

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No.61/92/2015

Date of decision: 04.10.2017

MA Nos.61/222, 416 & 1193/2017

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

MES 502643, Subhash Chander S/o Late Sh. Ishar Dass aged 59 years,
working as MCM FGM (Group 'C') under GE (S), Akhnoor.

...
APPLICANT

VERSUS

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Engineer-in-Chief, E-in-C's Branch, Army Headquarters, Kashmir House, New Delhi-110011.
3. Chief Engineer, HQ, Northern Command C/o 56 APO.
4. Garrison Engineer Jammu, C/o 56 APO-180003.
5. Garrison Engineer (South), Akhnoor (J&K)-900234.

... **RESPONDENTS**

PRESENT: Sh. Jagdeep Jaswal, counsel for the applicant.
Sh. Ram Lal Gupta, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant has challenged the correctness of order dated 25.07.2015 (Annexure A-1) and PTO dated 26.10.2015 (Annexure A-2). He has further sought direction to the respondents to grant him the benefit of judgment of Division Bench dated 07.03.2013 (Annexure A-2) in LPASW No.161/2005, 160/2005, 93/2005 and 257/2004 and that applicant be held entitled to pay scale of Rs.330-480 with all consequential benefits.

2. Facts which led to filing of this O.A. are that the applicant initially joined the respondent department on 07.2.1978 as Mazdoor. The post of Mazdoor was reclassified as OED/DES (Oil Engine Driver/Diesel Engine Statistic) was classified as skilled category (SK) on 15.12.1980 and thereafter, re-designated as FGM vide order dated 06.07.1994. Similarly placed employees like the applicant who were designated as skilled, but denied the benefit of pay scale of Rs.330-480 w.e.f. 15.10.1984 on the basis of GOI, MOD letter dated 15.10.1984 in HS-II category, filed SWP No.1440 to 1443 of 2000 before J&K High Court. At that time, the applicant was getting pay scale of Rs.260-400. Their plea was accepted by Single Bench of the High Court vide judgment dated 22.03.2004 and the applicants therein were held entitled to pay scale of Rs.330-480 w.e.f. 15.10.1984 on the basis of recommendations of Anomaly Committee. That order was further challenged in LPASW No.161/2005, 160/2005, 93/2005 and 257/2004, which was dismissed vide judgment dated 07.03.2013. Based upon the decision, applicants therein were granted the benefit. Thereafter, the applicant, who is similarly situated also filed SWP No.54/2014, which was disposed of on 01.04.2014, with a direction to respondents to consider his case in the light of judgment dated 07.05.2013 passed in LPA (SW) No.161/2005 and 30.09.2013 passed in SWP Nos.1013/2013 and 2067/2016, within a period of two months. It is thereafter, in continuation, the office of Engineer-in-Chief (Respondents No.2) vide order dated 03.09.2014 granted the benefit to applicant along with 3-4 other similarly situated persons by placing them in the pay scale of

Rs.330-480 from 15.10.1984 i.e. the date when it was granted to similarly placed employees and his pay was also revised. Subsequent to that vide impugned order dated 25.07.2015, respondents have withdrawn that benefit by holding that the name of applicant fall under 65% quota, therefore, earlier order conferring that benefit was withdrawn and accordingly pay of the applicant was revised, which has been challenged before this Court in the present O.A.

3. The respondents have resisted the claim of the applicant by filing written statement in which firstly, preliminary objection of delay and laches has been taken by submitting that applicant has raised this issue after 30 years, when cause of action arose in his favour. Secondly, they have submitted that earlier applicant had wrongly been granted benefit and respondents have only rectified their mistake.
4. Applicant has filed rejoinder by submitting that respondents have not come with any documentation to the effect that case of the applicant does not fall under 20% quota for grant of higher pay scale of Rs.340-480 and the impugned order withdrawing benefit has been passed without any supporting documentation.
5. A query was made by the Bench to the respondents to substantiate their stand as to why case of the applicant does not fall under 20% quota and why in their opinion, they have rightly withdrawn benefit granted vide order dated 25.07.2015. Meanwhile, applicant has also filed affidavit wherein he has given names of as many as 8 persons, who were junior to him and were granted benefit which has now

been withdrawn. Respondents were directed to file rebuttal to the statement made by the applicant in his affidavit that persons junior to him has been given benefit. No rebuttal has been filed by the respondents.

6. Today, when matter came up for hearing Sh. Ram Lal Gupta, showed his inability to file counter to the affidavit. He submitted that since they have already passed the impugned order, therefore, they have nothing to rebut the plea raised by the applicant in his affidavit. We again specifically asked as to whether persons named in affidavit filed by the applicant (at Page 228 of the paper book) are junior to him or not. He submitted that since he has not received any information from the concerned quarter, he cannot make any submission in this regard. Therefore, we have no option but to accept the plea of the applicant.
7. We have heard learned counsel for the parties at length and have gone through record with their able assistance.
8. Sh. Jagdeep Jaswal, learned counsel for the applicant vehemently argued that once benefit has been given and that too based upon some judicial pronouncement, which has been approved then the same cannot be withdrawn. To these facts, he placed reliance upon the order dated 06.07.2005 in the case of **Nasib Singh & Ors. Vs. Union of India and others** (2005 (2) ATJ 655) and submitted that the order is also in violation of principles of natural justice as applicant was not put on notice before passing the same.
9. Sh. Ram Lal Gupta, learned counsel for the respondents reiterated what has been stated in the written statement.

10. Conjunctive perusal of the pleading makes it clear that persons similarly placed like the applicant approached J&K High Court for grant of benefit of pay scale of Rs.330-480 being within 20% quota and for grant of HS Grade-I. Their plea was accepted by judicial verdict by holding that they be granted benefit w.e.f. 15.10.1984 i.e. the date when recommendations were made by the Anomaly Committee. The applicant approached the High Court of Jammu Kashmir and his petition was disposed of with a direction to decide his case in the light of judgment dated 07.05.2013 passed in LPA (SW) No.161/2005 and 30.09.2013 passed in SWP Nos.1013/2013 and 2067/2016, within a period of two months. While considering his case, respondents vide order dated 03.09.2014 has not only allowed him the benefit of pay scale of Rs.330-480 and also allowed the same benefit to other employees (Annexure A-10) and consequently his pay was revised. Vide impugned order, the respondents have raised the solitary contention that the applicant does not fall in 20% quota therefore, he cannot be granted pay scale of 330-480, which was wrongly granted and they have only rectified their mistake. As noted above, the respondents have not come with any documentation that applicant's case does not fall under 20% quota. They have not rebutted affidavit filed by the applicant wherein he has mentioned names of 08 persons despite there being direction by this Court. The respondents have failed to substantiate their plea and today when this query was made, learned counsel for the respondents shows his inability to rebut this argument. Therefore, by drawing adverse inference, the impugned order is quashed and set aside and the O.A. is allowed. We would like to

record a categorical finding that plea raised by the respondents is misconceived as once they have granted benefit in the year 2004, they cannot take the plea of delay of 30 years as cause of action arise from the date when they have passed impugned order on 25.07.2015 by withdrawing the benefit granted to the applicant. Accordingly, the respondents are directed disburse the amount, which they have recovered pursuance to impugned order within a period of one month from the date of receipt of a certified copy of this order.

11. MA Nos.61/222, 416 & 1193/2017 also stand disposed of.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 04.10.2017.
Place: Chandigarh.

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