21.12.99 issued by the respondents after declaring the same is as illegal, unjust, arbitrary, malafide, unconstitutional, against the principles of natural justice, violative of articles 14, 16 & 21 of the Constitution of India, against the mandatory provisions of law, discriminatory

and in violation of the relevant rules and instructions on the subject with all other consequential benefits accordingly namely the arrears of pay differences, revision of retirement benefits, arrears of differences of retirement benefits with interest etc.

- (c) Any other fit and proper relief may also be granted to the applicant and costs.”

2. Brief facts of the case are that the applicant joined Central Labour Department (CLD), Gorakhpur as Junior Clerk on 16.11.1962 and his appointment was made quasi permanent on 1.6.1966 and subsequently his appointment was made permanent on 1.6.1967. On 18.7.1975, consequent upon the recommendations of the Staff Inspection Unit, Ministry of Finance (Department of Expenditure), New Delhi, the applicant along with other staff was transferred/surrender to the Central Surplus Cell, New Delhi for absorption/redeployment in matching pay scale in the office under direct supervision and control of the Central Govt.

2.1 On 15.9.1975, the services of the applicant was transferred to Central Excise Department after being declared surplus in the CLD.

2.2 The issue regarding extending the benefits of past service was decided by the Hon'ble High Court of Allahabad in Second Appeal No.2056/1983. On 10.3.1999, the applicant represented the respondents as he was not extended the benefit of past service as was given to his juniors and similarly placed persons.

2.3 Feeling aggrieved by the inaction of the respondents, the applicant preferred a Writ Petition No.3270/1999 before the

Hon'ble Allahabad High Court and the High Court vide Order dated 6.8.1999 disposed of the said petition with the directions to the respondents to decide the representation of the applicant within two months.

2.4 The applicant furnished a copy of aforesaid Order passed by the High Court along with his representation dated 10.3.1999.

2.5 On 21.12.1999, the respondents passed the impugned order whereby the respondents declined the request of the applicant for extending the benefits of the judgment of the Hon'ble Allahabad High Court in Second Appeal No.2056/1983 in which the issue regarding extending the benefits of past services was extended.

2.6 The applicant challenged the said order of the respondents before the Hon'ble Allahabad High Court vide Writ-A No.3369/2000 and the Hon'ble High Court vide Order dated 6.4.2016 passed the following orders :-

“This writ petition has been filed in respect of a dispute relating to seniority and promotion.

Petitioner is an employee of the Central Excise Department of the Union of India. The dispute, which is raised in the present matter is not liable to be adjudicated in view of the provisions of the Administrative Tribunal Act as well as the judgment of Hon'ble the Apex Court in the case of L. Chandra Kumar vs. Union of India & Others reported in (1997) 3 SCC 261.

Writ petition, consequently, is dismissed as not maintainable.

It shall be open for the petitioner to pursue his remedy before the forum available to him in law.”

2.7 In view of the liberty granted by the Hon'ble High Court of Allahabad, the applicant has filed this OA seeking the reliefs as mentioned above.

3. Pursuant to notices issued to the respondents, they have filed their counter affidavit, in which they stated that there was no direction in the order of the Hon'ble High Court that it will have general effect in other cases also. Therefore, it was obvious that the above order was restricted to three appellants in the Second Appeal No.2056 of 1983 only. The applicant was not a party to the said appeal. The representation of the applicant dated 10.3.1999 was decided on 21.12.1999 in the light of DOP&T OM dated 2.12.1998 and the Hon'ble Supreme Court judgment dated 4.3.1998.

3.1 They further stated that as per the provisions of Rule 9 of redeployment of surplus staff and consolidated orders on seniority issued in paras 4.3.1 to 4.3.3 of OM dated 3.7.1986, the redeployed surplus employees are not entitled for benefit of past service rendered in the previous organization for the purpose of their seniority in the new organization. The judgment dated 18.7.1996 passed by Hon'ble Allahabad High Court in Second Appeal No.2056/1983 was passed irrespective of the contemporary provisions of redeployment of surplus staff and CCS (Redeployment of Surplus Staff) Rules, 1990, the department intended to file an appeal before the Hon'ble Supreme Court for the aforesaid judgment of the High Court was against the declared policy of the Government on loss of seniority in respect of the

surplus staff as clearly mentioned in the offer of appointment to the petitioner. The condition mentioned at Sl. No.11 clearly envisages that the benefit of previous service will not be allowed for the fixation of seniority in the new post. However, due to some reasons, the appeal could not be filed in time and it was, therefore, decided vide Ministry of Finance, Department of Revenue letter F.No.A.23024/31/96-Ad. III A dated 15.12.97, that the judgment should be implemented. It was, however, clearly mentioned in the said letter that it will not form a precedent. Further, the Hon'ble High Court in the judgment referred to above had allowed the appeal filed by the three appellants only. There was no direction in the order of the Hon'ble High Court that it will have general effect in other cases also. Therefore, it is obvious that the above order was restricted to the three appellants in the second appeal no.2056/1983 only.

4. The applicant has also filed his rejoinder reiterating the averments made in the OA and denying the contentions raised by the respondents in their counter affidavit. However, he further submitted that it is well settled law of the land in the case of ***Amrit Lal Berry vs. Collector of Central Excise, Central Revenue & Ors.*** (1975) 4 SCC 714 in which it has been held as under:-

“24. xxx xxx We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court.”

6. During the course of the arguments, counsel for the applicant submitted that the applicant was also a surplus employee of the same department where the appellants of Second Appeal No.2056/1983 and in the said Appeal, the Hon'ble High Court vide its Order dated 18.6.1996 held that when the transfer of the appellants was made in the public interest and when all other benefits of past services were given to them, there is no logic behind taking away from the right to count their seniority on the basis of their past services and upheld the order of the court of first instance.

6.1 Counsel further submitted that on 10.3.1999, the applicant preferred his representation for extending the benefits of the aforesaid judgment of the Hon'ble Allahabad High Court and when the respondents have not taken any decision on the same, the applicant preferred a Writ Petition 3270/1999 before the Allahabad High Court and the High Court, vide order dated 6.8.1999, disposed of the same with direction to the respondents to decide his representation. Thereafter the respondents have passed the impugned order dated 21.12.1999 rejected the case of the applicant for extending the benefits of the aforesaid judgment of Allahabad High Court. The applicant challenged the said order before the Hon'ble High Court vide Writ-A No.3369/2000 and the High Court vide its Order dated 6.4.2016 dismissed the same with liberty to applicant to pursue his remedy before the forum available to him in law and therefore the applicant has preferred the present OA seeking the same relief as extended to his

counterparts working in the same department. Counsel further submitted that the respondents have not denied the fact that the applicant is similarly situated as the appellants before the Hon'ble Allahabad High Court and they merely denied the same benefits to the applicant on the ground that he was not one of the appellants before the Hon'ble Allahabad High Court in the said Writ Petition, which act of the respondents amounts to violation of Articles 14 and 16 of the Constitution of India. In support of his claim, counsel for the applicant placed reliance on the judgment of Hon'ble Supreme Court in the case ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others***, (2015) 1 SCC 347, and ***Girdhari Lal vs. Union of India and others***, in S.L.P. (C) No.14005/1992 decided on January 1990 and also of Ernakulam Bench of this Tribunal in the case of ***S.V. Subramaniam vs. Union of India and others***, (1997) 35 ATC 3.

7. Counsel for the respondents submitted that after the judgment of the Allahabad High Court *supra*, the applicant submitted his representation which was considered and detailed order on the same has been passed by the respondents which is impugned by the applicant before the Hon'ble Allahabad High Court and the High Court dismissed the Writ Petition preferred by the applicant. Counsel further submitted that the said judgment of the Allahabad High Court is in *persona* and not in *rem*, hence, the benefits of the said judgment of the Allahabad High Court (*supra*) cannot be extended.

8. Heard learned counsel for the parties and perused the material placed on record.

9. This Court is unable to accept the contentions of learned counsel for the respondents, as it is admitted fact that applicant is also similarly situated employee as the appellants in Second Appeal No.2056/1983 in which the Hon'ble High Court categorically observed that *"....The approach of the court below that once they had accepted their appointment under the Central Excise Department, they would be bound by the conditions was not a proper one in view of the circumstances indicated above and the condition laid down in the appointment letter of the Excise Department which were to the disadvantage of the employees could not be enforced against them. The letters which have been referred to earlier also indicate that the transfer of the plaintiffs from the surplus cell to the Central Excise Department was to be treated as having been and made in public interest. Their previous service in the Central Labour Department were also treated as a consideration for their appointment in the Excise Department and they were allowed to count their past service towards their pension on condition that there was no break in service and that they were given all other benefits of the past service barring that of seniority."* The Hon'ble High Court further observed that *"when the plaintiffs were confirmed employees and were transferred to the surplus cell and, from there were again transferred to the Central Excise Department, their status as confirmed employees could not have been affected notwithstanding the fact that they were given new*

*appointment letters or that certain conditions were imposed to their disadvantage, in the appointment letter.” The Hon’ble Allahabad High Court further held that *when the transfer of the appellants was made in the public interest and when all other benefits of past services were given to them, there is no logic behind taking away from the right to count their seniority on the basis of their past services and upheld the order of the court of first instance.**

10. From the reading of the aforesaid observations of the Hon’ble Allahabad High Court in the said Second Appeal, it is quite clear that the said judgment cannot be said to be in *persona* and not in *rem*, hence, the benefits of the said judgment of the Allahabad High Court (supra), was also ought to be extended in the case of the applicant upon receipt of his representation and when no decision was taken by the respondents on his representation, the applicant preferred aforesaid Writ Petition before the Hon’ble Allahabad High Court and upon receipt of the direction of the High Court, the respondents have passed the impugned order in 1999 vide which they rejected the applicant’s representation for extending the said benefits of the Hon’ble Allahabad High Court. Upon receipt of the order on his representation dated 21.12.1999, the applicant preferred a Writ-A No.3369/2000 and the Hon’ble High Court vide Order dated 6.4.2016 passed the following orders:-

“This writ petition has been filed in respect of a dispute relating to seniority and promotion.

Petitioner is an employee of the Central Excise Department of the Union of India. The dispute, which is raised in the present matter is not liable to be adjudicated in view of the provisions of the Administrative Tribunal Act as well as the judgment of Hon'ble the Apex Court in the case of L.

Chandra Kumar vs. Union of India & Others reported in (1997) 3 SCC 261.

Writ petition, consequently, is dismissed as not maintainable.

It shall be open for the petitioner to pursue his remedy before the forum available to him in law.”

11. In view of the aforesaid Order of the Hon’ble Allahabad High Court, the applicant preferred this OA challenging the impugned order dated 21.12.1999. This Court perused the said impugned order dated 21.12.1999.

12. In the case of ***State of Uttar Pradesh and others vs. Arvind Kumar Srivastava and others***, (2015) 1 SCC 347, the Hon’ble Apex Court after considering catena of judgments on the issue involved in this case, held as follows:-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle 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 reason 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.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma & Ors. v. Union of India* (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

From the above observations of the Hon’ble Apex Court, it is quite clear that the applicant in the case in hand is diligently pursuing his remedy and further this Court found that the judgment of the Allahabad High Court (supra) cannot be said to be in personam as no such an intention is stated expressly in the said judgment.

13. In the result, for the foregoing reasons, the present OA is allowed. Accordingly, the impugned order dated 21.12.1999 is quashed. The respondents are directed to consider the case of the applicant in the light of the observations made hereinabove and extend the same benefits as has been extended to appellants in the said Writ Petition before the Hon’ble Allahabad High Court. The applicant is also entitled to all consequential benefits in

accordance with rules and law on the subject. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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