

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH****ORIGINAL APPLICATION NO. 060/1453/2018
& M.A. No. 60/1890/2018****Chandigarh, this the 6th day of May, 2019****CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

Komal Saini, aged 51 years, w/o Col. Bipin Pathak (Retd), R/o
House No. 655, Sector 7, Chandigarh working as WEI/TGT in Govt.
Model Girls Sr. Sec. School, Sector 20B, Chandigarh 160020
(Group-C).

....APPLICANT

(By Advocate: Shri R.K. Sharma)

VERSUS

1. Union of India through Secretary to the Government of India, Ministry of Human Resources Development, Department of School Education and Literacy, Shastri Bhawan, New Delhi-110001.
2. Secretary to Govt. of India, Ministry of Home Affairs, Central Secretariat, North Block, New Delhi 110001.
3. Secretary to Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi 110001.
4. Union Territory, Chandigarh through its Administrator, U.T. Secretariat, Sector 9, Chandigarh 160009.
5. Education Secretary, Union Territory, U.T. Secretariat, Sector 9, Chandigarh 160009.
6. Director School Education, Union Territory, Chandigarh Administration, Additional Deluxe Building, Sector 9, Chandigarh-160009.

....RESPONDENTS

(By Advocate: Shri A.L. Nanda)

ORDER (oral)**SANJEEV KAUSHIK, MEMBER (J)**

The present Original Application (O.A.) has been filed by
the applicant, feeling aggrieved by order dated 18.1.2017

(Annexure A-1), whereby her request for extending the benefit of judgment dated 18.12.2007 in O.A. No. 178-CH-2008 titled **Surinder Kumar vs Union of India & Ors.** of this Tribunal and further upheld by jurisdictional High Court by dismissing CWP No. 18581-CAT-2008 and CWP No. 19841-CAT-2008 filed at the hands of Chandigarh Administration and further upheld by Hon'ble Supreme Court in SLP © Nos. 12774-12779 of 2015 decided on 20.7.2015, approving the view taken by this Tribunal, wherein applicants therein were held entitled for grant of scale of three grade structure.

2. Alongwith O.A. the applicant has also filed M.A. No. 60/1890/2018 for condonation of delay of 320 days in filing the O.A. to which the respondent have filed reply.

3. The facts are not in dispute.

4. Admittedly, the applicant was appointed with the Chandigarh Administration as Work Experience Teacher on 11.11.1986 against a leave vacancy and she was regularized w.e.f. 1.6.1987. The post of applicant was re-designated as Trained Graduate Teacher (TGT) and she was confirmed as such w.e.f. 11.10.1990 in the pay scale of Rs. 1400-2600/-. The service conditions of applicant governed by rules known as Chandigarh Civil Service (Revised Pay) Rules, 1991. Some of similarly situated persons like the applicant, approached this Tribunal by filing O.A. No. 1063/CH/2002- **Pardeep Kumar & Ors. vs Chandigarh Administration & Ors.** where the applicants therein sought direction to the Chandigarh Administration to implement the letter dated 8.2.1989 (Annexure A-4), whereby a

decision was taken to revise the pay scale of School Teachers in U.T. Chandigarh. This Court find favour with the plea raised by the applicants therein and while allowing the O.As. recorded the following finding:-

“25. In view of the above discussion, it is held that the category of the applicants is entitled to the pay scale of Rs. 1400-2600 as entry scale, Rs. 1640-2900 as Senior Scale on completion of 12 years of service and scale of Rs. 2000-3500 after 24 years of service, in terms of decision dated 8.2.1989 to other scales on Central pattern as claimed in these O.As, on the basis of which earlier decision was rendered by this Tribunal and was upheld even by the Hon’ble Supreme Court of India. There is no relevancy of qualification for being entitled to such scales, as such exemption is available to the category of the applicants in terms of conscious decision in para 2 of letter dated 8.2.1989 that higher qualifications area to be applied to fresh incumbents only. If any recovery has been made from any of the applicants, the same shall be refunded to them. Necessary orders be passed within a period of three months from the date of receipt of copy of this order.”

The above decision was upheld by the jurisdictional High Court in judicial review. The findings recorded by the Hon’ble High Court are reproduced herein below:-

“25. In order to elucidate further, it is clarified that the salary of the respondents shall be fixed as per their scale allowed vide letter dated 8.2.1989 till 31.12.1995. Their salary shall be fixed w.e.f. 1.1.1996 in the equivalent pay scale as allowed to the Central Government employees and the same process shall be followed for fixing their salary in the new pay scale allowed w.e.f. 1.1.2006.

26. So far as the terms & conditions of the fresh appointees, after the issuance of letter dated 8.2.1989 and before withdrawal of the letter dated 8.5.2006, are concerned, the Administration cannot unilaterally change the same to their disadvantage. However, the Administration may take initiative by providing them the equal rank, status and pay scale in the Punjab Pay Scales and can implement the same by obtaining their consent.

27. The above discussion lead us to the following conclusions :-

(i) The respondents are entitled to the scale and status allowed to them vide letter dated 8.2.1989.

(ii) The circular dated 28.2.2002 (Annexure P-8) issued by the petitioners clubbing the initial, senior scale and selection grade allowed to the TGT vide letter dated 8.2.1989 into one scale of 5000-8000 was discriminatory and against all the principles of equality, equity, fair play, ethics and natural justice.

(iii) The letter dated 8.5.2006 (Annexure P-17) issued by the petitioners withdrawing the letter dated 8.2.1989 shall be implemented prospectively for those employees who have entered the service on or after the issuance of this letter and the petitioners, who were already in service, shall continue to be governed by the terms as mentioned in the letter dated 8.2.1989.”

The above findings were recorded by Hon'ble High Court based on arguments raised on behalf of Chandigarh Administration and it was held that letter dated 8.2.1989 cannot be withdrawn retrospectively and shall be implemented prospectively for those employees who have entered into service on or after the issuance of this letter and the persons who are already in service cannot be deprived of the benefits.

5. After the aforesaid decision the applicant herein submitted representation Annexure A-11 and Annexure A-12, which the respondents have rejected vide Annexure A-1. The applicant then filed Contempt Petition before the Hon'ble High Court, which was disposed of on 12.9.2018 with the liberty to the applicant to approach the competent Court of law. Hence, the applicant is before this Tribunal.

6. We have heard the learned counsel for the parties.

7. Mr. R.K. Sharma, learned counsel for applicant argued that once the similarly placed persons have been granted the benefit then the applicant cannot be denied the same benefit arising out of the judgment in the case of Pardeep Kumar (supra) (Annexure A-7) as this judgment was in rem and thus it was incumbent upon the respondents to grant the benefit to the similarly situated persons like applicant without forcing them to approach the Court. Therefore, he argued that a direction be issued to respondents to grant the applicant benefit which has been extended to the similarly situated persons in the above cited case.

8. Mr. Nanda, learned counsel for respondents vehemently opposed the prayer for grant of benefit on the ground that the relied upon decision is not according to law. He argued that the claim is raised based on a letter which does not confer any right on the persons like applicant to grant the benefit. Therefore, he submits that the O.A. is without merit and may be dismissed as such.

9. We have given our thoughtful consideration to the entire matter and are in agreement with the submissions made at the hands of applicant. Therefore, we are left with no option, but to allow this O.A. as well as M.A. because the relied upon judgment is in rem. Thus, the O.A. is allowed and the impugned view taken by the respondents is quashed and set aside. The respondents are directed to grant the benefit to the applicant in terms of the relied upon decision in the case of Pardeep Kumar (supra) because once the benefit granted can be withdrawn only from a prospective date and not retrospectively. Since, the persons who were in service

since 1986 cannot be deprived benefit, which has been accrued to them from 1989. Thus, the plea raised by the learned counsel for respondents cannot be accepted and rather it is contemptuous on the part of respondents as this issue has already been considered and decided by this Tribunal and further upheld by Hon'ble High Court by recording findings after noticing the arguments raised on behalf of Chandigarh Administration. Accordingly, the M.A. as well as O.A. are allowed. The respondents are directed to reconsider the claim of applicant and grant her the benefit in terms of decision rendered in case of Pardeep Kuamr (supra) within a period of three months from the date of receipt of certified copy of this order. No costs.

(P.GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 06 .05.2019

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