

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 03.10.2018

ORIGINAL APPLICATION NO. 060/00173/2017

Chandigarh, this the day of October, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...

Dev Karan son of Shri Sher Singh, Group -'C' presently working as Driver (Motor Lorry Driver), office of Executive Engineer, CPWD, Division No. II, Sector 7-B, Chandigarh.

....APPLICANT

(By Advocate: Shri A.K. Sharma, Advocate)

VERSUS

1. Union of India, through Ministry of Urban Development, Nirman Bhawan, New Delhi through its Secretary.
2. The Director General of Works, CPWD, Nirman Bhawan, New Delhi.
3. Chief Engineer (NZ-I), Chandigarh, Sector 9, Kendriya Sadan, Sector 9-A, Chandigarh.

....RESPONDENTS

(By Advocate: Shri Arvind Moudgil)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been filed by applicant Dev Karan seeking release of arrears of pay as admissible to him in pursuance of speaking order dated 6.5.2015 (Annexure A-7) passed by the respondent department w.e.f. the date of his initial employment alongwith intrest @ 12 % p.a. He has also sought issuance of direction to the respondents to decide his representation dated 11.4.2016 (Annexure A-9) and dated

17.10.2016 (Annexure A-10) to the same purpose keeping in view the fact that similarly situated employees (Dharampal , Vijay Singh and Sarup Singh) have been granted arrears of pay in terms of office memorandum dated 29.10.1990 (Annexure A-2)

2. The facts of the case are largely not in dispute. The applicant was initially appointed as Motor Lorry Driver in June 2003 on hand receipt basis. Later in 2007, work order was issued in his favour engaging him as Motor Lorry Driver w.e.f. 1.8.2007 to 31.05.2008. Since then, he worked as such. The respondent department adopted circular dated 29.10.1990 (Annexure A-2) of Government of India according to which daily wage employees were entitled to minimum of pay scale of regular post plus dearness allowance. Some other similarly placed daily waged employees approached the Central Government Industrial Tribunal –cum- Labour Court for getting the benefit of minimum of pay in the scale and the case was decided in their favour vide order dated 17.1.2005 (Annexure A-3). Writ Petition against this order was dismissed by the Hon'ble Delhi High Court on 5.4.2013, thus making the above mentioned employees entitled to grant of regular pay scale as per formula contained in office memorandum dated 29.10.1990. The present applicant approached this Tribunal in 2008 by filing O.A. No. 447/CH/2008 against change of the mode/nature of his employment and for his regularization. This O.A. was disposed of by this Tribunal by observing that whenever the respondents will start the process for filling up the post of Driver on regular basis,

the applicant would be at liberty to apply against the same and the respondents would be at liberty to consider his case.

3. Now the applicant's case is that he has been working with the respondent department as Motor Lorry Driver for last 15 years initially on hand receipt and subsequently on contract basis. He is now seeking salary payable to his counterparts working as Motor Lorry Driver on regular basis as per formula given in O.M. dated 29.10.1990 and adopted by the respondent department. He pleads that Dharam Pal and others have already been granted this benefit w.e.f. 1.1.2000 (Annexure A-4). The applicant made representation to the department on 27.9.2013. The case was recommended favourably to the competent authority admitting the fact that this benefit has already been granted in other similarly situated cases of Vijay Singh and Dharam Pal and accordingly recommending the case of the remaining two similarly situated persons namely Dev Karan (the present applicant) and Sarup Singh. As there was no relief for the applicant, he was forced to approach this Tribunal by filing O.A. No. 60/230/2015, which was disposed of on 18.3.2015 (Annexure A-6) by issuing direction to the respondents to pass a speaking and reasoned order. In compliance of this direction, the respondents have passed order dated 6.5.2015 (Annexure A-7), final portion of which reads as follows:-

‘To make payment of arrears of pay to the applicant Sh. Dev Karan in O.A. No. 060/00230/2015 by computing the wages in accordance with CPWD's OM No. 45/1/87-EC-X (Vol. IV) dated 21.10.1990’.

4. The respondents have, in compliance of the order of this Tribunal, started paying minimum of pay scale to applicant, but

have restricted his arrears of pay w.e.f. 18.3.2015 i.e. the date of passing of the order by this Tribunal and not from the date of his initial appointment. His representations dated 11.4.2016 and 17.10.2016 regarding payment of arrears from 2003 to 2015 have not been responded to by the respondents. Hence this O.A.

5. In sum, the case of the applicant is that he needs to be paid arrears of pay from the date of his initial appointment and not from the date of passing of order by this Tribunal. This is because the O.M. dated 29.10.1990 was already adopted by the respondent department and other similarly situated employees have already been granted arrears of pay from the date of their initial appointment.

6. on the other hand, the respondent department have argued that the applicant is not coming to the Court with clean hands and has suppressed the material fact that he had given an undertaking dated 1.5.2014 (Annexure R-1) wherein he had clearly stated that if the future payment of his wages is made as per formula of O.M. dated 21.10.1990 of DG, he 'shall not claim any arrears of my salary for the past period of temporary engagement in CPWD on account of difference of payment of wages payable to me as per O.M. dated 21.10.1990 and salary actually received by me during the past serving years on daily wages'. A copy of undertaking dated 1.5.2014 is enclosed at Annexure R-1 by the respondents. The respondents have argued that having given the undertaking, the applicant cannot now go back on it.

7. The respondents have quoted number of cases to show that a person not coming with clean hands to the Court needs to be dealt with firmly and cannot claim equity. Thus, they have taken support of the following cases:

(a) Case of **Ram Saran vs. IG of Police, CRPF and Ors. reported in (2006) 2 SCC 541**, wherein it has been held that ‘A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor would the Court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner...’

(b) Case of **Rajabhai Abdul Rehman Munshi vs. Vasudae Dhanjibhai Mody, AIR 1964 SC 345**, wherein it has been held that ‘If there appears on the part of a person who has approached the Court, any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of jurisdiction, the Court would be justified in refusing to exercise the jurisdiction...’

(c) Case of **S.P. Changalvaraya Naidu vs. Jagannath, 1994 AIR SC 853**, wherein it has been held that ‘A person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation...’

(d) Case of **Balwant Singh vs Jagdish, 2010 AIR SC 3043**, wherein it has been held that ‘The applicant, who seeks aid of the Court for exercising its discretionary power, is expected to state correct facts and not state lies before the Court. Approaching the Court with unclean hands itself, is a ground for rejection of such application...’

The respondents have argued that as the applicant has not come with clean hands to the Tribunal, he has no right to claim equity.

8. The respondents have further argued that earlier O.A. NO. 60/230/2015 filed by the applicant was disposed of by this Tribunal by giving direction to the respondents to consider his case and take a decision as per rules and regulations and as per the order of Delhi High Court as applicable to similarly situated person and pass speaking and reasoned order within a period of 2 months from the date of receipt of copy of the order. This was duly complied with by the respondents and rightly a speaking order

dated 6.5.2015 was passed allowing payment of arrears of pay to be made to the applicant. The payment of arrears was restricted from the date of issue of order of this Tribunal as the same was decided on merits though the O.A. should have been dismissed on the ground of delay and laches being time barred by limitation. The applicant is now going back on his undertaking dated 1.5.2015 and is not only claiming arrears from the date of his initial appointment, but also interest @ 12% p.a. thereon. According to the respondents, the applicant has cleverly filed earlier O.A. No. 60/230/2015 with only a limited prayer to cover the delay so that limitation may not strike the present O.A. The respondents have also stated that the applicant is seeking arrears from the date of his initial appointment, but is not even mentioning the date of his initial employment in the prayer clause. The O.A. is barred by limitation and no reason for the delay has been given in the O.A. Each days delay has to be explained which has not been done in the present case and hence the O.A. deserves dismissal on this ground.

9. On matters of facts, the respondents have stated that as per available records, the applicant was engaged as Motor Lorry Driver on work order basis w.e.f. 1.8.2007 and since 18.3.2015, he has been taken on hand receipt basis. There is no record of his employment prior to 1.8.2007. Further, Vijay Singh, Dharampal and Gita Ram were engaged by the department in 1992 or earlier, but they have been allowed minimum pay only from 1.1.2000 that is after almost 10 years of their initial engagement. It is also

stated that the speaking order DG does not mention any date for payment of arrears to the applicant. The date was fixed by ADG as 18.3.2015 that is the date of order of this Tribunal, keeping in view the facts of the case. Further, the arrears of pay were paid to the applicant on 7.7.2015 for the period from 18.3.2015 to 30.6.2015 and the same was accepted by the applicant without any protest. It is only later in February 2017 - after a lapse of more than one and half years- that he has filed the present O.A. for grant of this portion of arrears. The respondents have further stated that the representation of the applicant has been replied to on 6.3.2017 vide Annexure R-2. Finally, it is concluded that the O.A. is not only barred by limitation but also needs to be dismissed on merit as well in view of misleading facts and other statements made above.

10. The applicant has filed a rejoinder wherein he has confirmed the fact of giving an undertaking, but has stated that no tangible action was taken by the respondent department on the undertaking and hence this Tribunal was approached by filing instant O.A. According to the applicant, the matter would have been different had the respondents granted him the wages immediately after submission of the undertaking. However, as no wages were paid to him even after the undertaking and the case of the applicant was not rejected on the ground that the applicant had given an undertaking, there was no concealment of fact on the part of applicant. According to him, the respondent authorities are now taking shelter under the garb of an undertaking given by the applicant which was never implemented or acted upon by the

respondent authorities. It is also stated that the speaking order does not indicate the date for payment of arrears and other similarly situated employee Sarup Singh has been paid arrears w.e.f. 1.4.1993 and Vijay Singh and others from 1.1.2000; but there is an attempt on part of the respondents to maintain an ambiguity in the case of the applicant. Further, the objection of limitation was not raised by the respondent authorities while deciding his case in pursuance of direction issued by this Tribunal. His representation dated 11.4.2016 was decided on 6.3.2017 i.e. only after filing of the instant O.A. It is also pleaded that after passing of speaking order, the respondents have illegally changed of date of implementation and deviated from the order passed by the DG. The applicant has also claimed that he was appointed as Motor Lorry Driver w.e.f. 6.5.2003 on hand receipt basis and the respondent authorities have admitted this fact in history sheet of the applicant. In support of his claim the applicant has also produced log book of the vehicle duly signed by the competent officer in the department (Annexures A-14, A-15 and A-16).

11. We have heard the learned counsels of opposing sides and have gone through the pleadings of the case and have also given our thoughtful consideration to the matter.

12. The only issue in the case is the date from which the arrears of pay are to be paid to the applicant in terms of facts of the case as well as the speaking order passed by the respondent department.

13. First of all, we observe that the case for payment of arrears to the applicant right from the date of his initial appointment in 2003

would ordinarily be completely barred by limitation as the applicant approached this Tribunal only in 2014 i.e. after delay of almost 11 years. Even as per his own pleadings he has not made any representation to the respondent department till 2013. The first representation, as per his own submissions, is dated 27.9.2013. The case of the applicant cannot be equated with other employees who approached the Industrial Tribunal-cum-Labour Court and that Tribunal decided in their favour way back in 2005 itself. On the other hand, the applicant keep mum all these years and agitated about his claim first time only in 2013. It is settled law that limitation is to be worked out with reference to original cause of action. Section 21 of the Administrative Tribunals Act, 1985 is very clear and is worded in negative terms. If an application is not received within the prescribed time limit, the same cannot be admitted by the Tribunal unless the delay is satisfactorily explained. No explanation for such unusual delay is forthcoming in the instant case. There is not even an application for condonation of delay by the applicant. In case of **Union of India and Ors. vs. M.K. Sarkar** (2010) 2 SCC 59, the Apex Court has held that even an order passed by the executive authority in compliance of a judgment by the court/tribunal does not extend the period of limitation or erase delay and laches which should be considered only with reference to original cause of action. In this case, the original cause of action as per the applicant's case, would have arisen in 2003 itself (that is the date of his initial appointment) or at least in 2005 when Labour Court given decision

in favour of the other similarly situated employees. Even thereafter, the applicant has chosen not to take any recourse to agitate his claim. Hence, the O.A. needs to be dismissed purely on this ground, being hopelessly time barred. No M.A. for condonation has been filed. A general direction was issued by this Tribunal to consider his claim and passed a speaking and reasoned order perhaps on the understanding that the applicant will not claim arrears prior to 2014. It is settled law as discussed above that even a direction or an order passed by the executive in compliance of a court order does not extend the period of limitation which continues to be counted from the original cause of action. In the instant case, this limitation period is sought to be blurred by the order passed by the respondent department on 6.5.2015 which is in compliance of the order of this Tribunal dated 18.3.2015 and in the garb of this, limitation period is being sought to be extended, which to our mind is not correct.

14. The applicant has strongly pleaded his case based on other similarly situated persons who have received arrears of pay from 1.1.2000. Here an important point that is ignored is the fact that the other employees were vigilant about their claim and had agitated the matter first before Industrial Tribunal-cum-Labour Court which had way back in 2005 decided in their favour whereas the applicant has not agitated about his claim for all these long years and has only agitated of his case first time in 2013 before the respondents and in 2014 before this Tribunal. Having kept mum

all these years, he cannot claim same benefit as has been allowed to other employees who were vigilant about their claim.

15. We also note that in the O.A., there is not even whisper about the undertaking given by the applicant though this was relevant to the case and may have explicitly and implicitly been one of the basis for consideration of his claim at this belated stage. In any case, it is for the Court to decide what factors are directly relevant to the decision and it is not for the applicant himself to selectively choose facts. He, therefore, has not come with clean hands before this Tribunal, as contended by the respondents, and has suppressed material facts relevant to the case. He is now claiming that this undertaking was not relevant as this was not immediately acted upon and his claim was not decided or rejected thereafter. Even these contentions do not change the fact that the undertaking given by him was not conditional to any such later developments. He has also not given any time line while submitting his undertaking indicting that this would not be valid if his case is not decided within a certain period. We, therefore, find a willful and intentional suppression of material fact from this Tribunal and do not at all appreciate such action on the part of the applicant.

16. We have gone through the speaking order passed by the department and find that it does not indicate any mind of the deciding authority about the date from which the payment of arrears is to be made. There are only general observations and quotation of orders of Tribunal etc. and there is no indication about the date from which the arrears are to be paid. We also note that

even other so called similarly persons have not been paid arrears from the date of their initial appointment. Even the cases quoted by the applicant are paid w.e.f. 1.1.2000 whereas their initial date of appointment was in 1990, 1991 and 1992. We, therefore, see no reason as to why an exception should be made for the present applicant who not only did not agitate about his claim like others, but also suppressed the material fact with the intention to mislead this Tribunal.

17. We also observe that the applicant accepted the first payment in July 2015 without protest. This indicates his acquiescence to the fact that he will be paid from this date only. It is also relevant to note that the undertaking given by the applicant is dated 1.5.2014 and payment has already been made to him w.e.f. 18.3.2015 and hence there is hardly any difference in what he could have logically expected and what he has actually been granted by the respondent department. In any case he cannot expect immediate consideration and decision on his representation/undertaking.

18. In view of all the above observations, we find no impropriety in interpretation of the orders of payment of arrears w.e.f. the date order of the Tribunal i.e. 18.3.2015.

19. We, therefore, see no reason to interfere in the order. Therefore the O.A. is dismissed. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: .10.2018

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