

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00712/2017

Chandigarh, this the 11th day of April, 2018

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

1. Virinder Singh S/o Late Sh. Devinder Singh aged 64 years
R/o 20 Panchsheel Avenue, Deep Nagar, Jalandhar Cantt.
(Group A)
2. J.B. Singh R/o House No. 4988 Mohan Nagar Sulranpur
Road Amritsar – 143001.

....Applicants

(Argued by: Mr. Jagdeep Jaswal, Advocate)

VERSUS

1. Union of India, through Secretary, Ministry of Defence, South
Block, New Delhi – 110011.
2. Controller General of Defence Accounts, Ulan Batar Road,
Palam, Delhi Cantt – 110010.
3. Principal Controller of Defence Accounts (Pension), Draupadi
Ghat, Allahabad – 211014.

....Respondents

(Argued by: Mr. V.K. Arya, Advocate)

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

1. Applicants Virinder Singh and J.B. Singh have directed the instant Original Application (O.A.), challenging the circular dated 03.10.2011 (Annexure A-3) and the action of the respondents, in not extending the same benefit to them, emanating from the judgment dated 13.11.2002, passed in O.A. NO. 260/2002 titled R. Sridharan & Others Vs. The Controller of Defence Accounts & Others, by the Central Administrative Tribunal, Madras Bench (Annexure A-1), upheld by the Hon'ble Madras high Court, vide order dated 27.11.2008 and by the Hon'ble Apex Court in SLP

(Civil) No. CC 14167/2009, vide order dated 01.10.2009 (Annexure A-2), on the following grounds:-

a) That admittedly, the applicants are senior to Shri L. Narahari and the said factual position has been admitted by the respondents also and the case of the applicants for stepping up of pay is squarely covered by the judgment dated 13.11.2002 (A-1) passed by the Hon'ble Central Administrative Tribunal, Madras Bench, which has been further upheld by the Hon'ble High Court, Madras and the Hon'ble Supreme Court of India by dismissing the SLP on 1.10.2009. Thus, not extending the benefit of judgment to the applicants is wholly unjustified on the part of the respondents.

b) That from the documents annexed with the present original application, the respondents admitted the similarity also, but it is stated by them that the matter is under consideration with the Ministry of Defence/Ministry of Finance for extending the benefits of stepping up of pay to non-applicants.

c) That once that matter has been settled by the Hon'ble Supreme Court, there nothing remains to be examined by the Ministry of Defence/Ministry of Finance. It has been repeatedly held that once a decision has attained finality, the benefit of such decision be extended to all similarly placed. Reference is made to the decision of the Hon'ble Supreme Court in the case of K.C. Sharma Versus Union of India reported as 1997 (3) SCT 641 and also the decision of the Hon'ble Supreme Court in the case of Union of India Versus P. Jagdish reported as AIR 1997 SC 1783 and the decision of the Division Bench of the Hon'ble Punjab & Haryana High Court in the case of Satbir Singh Versus State of Haryana 2000 (2) SCT 354.

d) That the Hon'ble Apex Court in K. Sathyanaranyana Vs. Union of India and others has held that the benefit of declaration of law obtained by an applicant must be extended to other similarly placed without the need for them to take recourse to court.

e) That the principles of stepping of pay of senior to that of the junior from the date from which the junior is getting more pay than the senior is well settled and further reiterated by the decisions of the Central Administrative Tribunals, High Court, and the Apex Court through the orders quoted above.

f) That viewed in any angle, the action of the respondents is arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India.

2. Levelling a variety of allegations and narrating the sequence of events in detail in all, the applicants claim that they are also entitled to step up of their pay at par with the pay of their junior L. Narahari, w.e.f. 03.07.1995, along with all consequential benefits, arising there from, in view of the indicated judgments. On the strength of the aforesaid grounds, the applicants seek to quash the impugned circular and action of the respondents in the manner indicated hereinabove.

3. On the contrary, the respondents have refuted the claim of the applicants, and filed the reply, inter-alia, raising certain preliminary objections with regard to maintainability of the O.A., limitation and cause of action of the applicants. It was alleged that the applicants retired on 31.10.2012 and 30.09.2007 respectively. They are not entitled to the benefit of the aforementioned judgments. It was claimed that the pay of L. Narahari was fixed at higher stage on account of special pay granted for the complex nature of work assigned/performed by him, prior to his promotion to the grade of SO(A), under the special circumstances, and the same very benefit cannot be extended to the applicants, in view of the DOPT Instructions no.4/7/92-Estt. (Pay-I) dated 04.11.1993 (Annexure R-1) and the order dated 15.09.2015 (Annexure R-2) passed in OA No.3918 of 2013 and OA No.4212 of 2013 of C.A.T, Principal Bench, New Delhi.

4. At the same time, the respondents have admitted that the different pointed Benches of C.A.T have directed the respondents to step up the pay of similarly situated employees, in the indicated judgments, which were upheld by respective jurisdictional High Courts. Instead of reproducing the entire contents of the reply and in order to avoid the possibility of repetition of facts, suffice it to say that virtually acknowledging factual matrix and reiterating the validity of the impugned action, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal.

5. Controverting the pleadings of the reply filed by the respondents and reiterating the grounds contained in the OA, the applicants have filed the rejoinder.

6. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after considering the entire matter, we are of the firm view that the instant OA deserves to be partly allowed, in the manner and for the reasons, mentioned herein below.

7. What cannot possibly be disputed here is that both the applicants throughout remained senior to L. Narahari before they were promoted to the post of AAO. Mr. R. Sridharan & 24 other similarly situated persons filed an OA bearing No. 260 of 2002 claiming the parity in the pay on the basis of case of L. Narahari (Respondent No. 7 therein). While accepting the OA, the official respondents (therein) were directed to consider the fixing of pay of the applicants at par with L. Narahari w.e.f. 3.7.1995 and grant all the consequential benefits arising there from, vide orders dated 13.11.2002 (Annexure A-1), by the C.A.T. Madras Bench. The order was challenged in Writ Petition No. 20774 of 2003, which was dismissed vide order dated 27.11.2008, by the High Court of Madras. Still dissatisfied, the respondents filed SLP No. 14167 of 2009, that too was dismissed vide order dated 1.10.2009 (Annexure A-2).

8. Not only that, an identical question came to be decided by this Tribunal in O.A. No. 063/00154/2015, filed by similarly situated persons Jaswant Singh Dhiman & Another, decided on

22.03.2017, wherein having considered all the rival points, raised on behalf of the parties, it was ruled as under:

“15. As is evident from the record that no doubt applicant No.1 Jaswant Singh Dhiman and L. Narahari were promoted on the post of AAO on 3.7.1995, whereas applicant no.2 P.C. Sharma, was promoted as such on 8.4.1991, it is not a matter of dispute that both the applicants throughout remained senior to L. Narahari before they were promoted to the post of AAO. Mr. R. Sridharan & 24 other similarly situated persons filed an OA bearing No. 260 of 2002 claiming the parity in the pay on the basis of case of L. Narahari (Respondent No. 7 therein). While accepting the OA, the official respondents (therein) were directed to consider the fixing of pay of the applicants at par with L. Narahari w.e.f. 3.7.1995 and grant all the consequential benefits arising there from, vide orders dated 13.11.2002 (Annexure A-1), by the C.A.T. Madras Bench. The order was challenged in Writ Petition No. 20774 of 2003, which was dismissed vide order dated 27.11.2008, by the High Court of Madras. Still dissatisfied, the respondents filed SLP No. 14167 of 2009, that too was dismissed vide order dated 1.10.2009 (Annexure A-2).

16. Not only that the order dated 13.11.2002 (Annexure A-1) was implemented by the respondents vide letter dated 26.3.2010 (Annexure A-8). Sequelly, N. S. Shivakumar and others filed Original Applications No. 670, 831 and 832 of 1999, claiming the similar relief, which were allowed and respondents were directed to step up the pay of applicants (therein) at the level at which pay of L. Narahari (Respondent No.5) came to be fixed in the grade of AAO, vide order dated 10.11.2000 (Annexure A-4), by C.A.T. Bangalore Bench. The order, Annexure A-4, was upheld in Writ Petition No. 5523/2001 (S-CAT) and WPs 6240-41/2001 vide order dated 2.12.2004 (Annexure A-5) by Hon'ble High Court of Karnataka and in SLP No. 24157-24159/2005 filed by the respondents was dismissed on 12.3.2008 (Annexure A-6) by Hon'ble Apex Court. As per letter dated 6.10.2010 (Annexure A-9) (colly), the matter regarding step up of pay of non applicants at par with L. Narahari was referred to Ministry of Defence (Finance) / Ministry of Finance and CGDA (WC) was requested that no further applications on the matter be sent to that Headquarter and concerned officers may be informed accordingly.

17. This is not the end of the matter. An O.A.No. 403-CH-2011 filed by similarly situated persons namely Satpal Singh & Others was also allowed vide orders dated 19.9.2011 (Annexure A-10) by this Tribunal. The Review Application No. 91/2011 filed by respondents in OA was also dismissed vide a detailed order dated 21.1.2015 (Annexure A-11), by a coordinate Bench of this Tribunal. Still dis-satisfied with the above orders, the respondents filed CWP No.8758/2015 (O&M) titled Union of India & Others Vs. Satpal Singh & Others, which was dismissed. However, the claim of the applicants (therein) was restricted w.e.f. 1.1.2010, vide orders dated May 6, 2015 by a Division Bench of the Hon'ble High Court of Punjab & Haryana.

18. Therefore, once it is proved that both the applicants remained throughout senior to L. Narahari, as per Annexure R-1, that applicant No.1 Jaswant Singh Dhiman and L. Narahari were promoted to the post of AAO on 3.7.1995, whereas applicant no.2 P.C. Sharma was promoted as such on 8.4.1991, much prior to L. Narahari, in that eventuality, the case of the applicants deserve to be examined in the light of the indicated judgments.

19. Moreover, the applicants are also entitled to the step up of pay at par with L. Narahari, as respondents cannot legally permitted to discriminate them in this relevant connection. They are also entitled to same very treatment and parity in view of the law laid down by Hon'ble

Apex Court in cases Man Singh Vs. State of Haryana and others AIR 2008 SC 2481 and Rajendra Yadav Vs. State of M.P. and Others 2013 (2) AISLJ, 120, wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness."

9. During the course of arguments, learned counsel for the parties are very fairly at ad idem that the controversy involved in the instant O.A. is squarely covered by the judgment in the case of Jaswant Singh Dhiman & Another (supra), and can be disposed of in the same terms and manner.

10. In the light of the aforesaid reasons, instant OA is partly accepted. Impugned order dated 3.10.2011 (Annexure A-3) relatable to the applicants is set aside. The matter is remitted back to the Competent Authority to decide the claim of the applicants at par with that of L. Narahari in the light of the indicated judicial pronouncements and in accordance with law, within a period of 3 months from the date of receipt of a copy of this order. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

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

Dated: 11.04.2018

'mw'