

**CENTRAL ADMINISTRATIVE TRIBUNAL****CHANDIGARH BENCH**

...

**ORIGINAL APPLICATION NO.060/00389/2016****Chandigarh, this the 22<sup>nd</sup> day of January, 2018**

...

**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)  
HON'BLE MS. P. GOPINATH, MEMBER(A)**

...

Naval Kishore Verma, aged 48 years, S/o Sh. Harbans Lal Verma, working as Group Instructor, Government Industrial Training Institute for Women, Sec.-11, Chandigarh.

.... Applicant

**(Argued by: Shri G.S. Sathi, Advocate)**

VERSUS

1. Union Territory of Chandigarh through Secretary, Technical Education, U.T. Secretariat, Sector-9, Chandigarh.
2. Director, Technical Education, U.T. UT Secretariat, Sector-9, Chandigarh.
3. Smt. Suman, Group Instructor, Government Industrial Training Institute for Women, Sector 11, Chandigarh.
4. Ms. Anuka, Group Instructor, Government Industrial Training Institute for Women, Sector 11, Chandigarh.

....RESPONDENTS

**(Argued by: Sh. A.L. Nanda, Advocate for Respondents****No.1&2****None for Respondent No.3.****Mr. R.S. Thakur, Advocate for Respondent No.4)**

**ORDER (Oral)**  
**JUSTICE M.S. SULLAR, MEMBER (J)**

1. The challenge in this Original Application (OA), instituted by applicant Naval Kishore Verma, Group Instructor, S/o Sh. Harbans Lal Verma, is to the impugned order dated 16.02.2015 (Annexure A-1), whereby his representation dated 26.3.2014, for fixation of seniority from the date of direct selection in the cadre of Group Instructor and claim of other consequential benefits, was dismissed by the competent authority.

2. The matrix of the facts and the material, which needs a necessary mention, for the limited purpose of deciding the core controversy involved in the instant OA, and expositied from the record, is that applicant was already working as Instructor in the Government Industrial Training Institute for Women, Sector 11, Chandigarh. In the wake of an advertisement / direct recruitment notice dated 14.4.2007 (Annexure A-2), the applicant being eligible, has applied for the post of Group Instructor (for brevity "G.I"), in a direct recruitment.

3. Having successfully completed the recruitment process, the applicant was duly selected for appointment as G.I, vide recommendations dated 12.9.2007 (Annexure A-3) by the Selection Committee. Meanwhile, one Kanta Katoch, who had been working as Instructor in the Institute, filed **O.A.No. 603-CH-2007** challenging the advertisement, Annexure A-2, and claimed promotion on the post of G.I, without arraying the applicant, as a party therein. Due to stay order in the said O.A, the applicant could not join on the post of G.I. Ultimately, the

OA was dismissed and recruitment by direct recruitment to the indicated post was upheld, vide orders dated 16.9.2009 (Annexure A-5), by this Tribunal.

4. The case set up by the applicant, in brief, in so far as relevant, is that after dismissal of the OA, there was no legal impediment in appointment of the applicant, as G.I, but the competent authority, did not issue him appointment letter, which necessitated him to file O.A.No. **190-CH-2010**, which was allowed vide judgment dated 10.2.2011 (Annexure A-6) by this Tribunal. The decision of the Tribunal was upheld in Civil Writ Petitions No.23890 of 2011 and 23950 of 2011, vide orders dated 19.9.2012 (Annexure A-7), by Hon'ble High Court. But even after dismissal of the Writ Petitions, the official respondents did not issue appointment letter, so the applicant was compelled to file a Contempt Petition. Thereafter, appointment letter dated 20.2.2013 (Annexure A-8) was issued. Not only that, O.A.No. **231-CH-2013**, filed by another candidate **Parminder Pal Singh**, was also ultimately dismissed vide order dated 10.02.2014 (Annexure A-10), by this Tribunal. As such, the joining of the applicant was got delayed, for an inordinate long period, due to stay in the litigations, and the reasons beyond his control, who was always ready and willing to join as a G.I. Ultimately he joined on 2.4.2013, on the pointed post.

5. Meanwhile, the competent authority has promoted private respondents no.3 (Smt. Suman) and No. 4 (Smt. Anuka), in the same cadre of G.I, in the years 2010 and 2012, for the vacancies occurred on 1.9.2007 and 1.11.2011, respectively. It was

alleged, that though actual joining of the applicant was got delayed, due to above mentioned litigations and reasons beyond his control, but he was not given the seniority from the date of his selection, and the Respondents No.3 and 4, juniors to him, who were promoted in the years 2010 and 2012 respectively, were wrongly made senior to him, by the competent authority. He made detailed representations for claiming the retrospective seniority, but the same was wrongly rejected by the impugned order dated 16.2.2015 (Annexure A-1) by the competent authority.

6. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned order, Annexure A-1, and claimed retrospective appointment / seniority, from the date of his selection on the post of G.I, inter-alia, on the following grounds :-

(a) That admittedly, the applicant was selected for appointment, by way of direct recruitment, as G.I by the duly constituted Selection Committee on 12.9.2007, but his joining was delayed on account of pendency of court cases, as acknowledged by the respondents also. Once litigations came to an end, the applicant should have immediately been issued appointment order, after 12.9.2007. The interim orders, due to which his appointment was delayed, could not prejudice his case in view of the maxim "actus curiae neminem gravabit". A person cannot be penalized for no fault of his. If a person is deprived of any of his right due to pendency of a case in a court of law, it is obligatory for a court to undo the wrong caused to him. Thus, applicant is entitled to appointment from 2007 itself, in view of law laid down in ONGC vs. Assn. of Natural Gas Consuming Industries, AIR 2001 SC 2796, Karnataka Rare Earth Vs. Senior Geologist, Deptt. Of Mines and Geology, 2004 2 SCC 783, and Sunil Kumar Sharma vs. State of UP & Others, 2002 (4) AWC, 3172 etc.

(b) That the applicant was appointed against the vacancy that occurred on 1.9.2006 whereas private respondents No.3 and 4 were appointed against vacancies which occurred on 1.9.2007 and 1.11.2011 respectively and the selection process private respondents had also take subsequent to that of the applicant, and as such applicant cannot be placed in a position lower than respondents no. 3 and 4. The seniority of those appointed by direct recruitment is to be reckoned from the year of recruitment



and accordingly Government has framed Policy as per OM dated 4.3.2014 etc.

(c) That the impugned order dated 16.2.2015 (Annexure A-1) is non speaking, devoid of any reason or logic and is nothing but erroneous and illegal view was taken deliberately to deny legitimate claim of the applicant.

(d) That the respondents have not framed a proper policy to determine the seniority in the cadre of applicant and as such they are liable to be issued appropriate directions to frame a policy and issue the seniority list, showing the applicant at a higher position than private respondents.

(e) That the Government of India has issued Policy decision dated 4.3.2014, that seniority would be reckoned against the recruitment year in which the recruitment process is initiated to fill up the vacancies and as such it was impressed to ensure that process is initiated during vacancy year itself.

(f) That the applicant cannot be denied not only seniority, but also pay and allowances as well, as he was willing to work but he was denied such working due to fault of the respondents and principle of no work no pay shall not apply.

(g) That once a candidate is selected for a post, but is prevented from actually joining the service on account of litigation or due to inaction on the part of employer, in the manner it has been done in the case in hand, such candidate shall be entitled to benefit of seniority and pay with effect from the date of selection and not from the date of actual joining.

7. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant claims that he is entitled to seniority w.e.f. 12.9.2007, the date of his selection as G.I, and challenged the impugned seniority assigned to respondents No.3 and 4, over and above him, and seeks quashing of the impugned order, Annexure A-1, in the manner indicated hereinabove.

8. On the contrary, the respondents have refuted the claim of the applicant. The official respondents have filed their written statement, wherein it was pleaded that applicant was rightly assigned seniority from the actual date of his joining as G.I. He cannot claim seniority from the back date of his appointment. It was alleged that the pendency of prolonged litigation, will not

entitle the applicant for retrospective seniority. The official respondents have no role in delaying the issuance of appointment letter to the applicant, as the matter was under litigations. According to these respondents, that nodoubt, the applicant was selected by direct recruitment on 12.9.2007, whereas Respondents No.3 & 4, were subsequently promoted in the year 2010 and 2012 on the post of G.I, but the applicant cannot be given seniority retrospectively. The representation of the applicant was stated to have been rightly rejected vide impugned order, Annexure A-1, by the competent authority.

9. Sequelly, the private respondent No.4 has filed a separate written statement, toeing the same line of defence, as pleaded by the official respondents. However, the fact of stay order and the pendency and decisions (dismissal) of the above mentioned litigations between the parties, has not been denied. Instead of reproducing the entire contents of the replies of the respondents and in order to avoid repetition of facts, suffice it to say that while acknowledging the factual matrix and reiterating the validity of impugned order, Annexure A-1, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal.

10. Controverting the pleadings of the reply filed by the respondents and reiterating the grounds contained in the OA, the applicant has filed the rejoinders and prayed for acceptance of the OA. That is how, we are seized of the matter.

11. As illogical as it may appear but strictly speaking, the tendency and frequency of competent authorities in harassing

and denying the legal rights of the employees, for their vested interests, have been tremendously day by day. The sequence of the events, narrated hereinabove and contained in the instant OA, would reveal that the present case is the burning example of such like cases, which needs to be curbed and deprecated.

12. Having heard the learned counsel for the parties at quite some length, having gone through the record with their valuable assistance, and after bestowal of thoughts over the entire matter, we are of the firm view that the present OA, deserve to be accepted, in the manner and for the reasons mentioned herein below.

13. As is evident from the record, that in pursuance of the advertisement, Annexure A-2, the applicant has applied and was duly selected on the post of G.I on 12.9.2007, by way of direct recruitment, by the Selection Committee, vide proceedings, Annexure A-3. Although, he was stated to be ready and willing to join the post, but it was delayed due to stay & pendency of the indicated various litigations, which ultimately ended into dismissal. As a consequences thereof, the applicant actually joined on 2.4.2013, on the post of G.I, in the wake of selection dated 12.9.2007, Annexure A-3. Admittedly, the private respondents No.3 and 4 were subsequently promoted in the year 2010 and 2012 and were shown senior to the applicant, in the cadre of G.I. The representation filed by the applicant claiming retrospective seniority from the date of selection and consequential benefits, was rejected vide impugned order dated 16.2.2015, Annexure A-1, by the competent authority.

14. Thus, it would be seen that the facts of the case are neither intricate nor much disputed and fall within a very narrow compass, for deciding the real controversy, between the parties, involved in the present case. Such thus being the position on record, now the crucial question, that arises for our determination, in the instant matter, is as to whether the applicant is entitled to the seniority w.e.f. 12.9.2007, the date of his selection as G.I, in the given peculiar facts and special circumstances or not?

15. Having regard to the rival contentions of learned counsel for the parties, to our minds, the answer, must obviously be in the affirmative, in this regard, as the applicant was prevented from immediately joining on the post of G.I, due to stay order in the above mentioned litigations, which ultimately ended in dismissal, and the reasons, beyond his control, in this relevant connection.

16. Ex-facie, the main argument of the learned counsel for the respondents, that the applicant was rightly assigned seniority from the date of his actual joining, and he is not entitled to the seniority from the date of his actual selection on 12.9.2007 (Annexure A-3), is neither tenable nor observations of the Hon'ble Apex Court in the case of Civil Appeal Nos. 9906, 9907 and 9908 of 2003 titled **Pawan Pratap Singh & Other Vs. Reevan Singh & Others**, decided on 10.2.2011, wherein while deciding the inter-se seniority of direct recruited Deputy Jailors, appointed in 1991, on the basis of selection process commenced in 1990, and (whereas) the respondents (therein) were



appointed, as such, in the years 1994, even though selection process commenced much earlier in 1987. On the peculiar facts and special circumstances of that case, it was observed that since the substantive appointment of 1991 appointees is much prior to point in time, so they must rank senior to 1994 appointees.

17. Possibly, no-one can dispute with regard to the aforesaid proposition of law while dealing with the inter-se seniority of the directly recruited Deputy Jailors, recruited in two recruitment process, but same would not come to the rescue of the respondents, in the present set of circumstances, wherein the question is of seniority of direct recruit (applicant) vis-à-vis promotees (Respondents No.3 & 4), in the cadre of G.I.

18. What cannot possibly be disputed here is that the question and method of inter-se seniority between the direct recruits and promotee officers in the same cadre, is no longer res-integra and is now well settled. An identical question came to be decided by the Hon'ble Apex Court in the cases of **Balwant Singh Narwal & Others Vs. State of Haryana & Others**, (2008) 7 SCC 728, and **Surendra Narain Singh & Others Vs. State of Bihar & Others**, (1998) 5 SCC 246, wherein having considered the similar factual matrix, it was held (para 8) as under :

“8. There is no dispute about these general principles. But the question here is in regard to seniority of the respondents 4 to 16 selected on 1.10.1993 against certain vacancies of 1992-93 who were not appointed due to litigation, and those who were selected against subsequent vacancies. All others from the same merit list declared on 1.10.1993 were appointed on 2.6.1994. Considering a similar situation, this Court, in *Surender Narayan vs. State of Bihar* - 1998 (5) SCC 246, held that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.”

19. There is yet another aspect of the matter, which can be viewed entirely from a different angle. The learned counsel for the parties are at ad idem that the seniority of direct recruit (applicant) and promotee (respondents No.3&4) in the instant case, shall have to be determined, according to the rotation of vacancies between them, in view of the law laid down by Hon'ble Supreme Court in the case of **N.R. Parmar and Others (2012) 13 SCC 340**. Having interpreted the relevant instructions/OMs, it was authoritatively ruled that the inter-se seniority between the direct recruits and promotees, would be on the principle of quota and rota (rotation of quota) and the ***relevant date for determining the vacancy is the actual date of initiation of recruitment process***. It was also held that it is not necessary that the direct recruits for vacancy of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice, if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the concerned appointees.

20. As depicted herein above, the applicant was duly selected on 12.9.2007, on the post of Group Inspector. Although, he

actually joined on the indicated post on 2.4.2013, due to stay order in the pointed litigation, and reasons beyond his control, but his seniority will be ranked from the date of his selection on 12.9.2007. Admittedly, private respondents No.3 and 4 were promoted in the year 2010 and 2012, much after the selection of the applicant, and in that eventuality, applicant would naturally rank senior to the private respondents No.3 and 4, in the obtaining circumstances of the case. As a consequences thereof, the conduct of the competent authority, in denying the legitimate right of the applicant, is depreciable, in this relevant connection. Therefore, the contrary argument of the learned counsel for the respondents, ***stricto sensu***, deserves to be and is hereby repelled, in the present set of circumstances. Sequelly, the ratio of law laid down in the indicated judgments of Hon'ble Apex Court, ***mutatis mutandis***, is applicable to the present controversy and is the complete answer to the problem in hand.

21. Therefore, it is held that the applicant is entitled to his seniority from the date of his selection as G.I and would rank senior to private respondents No.3&4, in the seniority list of G.I, for all intents and purposes. Not only that, he is entitled to all the consequential benefits, arising therefrom, as well.

22. No other point worth consideration has either been urged or pressed by the learned counsel for the parties.

23. In the light of the aforesaid prismatic reasons, the instant OA is accepted with costs throughout. The impugned order dated 16.2.2015, Annexure A-1 is set aside. As a consequences

thereof, the respondents are directed to prepare a fresh seniority list of G.Is, in the manner and terms, indicated hereinabove, within a period of one month from the date of receipt of a copy of this order.

**(P. GOPINATH)**  
**MEMBER (A)**

**(JUSTICE M.S. SULLAR)**  
**MEMBER (J)**

**Dated: 22.01.2018**

**HC\***

