

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

...

ORIGINAL APPLICATION NO. 060/ 00174/2019

Chandigarh, this the 7th day of May, 2019

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

...

Krishan Chand son of Shri Gian Chand, Electrician, aged 59 years category 'C' office of the Executive Engineer (E), Chandigarh Central Electrical Circle, Central Public Works Department, Kendriya Sadan, Sector 9-A, Chandigarh, resident of House No. 1954, Sector 43-B, Chandigarh Pin 160043.

....APPLICANT

(By Advocate: Shri Som Dutt Sharma)

VERSUS

1. The Union of India through the Secretary, Govt. of India, Ministry of Housing & Urban Development/Affairs, Central Public Works Department, Nirman Bhawan, New Delhi 110011.
2. The Director General (Works), Central Public Works Department, Nirman Bhawan, New Delhi 110011.
3. The Additional Director General, North Zone-1, CPWD, Kendriya Sadan, Sector 9-A, Chandigarh-160009.
4. The Superintending Engineer (E), Chandigarh Central Electrical Circle, Central Public Works Department, Kendriya Sadan, Sector 9-A, Chandigarh 160009.
5. The Executive Engineer (E), Chandigarh Central Electrical Division, Central Public Works Department, Kendriya Sadan, Sector 9-A, Chandigarh 160009.

(By Advocate: Shri Sanjay Goyal)

ORDER (oral)

SANJEEV KAUSHIK, MEMBER (J)

M.A. No. 60/784/2019 has been filed under rule 8(4) of the C.A.T. (Procedure) Rules, 1987 for preponing the date of hearing from 25.7.2019 to today, as the issue in the present case has

already been put to rest by this Tribunal in the case of **Kewal Singh vs Union of India & Ors.** (O.A. NO. 60/334/2016 decided on 28.9.2017 (Annexure A-12) and further upheld by the Hon'ble High Court in judicial review in favour of applicant (therein) against the same very respondents.

2. Notice to counsel opposite.

3. Mr. Sanjay Goyal, learned Sr. CGSC, present in Court, accepts notice and seeks short adjournment to file reply.

4. The M.A. is allowed and the date of hearing is preponed from 25.7.2019 to today.

5. The applicant in the present O.A. has sought the following relief:-

a) It is respectfully prayed that this Hon'ble Tribunal may kindly quash Annexures A-9 dated 4.4.18 and A-10/ 10/T dated 14.8.2018.

b) It is respectfully prayed that this Tribunal may kindly declare that the applicant has correctly been given the benefit of 3rd financial upgradation granted to the applicant vide order dated 23.4.2011 at Annexure A-6/A-6/T and his pay was correctly fixed at A-7 under the MACP Scheme.

c) It is further declared that no recovery can be made from the applicant in view of the law laid down by the Hon'ble Apex Court in the case of Rafiq Masih and the subsequent direction issued by respondent no. 1 at Annexure A-11.

d) this Hon'ble Tribunal may kindly be please to issue direction to the respondent authorities not to effect recovery from the Applicant of the amount paid to him as a result of the grant of 3rd financial upgradation w.e.f. 23.4.2011 during the pendency of the instant O.A.

e) it is further prayed that during the pendency of the instant O.A. in this Hon'ble Tribunal the recovery from the applicant may kindly be stayed.”

6. We have heard the learned counsel for the parties and perused the pleadings available on record.

7. Learned counsel appearing for the applicant vehemently argued that the facts of the present case are squarely covered by a decision of this Tribunal rendered in the O.A. No. 060/00334/2016- **Kewal Singh vs Union of India & Ors.**, decided on 28.9.2018 and further upheld by jurisdictional High Court in judicial review by dismissing CWP No. 13924/2018 on 23.8.2018 at the hands of Union of India. He submits that the issue involved in the instant O.A. has already been settled against the same very respondent, therefore, no fruitful purpose will be served by granting the time to respondents for filing reply.

8. Learned counsel representing the respondents though seeks time to file reply, but he is neither in a position to rebut the argument raised by the learned counsel for the applicant and bring to our notice any distinguishing feature in the instant case from the facts in the case of Kewal Singh (supra).

9. In the wake of above noted facts, once this Tribunal has already settled the issue in the above noted case against the same very respondent, we agree with the submission of learned counsel for applicant that no fruitful purpose will be served by keeping the O.A. pending. Since the fate of the petition is sealed by the said judgment by not accepting the defence taken by the respondents in that case, the present lis has to meet the same fate. Thus, the O.A. is disposed of in terms of directions issued

in the case of Kewal Singh (supra). The operative part of the said judgment is reproduced herein below:-

“7. Two questions of law have come for consideration before this Court. Firstly, whether the applicant who has been given selection grade on completion of 8 years of service is to be granted 2nd MACP on completion of 10 years of regular service from the date when he was granted selection grade and 3rd financial upgradation on completion of 28 years of service or not. Secondly, whether the respondents can order recovery of amount which they have paid pursuant to a valid order which has subsequently been rectified by them. To answer first question, it would be appropriate to note down the illustration given in MACP in para 20 and policy which is annexed with this clarification para 28 A (i)(ii), which reads as under:

28. Illustrations:

A(i) If a Government servant (LDC) in PB-1 in the Grade Pay of Rs.1900 gets his first regular promotion (UDC) in the PB-1 in the Grade Pay of Rs.2400/- on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-1 in the Grade Pay of Rs.2800/- after completion of 8+10+10 years).

(ii) In case he does not get any promotion, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200 on completion of further 10 years service i.e. after 28 years (8+10+10)”

8. Perusal of the above makes it very clear that if person gets regular promotion on completion of 8 years of service then he becomes entitled to grant of 2nd ACP on completion of 18 years of service and then 3rd financial upgradation on completion of 28 years of service. By applying this illustration, the respondents have rightly allowed 2nd and 3rd financial upgradation in favour of the applicant in terms of their office order dated 09.06.2011 issued by Govt. of India, Director General Public Works Department, which has been issued in furtherance to DoPT OM dated 09.02.2009 and the said benefit has been conferred upon the applicant by fixing his pay. Not only this, clarification dated 12.07.2012 issued by them wherein they have stated that the selection grade is to be treated as upgradation for the purpose of grant of ACP/MACP on completion, therefore, after grant of selection grade on completion of 8 years to skilled category, the 2nd MACP is to be granted on

completion of 10 years in a grade i.e. after 18 years (8+10) and 3rd MACP after 28 years of service (8+10+10). Therefore, the impugned order withdrawing the benefit is totally bad in law and cannot be allowed to sustain.

9. We, therefore, allow both the O.As. and quash the impugned orders. Consequently, the respondents are directed to refix pay of the applicants and grant them the benefit of 3rd MACP on completion of 28 years of service as has already granted to them on 03.04.2014 instead of 03.04.2016.”

10. The O.A. stands disposed of accordingly. No costs.

(P.GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 07.05.2019

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