

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No. 060/00791/2015 Date of decision- 16.11.2017

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

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1. Haracharan Singh S/o Late Sh. Gajjan Singh, Ex-Assistant Cook
C/o House No. 49, Type XIV, Postgraduate Institute of Medical
Education & Research, Sector 12, Chandigarh.
2. Balbir Singh S/o Late Sh. Gajjan Singh, Ex-Assistant Cook C/o
House No. 49, Type XIV, Postgraduate Institute of Medical
Education & Research, Sector 12, Chandigarh.

..APPLICANTS

BY ADVOCATE : Mr. Karan Singla, Advocate.

VERSUS

Postgraduate Institute of Medical Education & Research, Sector 12,
Chandigarh through its Director.

...RESPONDENTS

BY ADVOCATE: Mr. Vikrant Sharma, Advocate.

ORDER

...

SANJEEV KAUSHIK, MEMBER(J):-

The applicants have challenged the correctness of order dated 06.12.2014 whereby their claim for grant of selection grade and financial up-gradation under 1st Backlog Promotion Scheme w.e.f 01.03.1974 and 01.01.1985, respectively in terms of direction of this Tribunal issued in TA No. 41/2013 vide order dated 04.09.2014, have been rejected.

2. This case has checkered history. The applicants are legal heirs of Late Sh. Gajjan Singh. Late Sh. Gajjan Singh sought voluntary retirement on medical grounds on 09.11.1993 and unfortunately died on 24.04.1996. The applicants along with their mother Mrs. Gurbachan

Kaur (now deceased) had filed CWP No. 9666/1996 before the Hon'ble High Court for redressal of her grievance which was dismissed on 10.07.1996 on the ground of involvement of disputed questions of facts which could be appropriately examined by Civil Court of Competent jurisdiction and the petitioner therein was relegated to avail ordinary remedy of a Civil suit. Aggrieved against that order, the applicants moved review application no. 217/1996 which was also dismissed vide order dated 24.09.1996. Being aggrieved against that order, the applicants filed SLP (C) 23138-39/1996 which was partly allowed by the Hon'ble Supreme Court and the Lordships have held that writ petition should have been entertained on merits, particularly because the claim relates to pension and deduction of amount from retiral benefits and order therein was set aside and said petition was restored to the file of the Hon'ble High Court, to be heard and disposed of on merits. After remand, said writ petition was admitted in the year 1997 and the same remained pending in the Hon'ble High Court till 2013 and vide order dated 01.03.2013, the Hon'ble High Court was pleased to transfer the above writ petition to this Tribunal as jurisdiction lies with this Tribunal. After receipt of said writ petition, same was registered before this Court as TA No. 41/2013. That TA was ultimately decided on 04.09.2014 vide which the Court did not find merit in the contention raised by the applicants therein for grant of pension as father of the applicants had already availed CPF and received the amount due on this account. But while disposing of petition, this Court given window to the applicant to agitate their matter for grant of selection grade from due date and the respondents were directed to decide their claim by passing reasoned and speaking order within a period of three months. It is in furtherance thereto the

respondents have passed the impugned order (Annexure A-2) whereby they rejected their claim. Hence the present O.A.

3. The respondents while filing the written statement contested the claim of the applicant with tooth and nail and submitted that this Tribunal does not have power to issue direction to the respondents to decide the claim of the applicant's father for grant of selection grade w.e.f. 01.01.1979 after more than 30 years. It has further been averred therein that the Hon'ble Supreme Court remanded the matter back to the Hon'ble High Court with regard to claim of the applicants for pension and deduction of amount from retiral benefits. This Tribunal while directing the respondents vide order dated 04.09.2014, had travelled beyond the limited scope given by the Hon'ble Supreme Court. It is, therefore, prayed that O.A be dismissed firstly on the ground of delay and latches and secondly on the ground that a direction issued by this Tribunal is contrary to the judgment passed by the highest Court of law. It has also been submitted therein that during the life time, father of the applicants never raised alarm as now canvassed by the applicants before this Court. It has also been submitted therein that claim of the applicants for grant of selection grade w.e.f. 01.04.1979 has already been considered and rejected by the respondents vide communication dated 16.05.1989. Since the applicants have not challenged the order before any Court of law, therefore, petition deserves to be dismissed. Further it has also been submitted that one of the applicants also filed civil suit No. 255 of 28.07.1990 with a prayer to direct the respondents to declare the order dated 27.03.1990 as illegal, inoperative, unconstitutional, null and void against the principles of natural justice, equity and fair play and plaintiff is entitled to selection/special grade

prior to defendant no. 2 (Raunak Singh). It is stated that said civil suit was dismissed having rendered infructuous vide judgment dated 21.05.1993 on the ground that the respondents had withdrawn the benefit from Raunak Singh as the applicant therein was seeking parity, therefore, they did not grant the benefit to the applicant. It is submitted that once the applicant(s) had already availed the remedy, therefore, O.A be dismissed on the principle of res-judicata.

4. We have heard learned counsel for the respective parties at considerable length.

5. Mr. Singla, learned counsel for the applicants vehemently argued that once a direction has been issued by this Tribunal in TA No. 41/CH/2013, the respondents are duty bound to obey the direction of this Court and rightly, order has been passed to agitate the matter before this Court as they declined relief to the applicants. He further submitted that since a direction has been issued in the year 2014, therefore, there is no question of delay and latches because subsequently impugned order has been passed on 06.12.2014 and the applicants immediately filed the present O.A in the year 2015. He submitted that though the respondents have admitted this fact that father of the applicants had already been granted the selection grade in the pay scale of Rs. 400-600 w.e.f. 01.01.1978 but since pay scale for the post of Assistant Cook has already been revised to the higher pay scale, therefore, father of the applicants sought to have been placed in higher pay scale then that of Assistant Cook.

6. Per contra, Mr. Vikrant Sharma, learned counsel for the respondents vehemently opposed the prayer and submitted that once the issue has already been looked into by the highest court of law and the matter has been remanded back with regard to pension and

deduction of amount from retiral benefits then ration laid down by this Court is contrary to the direction issued by the Hon'ble Supreme Court, therefore, direction issued in para 11 of the order dated 04.09.2014 in TA No. 41/CH/2013 is contrary to decision of the Hon'ble Supreme Court, thus, O.A be dismissed. He also submitted that even otherwise claim of the applicants cannot be allowed to agitate at this point of time after a lapse of more than 23 years from the date of discharge of duty by the father of the applicants and more than 20 years from the date when father of applicants died as the applicants are claiming the benefit w.e.f. 01.01.1978 by filing the present O.A in the year 2015, therefore, O.A be dismissed in terms of Section 21 of the Administrative Tribunals Act, 1985 on the ground of delay and latches. To buttress his submission, he placed reliance upon the judgments passed in case of **Bhup Singh versus Union of India & Ors.** (1992 A.I.R. S.C. Page 1414), **Union of India & Ors. Versus M.K.Sarkar** (2010(2) S.C.C. Page 58) and **Union of India & Ors. Versus A.Duairaj** (J.T. 2011(3) S.C. Page 254).

7. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record.

8. To decide the controversy, it will be useful to reproduce the prayer made by the applicant in the CWP No. 9666/1996:-

- i) "A writ in the nature of mandamus directing the respondent to grant retirement pension to the petitioners as legal heirs of the deceased Gajjan Singh w.e.f. 02.11.1993 with all consequential benefits as per the pension scheme applicable at the P.G.I.
- ii) Direction to the P.G.I. to refund the illegally deducted amount of money from the gratuity / retirement benefit with 18% interest.
- iii) Direct the P.G.I. to grant 18% interest on the arrears of pension due from 02.11.1993 i.e. the date of voluntary retirement on medical grounds.

- iv) **Direct the P.G.I. to grant selection grade and backlog promotion w.e.f. 01.03.1974 and 01.01.1985 respectively with all consequential benefits with interest at the rates as decided by this Hon'ble Court deemed fit in the facts and circumstances of the case.**
- v) Any other suitable writ, order or direction be issued deemed fit in the facts and circumstances of the case.
- vi) Advance notice to the P.G.I. be dispensed with.
- vii) Filing of certified copies of Annexures P-1 to P-7 be dispensed with.
- viii) This Hon'ble Court be pleased to accept photocopy of Annexure P-6, in view of its special significance.
- ix) Writ petition be allowed with exemplary costs. "

Perusal of above makes it clear that under para 25(iv) the applicants had sought issuance of direction for grant of selection grade and backlog promotion w.e.f. 01.03.1974 and 01.01.1985, respectively with all consequential benefits. The said writ petition was dismissed vide judgment dated 10.07.1996 and relevant portion of said judgment reads as under:-

"The writ petition discloses disputed questions of facts which can be appropriately examined by Civil Court of competent jurisdiction. Relegated to ordinary remedy of a Civil Court. Dismissed."

Thereafter review applications was also filed in decided writ petition which was also dismissed by the Hon'ble High Court vide order dated 24.09.1996. Thereafter, the applicants filed SLP (C) No. 23138-39/1996 where lordship in concluding para passed the following order:-

"Having heard counsel and seeing the pleading, we are of the view that the writ petition should have been entertained on merits, particularly because the claim relates to pension and the deduction of an amount from retiral benefits. We do not say any more, lest it should prejudice the claim of either side.

The appeals are allowed. The order under appeal is set aside. The writ petition (CWP No.9666/96) is restored to the file of the High Court of Punjab & Haryana, to be heard and disposed of on merits."

Perusal of above makes it clear that while allowing the SLP, the lordships have directed the Hon'ble High Court to consider the case of the applicants therein on merit particularly the claim relating to pension and deduction of amount from retiral benefit. Accordingly, the matter was firstly remanded back to the Hon'ble High Court and thereafter to this Court as the jurisdiction lies with this Court.

9. Though the respondents have rejected the claim of the applicants by passing impugned order Annexure A-2 whereby holding that the said benefit had already been granted in favour of the applicants w.e.f. 19.09.1984 and for backlog promotion, father of the applicants was not held entitled. By impugning the order in the year 2015, the applicants wanted to revive their cause of action which was available to them in the year 1978. By not challenging the same during the life time or till father of the applicants has discharged from duty, it is presumed that father of the applicants has accepted that he had already been granted the selection grade in the pay scale of 400-600 from due date, therefore, present LRs of the deceased employees cannot be allowed to raise this plea that too without any documentations. We cannot shut our eyes at this stage that the petition cannot be maintained because cause of action arose 23 years earlier. Now neither counsel for the applicants nor counsel for the respondents was in a position to place on record the documents to support the case of the applicants or the respondents, but the pleadings are there that father of the applicants was granted the selection grade in the pay scale of Rs. 400-600. Even the plea of the applicants for grant of higher pay scale cannot be accepted being time barred. There is no application for condonation of delay as provided under Section 21(3) of the Administrative Tribunals Act, 1985,

therefore, we find substance in the arguments of the respondents that petition deserves to be dismissed on the ground of delay and latches.

10. In view of the above, the present O.A is dismissed being time barred. No order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 16.11.2017

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