

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH****CIRCUIT BENCH: JAMMU**

...

Order reserved on: 29.03.2019**ORIGINAL APPLICATION NO. 061/001317/2017
(SWP NO. 2332/2015)****Chandigarh, this the 23rd day of April, 2019**

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

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1. Manohar Lal age 55 years s/o Sh. Chandu Ram, R/o Sumwan Barnoti, Tehsil & District Kathua, MES NO. 506287.
2. Ghar Singh age 59 years s/o Sh. Nand Lal R/o Chakna Khairi, Tehsil Bishnah, Distirct Jammu MES NO. 505934
3. Om Parkash age 55 years S/o Sh. Chaju Ram, R/o Sumwan Barnoti, Tehsil & District Kathua, MES No. 506284
4. Ashok Kumar age 56 yars s/o Sh. Shiv Ram, R/o JarsoChak, Ramgarh, Tehsil & District Samba, MES NO. 503948
5. Romesh Kumar age 57 years s/o Sh. Sansar Chand R/o Ghar, Tehsil & Distirct Samba MES No. 505628.

....APPLICANTS

(By Advocate: Shri A.K. Sharma)

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Engineering-in-Chief, Army Headquarters, Kashmir House, New Delhi.
3. Chief Engineer, Western Command C/o 56 APO
4. Commander Works Engineer, Jammu C/o 56 APO
5. Garrison Engineer, Kalu Chack C/o 56 APO.

....RESPONDENTS

(By Advocate: Shri Raghu Mehta)

ORDER**P. GOPINATH, MEMBER (A)**

Applicants in the instant Original Application (O.A.) are challenging impugned order dated 4.6.2015 (Annexure- A) read with amendment dated 3.7.2015 on the ground that is passed by an incompetent authority. The benefit of Highly Skilled Grade –II (HSG) has been allowed and received by employees juniors to the applicants in compliance of the Court's direction. Prayer of the applicants is for quashing of impugned order (Annexure-A) and directing the respondents to grant them pay scale of Rs. 330-480.

2. Respondent argues that O.A. is time barred as the relief sought by the applicants pertains to the period more than 33 years old. It is further argued that the judgment of the Single judge of Hon'ble High Court of Jammu and Kashmir in SWP (s) No. 1440-43 of 2000 dated 22.3.2004 and Division Bench of High Court of Jammu and Kashmir in LPA (SWQ) no. 161/2005 dated 7.3.2013 which applicants cite in their favour was relating to FGM category whereas the applicant in the present case are working as Lineman and the judgment is, therefore, not applicable in their case.

3. The applicants lack the requisite eligibility qualifications required under the rules. The essential qualifications required as per statutory rules are as under:-

(i) An employee should be qualified for the next promotional grade of Highly skilled-II for 20% quota to grant of scale of Rs. 330-480.

(ii) Minimum service for grant of pay scale as on 15.10.1984 should be 3 years and also subject to availability

of the post in CWE level as per Government policies i.e., 65% skilled (260-400), 20% Highly skilled grade-II (Rs. 330-480) and 15% Highly skilled grade-I (Rs. 380-560). Applicants are qualified if they fall within 65% quota for promotion to the post of next grade.

4. We have heard the learned counsel for the parties and have carefully gone through the pleadings available on record.

5. Respondent brings to our notice that the controversy involved in the present O.A. has been settled by this Tribunal in O.A. No. 61/55/2015 and 3 others filed by similarly placed employees for the same cause of action. The Tribunal in its common order dated 29.3.2016 rejected the claim of similarly placed employees. The operative para of said judgment is reproduced herein below:-

“ 10. The short question which arose for our consideration is whether the applicants, who are fence-sitters can be granted the benefit of a judgment, which was passed in the year 2004 holding that the petitioners therein are entitled for the benefit. A conjunctive perusal of the pleadings makes it clear that the applicants herein are aware of the letter dated 15.10.1984 of which they seek the benefit by filing the present OA based upon the interpretation given by the Hon'ble High Court of J & K in the year 2004 wherein those petitioners were held entitled to the benefit of Highly Skilled Trade-II arising out of letter dated 15.10.1984. The judgment passed by the Single Judge makes it very clear that the benefit was allowed only to those petitioners who are party to the proceedings. Though, the LPA against that judgment was dismissed in 2013, but the benefit was only to the petitioners therein. Therefore, it can safely be concluded that the said judgment was not in rem. The applicants herein for the first time approached the respondents by serving legal notice dated 15.3.2015 i.e. almost after 30 years from the cause of action when the letter was issued i.e. on 15.10.1984 and after about 11 years from the date when the writ petition was allowed by the Single Judge of J & K High Court. No explanation has been put-forth for not approaching the Court at earlier point of time. The issue with regard to grant of benefit to similarly situated persons based upon the judgment came up for consideration before the Hon'ble Apex Court in the case of Arvind Kumar Srivastava (supra), wherein the Lordships have considered the entire law on the subject and have laid down the legal principles as under :-

The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

A perusal of the above law laid down by the Hon'ble Apex Court makes it clear that the benefit which has been granted to an employee, will not allow to get the same benefit by other employees after a considerable delay and it is held that those who kept mum cannot be allowed the benefit and their petitions be dismissed as fence-sitters on laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. When we apply the legal proposition laid down by the Hon'ble Apex Court as noticed herein above, we are left with no option, but to dismiss all the four OAs on the ground of delay and laches. No costs."

6. Applicants who were appointed on 21.12.1982 claiming relief under the Revised Pay Rules 1986, Revised Pay Rules 1996 and Revised Pay Rules 2006. The relief claimed by the applicants relates to the year 1986 w.e.f. which date they are seeking change

in the option made by them. The applicants have filed this SWP before the Hon'ble High Court of Jammu & Kashmir on 2.3.2015. Going by this date as the cause of action, the relief sought by the applicants w.e.f. 1986 relates to a period over 30 years ago. The Rules of Limitation are not intended to destroy the rights of parties, but cannot also be elastic enough to condone a delay of 30 years. The O.A. is, therefore, dismissed being hit by delay and laches. No costs.

(P.GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 23.04.2019
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