

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT JAMMU)**

...

**OA No. 061/00789/2017 Date of decision- 09.11.2017
& MA No. 061/01062/2017**

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

Behari Lal Gupta, Age 66 years.

S/o Nek Ram

R/o H.No. 376-A, Lane No. 17, Rajpura Magotra, Jammu.

...APPLICANT

BY ADVOCATE : Mr. Kapil Sharma, Advocate.

VERSUS

1. Union of India through Ministry of Defence Govt. of India, New Delhi.
2. Engineer-in-Chief, Army Headquarters Kashmir House, DHQ New Delhi-110011,
3. Chief Engineer Pathankot Zone, Pathankot
4. Commander Works Engineers, Jammu.
5. Garrison Engineers, Project Jammu.

...RESPONDENTS

BY ADVOCATE: Mr. Harshwardhan Gupta, Advocate.

ORDER

...

SANJEEV KAUSHIK, MEMBER(J):-

The applicant has challenged the order dated 24.01.2014 whereby the respondents have rejected his claim for grant of financial up-gradation as the same has been extended junior to him in terms of various judicial pronouncements by this Court on the ground that the applicant was not party to those proceedings.

2. The facts are not in dispute. Conjunctive perusal of the pleadings makes it clear that the applicant stakes his claim for grant of second financial up-gradation on the plea that same has been extended to his junior in terms of decision rendered by this Court in O.A Nos. 67/JK/2010, 66/JK/2010, 390/JK/2009 and 391/JK/2009. His

prayer for 2nd financial upgradation has been rejected by the respondents by passing impugned order dated 24.01.2014 (Annexure D) on the ground that he cannot be extended the benefit of judgment as relied upon by him as he was not party to those proceedings.

3. We have heard learned counsel for the respective parties at considerable length on O.A along with MA for condonation of delay.

4. We have given our thoughtful consideration to the entire matter and have perused the impugned order dated 24.01.2014 rejecting his claim solely on the ground that the applicant was not party to the proceedings in the cases relied upon by him. It is not disputed by learned counsel for the respondents that all the applicants in the judgment/order relied upon by the applicant for grant of second financial up-gradation are junior to him and they have been granted the benefit of second financial up-gradation after their retirement as seen from the memo of parties. Order passed by this Court has also been affirmed by the Hon'ble High Court by dismissing the SWP at the hands of the Union of India vide judgment dated 01.03.2013 (Annexure B). Instead of following the ratio laid down by this Court , the respondents rejected his claim on the ground that he was not party to those proceedings, thus, view of the respondents cannot be approved and it is incumbent upon the respondents to extend the benefit to the similarly situated persons without forcing them to approach the court of law.

5. It is well settled by now that those who do not come to court need not be at a disadvantageous position, as compared to those who had gone to Courts, and were allowed relief. If they are otherwise similarly situated, they are entitled for similar treatment as held in the case of **Inderpal Yadav v. Union of India**, (1985) 2 SLR 248; **K. I. Shephard and Others v. Union of India**, AIR 1988 SC 686 and **K.T. Veerappa and Others v. State of Karnataka &**

Others, (2006) 9 SCC 406. In **State of Karnataka v. C. Lalita**, (2006) 2 SCC 747 it was held that "service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently".

6. Recently again, the Lordships in case of **State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava & Ors.**, 2015(1) SCC 347 have reconsidered the entire law on the subject and have laid down the parameters for grant of benefit to similarly situated persons in para 22 which reads as under:-

"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:

(1) 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.

(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.

(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.”

7. In view of the above, impugned order is hereby quashed and set aside. The matter is remitted back to the respondents to reconsider the case of the applicant in the light of the judgments relied upon by him by passing a reasoned and speaking order. The respondents are further directed to grant benefit to the applicant 18 months prior to filing of the O.A if he is otherwise found eligible. Let needful be done within a period of three months from the date of receipt of a certified copy of the order. Order so passed be duly communicated to the applicant.

8. The O.A along with linked MA stand disposed of in above terms. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 09.11.2017.

‘jk’