

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH
(CIRCUIT BENCH AT SHIMLA)

Orders pronounced on: 24.10.2018
(Orders reserved on: 11.10.2018)

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

(I) O.A.NO.063/01194/2017

1. Prem Lal Thakur S/o Sh. Ram Dass Thakur, R/o Village & Post Office Totu, presently posted in the office of SDOPN, Boileauganj, aged about 57 years.
2. Pyare Lal Sharma S/o Sh. Dhani Ram Sharma, R/o Om Niwas, near Cemetery Gate, Sanjauli, District Shimla, H.P. aged about 55 years.
3. Hukam Chand Thakur /o Sh. Mathra Dass, R/o Quarter No. 330, Block No. 19, Sector-II, New Shimla, District Shimla, H.P. aged about 54 years
4. Karam Chand S/o Sh. Chetu Ram, R/o Village Ghori, Post Office Dhabiri, Tehsil Barsar, District Hamirpur, H.P. Aged about 60 years.
5. Daya Ram S/o Sh. Bhadrur Ram, R/o Village Dhaini, Post Office Bhumti, Tehsil Arki, District Solan, H. P. aged about 54 years
6. Shobha Ram S/o Sh. Balak Ram, R/o Village Chatti, Post Office Rampur Bhushahar, District Shimla, H.P. presently posted as Telephone Mechanic at Rampur Bushahar, Aged about 57 years. All are Group C.

(II) O.A.NO.063/01195/2017

1. Nand Lal S/o Sh. Dhani Ram Sharma, R.O. Village Dodi, P.O. Batal, Tehsil Arki, District Solan, H.P. presently working as T.T.A. at Shimla, aged about 52 years.
2. Man Singh Tanwar, S/o Sh. Kanshi Ram, R/o Village Dadal, P.O. Bhumpti, Tehsil Arki, District Solan, H.P. presently working as TTA at Boielauganj, Shimla, aged about 55 years.

3. Yash Paul S/o Sh. Rikhi Ram, R/o Village Habriana, P.O. Bani, District Hamirpur, H.P. presently working as T.T.A. under SDE (TX) Shimla, aged about 53 years.
4. Surjeet Singh S/o Sh. Roop Lal R/o Village Ropri, P.O. Kothi, Tehsil Ghumarwin, District Bilaspur, H.P. presently working as T.T.A. OCB Chotta Shimla, aged about 56 years.
5. Madan Lal, S/o Sh. Nant Ram, R/o Village Kotti, P.O. Shush, Tehsil Ani, District Kull, H.P. presently posted as T.T.A. at Rampur, District Shimla, H.P. aged about 54 years.
6. Not Ram, S/o Sh. Dharamdass, R/o Village Barno, P.O. Chhendi, Tehsil and District Kull, H.P. presently working as T.T.A. at Commercial Office, The Mall, Shimla, H. P. aged about 53 years.
7. Roshan Lal Soni S/o Sh. Nand Lal Soni, R/o Village Chandpur, P.O., Bakhalag, Tehsil Arki, District Solan, H.P. presently working as T.T.A. at Theog, District Shimla, aged about 51 years.
8. Krishan Kumar S/o Sh. Madan Lal, Village Lower Kuftadhar, P.O. A.G. Chowk, Tehsil and District Shimla-171003, presently posted as T.T.A. in the office of DGM OMCR Shimla, District Shimla, H.P. aged about 54 years.
9. Sh. Khem Chand Pathak S/o Sh. Sita Ram Pathak, R/o Village Bhajolu, P.O. Jobri, Tehsil Arki, District Solan, H.P. presently working as T. T.A. District Shimla, aged about 54 years, all are Group C.

.... Applicants

By : **MR. SANJEEV BHUSHAN, SR. ADVOCATE
WITH MR. RAJESH KUMAR, ADVOCATE.**

Versus

1. Bharat Sanchar Nigam Limited through its Managing Director, 4th Floor, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Bharat Sanchar Nigam Limited, Telecom Circle, Shimla.
3. General Manager, Telecom District Shimla, Bharat Sanchar Nigam Limited.
4. General Manager Telecom District Solan, Himachal Pradesh.

...

Respondents

By : **MR. NAVLESH VERMA, ADVOCATE.**

(O.A.No. 063/01194/2017
Prem Lal Thakur etc. Vs. BSNL etc.)

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The facts of the case and point of law involved in both these cases being common, these have been taken up for disposal by a common order, with the consent of learned counsel for the parties. For facility of reference, facts are being taken from O.A.No. 063/01194/2017 – **PREM LAL THAKUR & OTHERS VS. BSNL & OTHERS**).

2. The applicants have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, inter-alia, for issuance of direction to the respondent to step up their pay to the level of their junior with effect from the date of arising of the anomaly, with all the consequential benefits.

2. The facts leading to the filing of the instant Original Application (OA), are that applicants were promoted as Telephonic Mechanic during 1993 to 1995. It came to the notice of the applicants that certain named juniors to them were drawing more pay than them. For removal of the same, they submitted representations. The respondents framed Non-Executive Promotion Policy (NEPP) for employees in IDA pay scales of NE-1 to NE-10 of BSNL (Annexure A-2), providing for Time Bound financial up-gradations under IDA Scale. Similar policy was framed for Executives vide OM dated 18.1.2007 (Annexure A-3). Para 6.3 thereof, provides that the time bound IDA pay scale up-gradations are personal to non-executive concerned and no claim, whatsoever, can be made by comparison on grounds of seniority, class, community, cadre, stream etc. Further, except as provided in the instant guidelines, there will be no claim on account of any of the other provisions of FRSR in the context of pay scale, pay fixation, substantive status etc. They submit that similar issue of stepping up of pay came to be decided by Central Administrative Tribunal, Ernakulam Bench in O.A. No. 109/2011 (**M.**

SETHUMADHAVAN & OTHERS VS. BSNL ETC.) decided on 7.12.2011.

This was upheld by Kerala High Court in O.P (CAT) No.1576 of 2012 (Z) titled **BSNL VS. M. SETHUMADHAVAN**, vide order dated 10.7.2012.

The applicants placed reliance on these decisions for stepping up of their pay but to no avail. Hence the OAs.

3. The respondents have filed reply opposing the claim of the applicants. They submit that under the Schemes, maximum 4 up-gradations are allowed and in view of para 6 of the policy, the applicants are not entitled to stepping up of their pay. The decisions relied upon by applicants is in regard to different Policy, which has nothing to do with the case in hand. They have not challenged the policy issued in 2010 till date. The claim of the applicants was considered and rejected vide order dated 27.1.2016 (Annexure R-1). They submit that the applicants have filed OA even prior to grant of benefit to them when anomaly would have arisen. As on date, there is no anomaly at all and O.A. is based on apprehension of the applicants. Some of the applicants would be getting relevant benefit only in 2019 and they are claiming benefit of stepping up by filing O.A. in 2017. Thus, it is not maintainable.

4. The applicants have filed a rejoinder. They submit that the anomaly in pay fixation is recurring one and had arisen in 2005 when juniors after getting benefit under NEPP Scheme, started getting more pay, w.e.f. 1.3.2005 as at that time applicants were getting pay of Rs.6,340, whereas junior was getting Rs.6,500/-. However, on grant of up-gradation, applicants started getting higher pay in 2009 at Rs.16,970 as compared to pay of their junior at Rs.16,880/-. Again juniors got benefit in October, 2011 and started getting more pay than applicants since 1.3.2012 till 2017. In 2017, the applicants again were fixed on higher side than their juniors. However, these juniors will be fixed on higher side on getting 3rd financial up-gradation in October, 2019.

4. We have heard learned counsel for the parties and examined the material on the file.

5. The learned Senior Advocate, appearing for the applicants argued that once the issue has been set at rest by a coordinate Bench of this Tribunal, accepting the claim of applicants (therein) for stepping up of their pay at par with their juniors, then similar claim cannot be denied to the applicants in these O.As. On the other hand, learned counsel for the respondents argued that the applicants claim is based on apprehension, conjectures and surmises only. As on date, there is no anomaly at all and it is only on the basis of apprehension only that in future as and when applicants are granted benefit, their pay would be fixed at lower side, so directions be issued to the respondents to take care of such a situation, which is not permissible.

6. We have considered the submissions made by both the sides carefully.

7. It is not in dispute, and it is specifically admitted by learned Senior counsel for the applicants, that as on date, there exists no cause of action, in favour of the applicants, in as much as the applicants are not drawing less pay than their juniors and situation for drawl of such less pay would arise only in future on application of the relevant policy. In that view of the matter, we have no hesitation in accepting the plea taken by the respondents that the O.As are based on apprehensions only and unless a cause of action has arisen, this Tribunal cannot accept a petition on behalf of persons like the applicants. It is, thus, held that the O.As, in their present form are not maintainable, at all.

8. It is also undisputed that the applicants had submitted their representations, which have been turned down vide order dated 27.1.2016 (Annexure R-1). This fact is in knowledge of the applicants

but surprisingly they have not challenged this order by way of amendment of the O.A. and as such they cannot be granted any benefit.

9. Not only that, in relief clause, the applicants claim stepping up of pay from the date juniors started getting higher pay. Apparently, that event happened from time to time since 2005. The applicants have not mentioned this fact in relief clause. In other words, the cause of action, if any, arose to them in 2005. But they have not filed any application seeking condonation of delay. No doubt, the concept of recurring cause of action can be pressed into service but that would only be a ground to seek condonation of delay and it cannot ipso facto afford a ground to condone the delay.

10. Apparently, the defence taken by the respondents is based on para 6 of the Scheme, which prohibits grant of any benefit of fixation on the basis of juniority/ seniority. That part of the Scheme has not even been challenged by the applicants. Thus, they cannot be granted any benefit on this ground also.

11. The reliance placed by applicants on case of **M. Sethumadhavan** (supra) also appears to be misconceived. In that case, the juniors got 2nd time bound promotion on 1.10.2009 from SDE and got benefit of pay fixation. They got one more benefit of pay fixation when they were given promotion as DE (ad-hoc) on 30.6.2010. Thus, they got two fixations, from Senior SDE cadre, but applicants who were senior got only one fixation from senior SDE cadre and that was the reason seniors got less pay fixation. The Court held that the root cause was policy of respondents which allowed benefit of pay fixation on time bound financial up-gradation as well as on ad-hoc / regular promotion. In that case most of the applicants were on the verge of retirement or had retired.

12. Additionally, the applicants are seeking benefit of decision of a court of law delivered in 2011 by filing an O.A. in 2017, without any

condonation of delay. Secondly, the issue regarding delay in invoking jurisdiction of a court of law was considered by Hon'ble the Supreme Court in **U. P. JAL NIGAM AND ANOTHER V. JASWANT SINGH AND ANOTHER**, (2006) 11 SCC 464. In that case, the judgment of the High Court was impugned before Hon'ble the Supreme Court, wherein while referring to earlier judgments of Hon'ble the Supreme Court in **RUP DIAMONDS V. UNION OF INDIA**, (1989) 2 SCC 356; **STATE OF KARNATAKA V. S. M. KOTRAYYA**, (1996) 6 SCC 267; **JAGDISH LAL V. STATE OF HARYANA**, (1997) 6 SCC 538 and **GOVERNMENT OF WEST BENGAL V. TARUN K. ROY**, (2004) 1 SCC 347, it was held that a person, who approaches the court at a belated stage, placing reliance upon an order passed in some other case earlier, can be denied the discretionary relief on account of delay and laches. Relevant paragraphs thereof are reproduced below:

"5. So far as the principal issue is concerned, that has been settled by this court. Therefore, there is no quarrel over the legal proposition. But the only question is grant of relief to such other persons who were not vigilant and did not wake up to challenge their retirement and accepted the same but filed writ petitions after the judgment of this court in Harwindra Kumar v. Chief Engineer, Karmik, (2005) 13 SCC 300. Whether they are entitled to same relief or not? Therefore, a serious question that arises for consideration is whether the employees who did not wake up to challenge their retirement and accepted the same, collected their post-retirement benefits, can such persons be given the relief in the light of the subsequent decision delivered by this court?

6. The question of delay and laches has been examined by this court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 and 2006 much after their retirement. Whether such persons should be granted the same relief or not?

xx xx xx

16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two

years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others."

13. Not only that, in **A.P. STEEL RE-ROLLING MILL LTD. V. STATE OF KERALA AND OTHERS**, (2007) 2 SCC 725, similar issue was considered and it was held as under:

"40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

14. In the wake of the aforesaid discussion and level position, we are of the firm opinion that both these OAs lack merit and are dismissed accordingly. The parties are left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh.
Dated: 24.10.2018

HC*