

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

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**ORIGINAL APPLICATION NO.061/00054/2016 &  
M.A. No. 061/01358/2018**

**Chandigarh, this the 09<sup>th</sup> day of January, 2019  
(Reserved on 21.12.2018)**

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

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Shubh Kumar s/o Late Shri Nek Ram R/o Ward No. 2, Samba, Jammu  
- 184121

**....Applicant**

**(Present: Applicant in person)**

**Versus**

1. Union of India through its Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Commandar Works Engineer, Pathankot.
3. Garrison Engineer Samba (J &K)

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**Respondents**

**(Present: Mr. Harsharwardhan Gupta, Advocate)**

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

1. Applicant is challenging the speaking order dated 05.12.2015 whereby he has been denied promotion as Electrician HS-II w.e.f. 15.10.1984 and prayed for promotion as such with all consequential benefits.

2. Applicant was appointed as Lineman in MES on 16.10.1976. In 1984, three grade structure was introduced in MES, creating the posts of Skilled, Highly Skilled Grade-II and High Skilled Grade-I. Sixteen trades were included in this Three Grade Structure Policy (in short, TGSP). This included the trade of applicant i.e. Lineman.

3. Applicant argues that some trades were kept out of the purview as 10% of them had already been promoted to the next higher pay scale as Lineman/SBA/Wireman. The trades of Electrician and Lineman were clubbed together and Electrician being enblock senior were upgraded first and total 20% of Electrician and Lineman on the basis

of seniority were to be upgraded as Electrician HS-II without passing the trade test. The remaining skilled workers were given chances to qualify trade test in two attempts, and 15% of them, as per their seniority, were upgraded as Electrician HS-II. Applicant contends that the pay fixation was not done strictly as per the policy and seven ineligible persons were inadvertently included. Over a period of time, a total of 22 individuals were inadvertently upgraded in 20% DPC as Electrician HS-II since 15.10.1984.

4. Learned counsel for the respondents submits that the subject matter herein stands covered in a bunch of three matters with the leading case of **Puran Chand & Others Vs. Union of India & Others** (O.A. NO. 061/00055/2015), wherein a similar order was assailed and a prayer for grant of promotion to HS-II w.e.f 15.10.1984 was made, which was dismissed on the ground of delay and laches, in the light of judgments of Hon'ble High Court of J & K.

5. After having heard learned counsel for the parties, perused the pleadings on record and the judgment relied upon by the respondents, we are of the view that the facts of this case and relief claimed herein are similar to the above indicated case and therefore, it deserves to be treated similarly. The operative part of the order passed in the case of Puran Chand (surpa) is reproduced hereunder:-

"9. We have given our thoughtful consideration to the entire matter and have perused the judgments cited by the learned counsel for the parties.

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 the 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. This O.A. is similar in terms of relief sought and delay. Puran Chand's similar matter was filed in 2015, whereas this O.A. is filed in

2016. Accordingly, the O.A. is dismissed on the ground of delay and laches in terms of order dated 29.03.2017, passed by this Court, in the case of Puran Chand (supra). M.A. NO.061/01358/2018 also stands disposed of. No costs.

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

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 09.01.2019**

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