

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/01037/2016

**Chandigarh, this the 31st day of July, 2018
(Reserved on 24.07.2018)**

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

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Anil Kumar, aged 41 years, s/o Sh. Daya Chand working as TGT-Hindi Teacher at Govt. Model High School, Sector 38 (West), Chandigarh and r/o GH. No. 1038-B, Sector 41-B, Chandigarh. Group C.

....Applicant

(Present: Mr. Ravi Kant Sharma, Advocate)

Versus

1. Secretary Education, Union Territory Secretariat, Chandigarh Administration, Sector 9, Chandigarh.
2. Director, Public Instructions (School), U.T. Secretariat, Chandigarh Administration, Sector 9, Chandigarh.

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Respondents

(Present: Mr. A.L. Nanda, Advocate)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

1. Applicant is aggrieved against the order dated 10.02.2016 (Annexure A-1), whereby his request for protection of his pay has been rejected by the respondents.
2. The facts which led to the filing of this case are largely not in dispute.
3. Applicant, prior to joining the Chandigarh Administration as Master TGT Hindi, under direct recruitment, was working as TGT Hindi Teacher with Jawahar Navodaya Vidyalaya, (in short JNV) Punjab and rendered service of five years and six months there. He was getting basic salary of Rs.6375/- + dearness allowance of Rs. 3124/- totaling to Rs.9499/- at JNV, as per last pay certificate dated 20.12.2014 (Annexure A-3). He submitted a representation

to the respondents to protect his pay at the stage he was getting from his previous employer, in terms of rule 4.4 (b) of the Punjab Civil Service Rules, Vol-I, Part- I, read with instructions dated 15.11.2000, which provide that if an employee has held a post in the same or identical time scale in some other Department or body whether incorporate or not which is wholly or substantially financed by the Govt., his pay on appointment in the govt. service is to be fixed at the same level. He has cited an example of one Rajinder Singh, whose pay, on joining the Chandigarh Administration on 09.06.2004, was protected at the stage of Rs.3375/- which he was getting from his earlier department JNV. However, his representation has been rejected, vide impugned order dated 10.02.2016 (Annexure A-1), on the ground that his case is not covered under Rule 4.4(b) of Punjab Civil Services Rules.

4. The respondents have filed written statement wherein they have submitted that the view taken by the respondents on the claim of the applicant for pay protection is in consonance with rules applicable on the issue. Though, the factual accuracy of the averments, made in the O.A. has not been disputed, however, it is submitted that as per Rule 4.4 (b) of the Punjab Civil Services, the applicant is not entitled to the benefit of pay protection, for the service rendered in JNV, Punjab, on joining the Chandigarh Administration as a direct recruit.

5. We have heard learned counsel for the parties.

6. Mr. Ravi Kant Sharma, learned counsel for the applicant vehemently argued that the impugned decision of the respondents

is in contravention of Rule 4.4 (b) of Punjab Civil Service, and is liable to be set aside.

7. Per contra, learned counsel for the respondents vehemently opposed the prayer of the applicant. He submitted that the rules relied upon by the learned counsel for the applicant have already been interpreted by the Hon'ble Jurisdictional High Court in the case of **Karamjit Singh Vs. State of Punjab and Others**, in CWP NO. 1450 of 2013 decided on 06.10.2014, wherein it has been held that the benefit of the pay protection is available to the employees, who had been working in other departments of the Chandigarh Administration, and not to the employees of other States and UTs. Therefore, he submitted, the decision of the respondents is in conformity with the rule formation on the subject, and in accordance with law, therefore, the O.A. deserves to be dismissed.

8. We have given our thoughtful consideration to the entire matter.

9. A co-joint reading of the rule 4.4 (b), executive instructions dated 15.11.2000 and the judgment rendered in the case of Karamjit Singh (supra), leaves no scope of doubt in our mind that the applicant has rightly been held disentitled for pay protection, for the reason that before joining the Chandigarh Administration as a direct recruit, he rendered his service with the JNV., and not the Chandigarh Administration. As per the relevant rule formation, the benefit of pay protection is available to the employees, who were already in another service/cadre/department/body of the same Government, (which is missing in the present case), and not the other State/UT Government, as held by the Jurisdictional High

Court in the above noted case. The relevant part of the judgment is extracted hereunder:-

“When Government speaks formally and in writing, it speaks for its own territories and for its employees but not employees of other States and Union Territories unless it is expressly stated so. The doctrine of necessary implication or what might appear to fall on first principles or on the common law are inappropriate legal principles to apply to the instructions dated 15th November, 2000 issued by way of clarification to remove doubts. There can be no doubt that when the instructions speak of 'employees', it means only 'employees' who are in Government service of the State of Punjab. The decision of the Finance Department in the case of the petitioner is therefore unexceptionable and is in accordance with rule 4.4 (b) read with the clarificatory instructions dated 15th November, 2000. **The past service rendered in the State of Haryana, or any other State for that matter or in the U.T., Administration, will not count for protection of pay of an employee entering service through open competition by direct recruitment.** The past service stands surrendered for all intents and purposes. However, the only demonstrable right the petitioner has is of retention of lien in the Electricity Department of the U.T., Administration for a period of 2 years so that his doors are not shut in case he does not satisfactorily complete the period of probation and is discharged from service of the Punjab Government. Though the specific rules of service applicable to the department of Legal Metrology, Punjab are not shown but usually the period of probation in direct recruitment is of 2 years which matches the period of retention of lien. Protection by lien afforded by the U.T. Administration, Chandigarh is addressed to itself and not to the State of Punjab and is not binding on it. It would be of no consequence to the new employer if it were to discharge the petitioner during the probationary period or what events may follow adverse to the petitioner as a consequence.”

10. In the light of above, we see no reason to interfere with the decision taken by the respondents, denying pay protection to the applicant, which is strictly in accordance with the relevant rules, supported with the judicial pronouncement. Accordingly, the O.A. is hereby dismissed being devoid of any merit. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 31.07.2018

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