

Central Administrative Tribunal

Chandigarh Bench

(Circuit Bench at Jammu)

Pronounced on : 05.04.2019

Reserved on : 28.03.2019

Coram : Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Ms. P. Gopinath, Member (A)

(I) OA No.061/463/2018
MA No. 061/600/2018

1. MES No. 356748, Sh. Dina Nath Age 72 years (FGM 04.07.1968) S/o Sh. Kaka Ram R/o Gho Manhasa, Ward No. 4, Tehsil and District Jammu.
2. MES No. 502687, Sh. Sham Lal Age 59 years (FGM 03.03.1983) S/o Sh. Pukha Ram R/o Hakkal, Ward No. 2, P.O. Satwari, Tehsil and District Jammu.
3. MES No. 503028, Sh. Kulbir Singh, Age 61 years, (FGM 14.02.1984) S/o Sh. Tara Singh R/o Dashmesh Nagar, Digiana, P.O. Gangyal, Jammu.
4. MES No. 504670, Sh. Kartar Chand, Age 62 years (FGM 01.01.1983) S/o Sh. Gian Chand R/o Village Tanda, Tehsil R.S. Pura, District Jammu.
5. MES No. 502648, Sh. Romesh Lal, Age 62 years (FGM 15.09.1982) S/o Sh. Bhagat Ram R/o Village Magowali, Tehsil R.S. Pura, District Jammu.
6. MES No. 504601, Sh. Nek Ram Age 58 years (FGM 15.05.1981) S/o Sh. Sansar Chand R/o H. No. 368, Sect-1/P, Trikuta Nagar, Jammu.
7. MES No. 507230, Sh. Rajinder Singh Age 57 years (FGM 01.07.1983) S/o S. Amar Singh R/o H. No. 159, Narwal Pain, Satwari, Jammu Cantt. Jammu.
8. MES No. 355802, Sh. Baldev Raj Age 74 years (FGM 22.01.1977) S/o Sh. Nanak Chand R/o Old Satwari, P.O. Satwari, Tehsil and District Jammu.
9. MES No. 365646, Sh. Jangi Lal Age 67 years (FGM 09.10.1973), S/o Sh. Balaki Ram R/o H. No. 288, Lane No. 10, Kabir Colony, Talab Tillo, Tehsil and District Jammu.

.... Applicants

Versus

1. Union of India, through Secretary to Government, Ministry of Defence, Govt. of India, New Delhi.
2. Engineer-In-Chief, Army HQrs, Kashmir House, DHQ, New Delhi.
3. The Chief Engineer, Western Command, C/o 56 APO.
4. Commander Works Engineer (CWE) Satwari, Jammu C/o 56 APO.
5. The GE Satwari, Jammu Cantt.
6. GE (Air Force), Satwari, Jammu.
7. GE Jammu.

.....Respondents

(II) OA No.061/464/2018
MA No. 061/601/2018

1. MES No. 362693 (FGM/Refrigeration Mech Retd), Sh. Dev Kumar Gupta, Age 65 years S/o Sh. Nathu Ram R/o 114-F, Rajpura Mangotria, Jammu.
2. MES No. 502720 (FGM/Refrigeration Mech Retd), Sh. Birbal, Age 62 years S/o Sh. Nand Lal R/o Rajpura Mangotria, Jammu.
3. MES No. 362562 (FGM/Refrigeration Mech Retd), Sh. Babu Ram Khajuria Age 64 years S/o Sh. Tulsi Ram R/o 594, Narwal Pain, Satwari, Jammu.
4. MES No. 503700 (FGM/Refrigeration Mech Retd), Sh. Sagar Singh Age 64 years S/o Sh. Beli Ram R/o Village & PO Satrian, R.S. Pura.
5. MES No. 365450 (FGM/Refrigeration Mech Retd), Sh. Rattan Singh Age 64 years S/o Sh. Dhani Ram R/o Ambika Colony, Kunjwani, Jammu.
6. MES No. 5046833 (FGM/Refrigeration Mech Retd), Sh. Raj Kumar Age 65 years S/o Sh. Prem Chand R/o Village & P.O. Makwal, Jammu.
7. MES No. 363382 (FGM/Refrigeration Mech Retd), Sh. Kesav Dass Age 68 years S/o Sh. Chunni Lal Sharma R/o H. No. 21, Sector 4, Extension Sanjay Nagar, Jammu.

.... Applicants

Versus

1. Union of India, through Secretary to Government, Ministry of Defence, Govt. of India, New Delhi.

2. Engineer-In-Chief, Army HQrs, Kashmir House, DHQ, New Delhi.
3. The Chief Engineer, Western Command, C/o 56 APO.
4. The Chief Engineer, Northern Command, C/o 56 APO.
5. Commander, Commander Works, Engineering, Jammu.
6. The GE Kaluchak, Jammu C/o 56 APO.
7. GE, Satwari, Jammu.

.....Respondents

(III) OA No.061/462/2018
MA No. 061/599/2018

1. MES No. 362690 (Electrician Retd.), Sh. Mohan Singh, Age 68 years S/o Sh. Gurdial Singh R/o H. No. 112, Ward No. 12, Vijaypur, Samba.
2. MES No. 503730 (Electrician Retd.), Sh. Jagjit Pal, Age 61 years S/o Sh. Gian Chand R/o Maheshpura, Near Medical College, Jammu.
3. MES No. 504177 (Electrician Retd.), Sh. Ashok Kumar Age 60 years S/o Sh. Gian Chand Bhalla R/o H. No. D-259, Lower Shiv Nagar Lane, Shakti Nagar, Jammu.
4. MES No. 508801 (Electrician Retd.), Sh. Madan Lal, Age 61 years S/o Sh. Shiv Ram, R/o Village & V.P. Gadi Garh, Jammu.
5. MES No. 503661 (Electrician), Sh. Prithpal Singh Age 59 years S/o S. Dalip Singh R/o 16/1, Key Pers Qts. Golconda Line, Kaluchak, Jammu in O/o GE Kaluchak.
6. MES No. 505970 (Electrician Retd.), Sh. Pitamber Dutt Sharma, Age 61 years S/o Sh. Bhagat Ram R/o Village Lower Gadi Garh, Jammu.
7. MES No. 502513 (Pipe Fitter Retd.), Sh. Rattan Lal Age 63 years S/o Sh. Fateh Chand R/o H. No. 198, Nai Basti, Jammu.
8. MES No. 419724 (Pipe Fitter Retd.) Sh. Girdhari Lal, Age 68 years S/o Sh. Mathura Dass R/o Ward No. 2, Bhour Camp, Chatta, Jammu.
9. MES No. 365517 (Electrician Retd.), Sh. Kulbir Singh, Age 62 years, S/o Sh. Sukha Singh R/o Preet Nagar, Digiana, Near Choudhary Atta Chaki, Jammu.
10. MES No. 362467 (Masson Retd.) Sh. Puran Chand Age 68 years S/o Sh. Nanak Chand R/o Ward No. 1, Chatha Bhour Camp, Jammu.
11. MES No. 365498 (Pipe Fitter) Sh. Tilak Raj, Age 65 years S/o Sh. Amar Nath R/o Village Kothi Barnai, P.O. Muthi, Tehsil Jammu.

12. MES No. 504175 (Electrician) Sh. Ravinder Nath Suri S/o Sh. Kundan Lal R/o H. No. 856, Street No. 10, Rajpura Mangotrian, Jammu.

.... Applicants

Versus

1. Union of India, through Secretary to Government, Ministry of Defence, Govt. of India, New Delhi.
2. Engineer-In-Chief, Army HQrs, Kashmir House, DHQ, New Delhi.
3. The Chief Engineer, Western Command, C/o 56 APO.
4. The Chief Engineer, Northern Command, C/o 56 APO.
5. Commander, Commander Works, Engineering, Jammu.
6. The GE Kaluchak, Jammu C/o 56 APO.
7. GE Jammu, C/o 56 APO.

.....Respondents

Present: Sh. Anil Mahajan, counsel for the applicant.

Sh. Raghu Mehta, counsel for the respondents.

ORDER

Hon'ble Mr. Sanjeev Kaushik, Member (J) :

1. This order will dispose of above three OAs which involve identical questions of law and facts and relief is also common. Likewise is also requested by the learned counsel for the parties. For convenience, the facts are being taken from OA No. 061/463/2018 titled Dina Nath & Ors. Vs. UOI & Ors.

2. Nine applicants in this OA have approached this Tribunal seeking quashing of letter dated 11.01.2018 issued by respondent No. 2, Engineer-in-Chief conveyed vide letter dated 15.01.2017 by respondent No. 5 passed in terms of orders of this court in TA No. 061/0001/2016 in SWP No. 1154/2016 decided on 20.06.2016. They have further sought issuance of

a command directing the respondents to grant them the benefit of three grade structure being paid to similarly placed persons w.e.f. 15.10.1984 by treating them Highly Skilled Grade II from the date, as granted to persons junior to them.

3. Facts which led to the filing of the present OA are that the applicants are civilian employees in the respondent department and performing the job in a skilled category in the pay scale of Rs. 260-400. Government of India vide order dated 11.05.1983, conveyed the sanction of President of India with regard to fitment of industrial workers in five scales. Thereafter, an order was issued on 15.10.1984 whereby they issued a fitment of industrial workers in three scales i.e. Highly Skilled Grade I (Rs. 380-560-15%), Highly Skilled Grade II (Rs. 330-480-20%) and Skilled Grade (Rs. 260-400-65%). It is the case of the applicants that for their placement in Highly Skilled Grade II, they have already cleared the departmental examination and they are to be considered for their placement in Highly Skilled Grade II as the same benefit has been granted to the similarly placed persons. Some of the similarly placed persons approached the Hon'ble High Court by filing a writ petition wherein directions were issued to the Government of India to consider their claim in terms of the decision already taken by the Hon'ble High Court for grant of Highly Skilled Grade II, if they are otherwise eligible.

4. Some of the persons like the present applicants who are performing the job of skilled workers, approached the jurisdictional High Court of J&K by filing SWPs No. 1440-1443/2000 titled **Manmohan Kumar Bali & Ors. Vs. UOI & Ors.** which was decided vide judgement dated 22.03.2004 and the petitioners therein were held entitled to benefit of Highly Skilled Grade II in the pay scale of Rs. 330-480 w.e.f. 15.10.1984. The LPA against this judgement was also dismissed vide order dated 07.03.2013 by slightly modifying the order of the learned Single Judge that the respondents will grant the benefits notionally w.e.f. 15.10.1984 and actual benefits were confined to a period of three years and two months from the date of filing of the petition. It is the case of the applicants that since the orders passed by the Jurisdictional High Court in the above cases have already been implemented, the applicants being similarly placed, approached the Jurisdictional High Court by filing different SWPs, leading one being SWP No. 1378/2007 with a prayer to direct the respondents to extend them the same benefits which have already been granted by the Hon'ble High Court in LPASW No. 161/2005 titled **Union of India & Ors. Vs. Babu Ram & Ors.** The Hon'ble High Court vide order dated 17.09.2013, disposed of the SWP No. 1378/2007 alongwith other matters, by directing the respondents to consider the case of the applicants therein

in terms of the decision relied thereupon, by grant of benefit of pay scale of Rs. 330-480 w.e.f. 15.10.1984 and with a further direction to the respondents to comply the order within a period of two months from the date preceding the date of filing of the writ petition.

5. Pursuant to order dated 17.09.2013, the respondents did not grant them the benefit as has been granted to the similarly situated persons. Thus, they were compelled to file another SWP No. 2880/2014 which was disposed of on 10.10.2014 in terms of earlier decision in SWP No. 1378/2007 titled Dev Raj (supra) decided on 17.09.2013. Subsequently, the respondents passed the order rejecting their claim by order dated 10.06.2015 followed by corrigendum dated 23.06.2015 and ultimately the final order was passed on 03.07.2015 where they rejected the claim of the applicants. Aggrieved by that order, the applicants approached High Court of J&K by SWP No. 1154/2016 which was transferred to this Tribunal and registered as TA No. 061/0001/2016 which was disposed of by order dated 20.07.2016 at the initial stage by directing the respondents to reconsider the claim of the applicants, but that had not been considered by the respondents by passing a reasoned speaking order. While disposing the TA, this court directed the respondents that their claim will not be declined merely on the ground of delay. If they were found eligible

otherwise, for grant of relief as prayed for, then, the arrears will be restricted to the limitation period. That exercise was to be carried out within four months from the date of receipt of a certified copy of that order. It is thereafter the respondents had passed order dated 11.01.2018 against the applicants. Hence this OA.

6. The respondents have contested the claim of the applicants by filing a detailed written statement wherein they have submitted that since the direction was only to consider the claim of the applicants, therefore, they have considered and rejected the same on two grounds, firstly, that their prayer is hopelessly time-barred as the applicants had given option for fixation of their pay during 1986, 1996, 2006 and 2016, as such, challenging the pay fixed during these three Pay Commissions i.e. after a period of 30 years is barred by limitation. Secondly, they have submitted that they have considered the claim on merit also. Since the applicants come within the 1st 65% quota and as such they were not eligible for next promotion. Hence, the claim of the applicants cannot be accepted.

7. We have heard learned counsel for the parties. Learned counsel for the applicants vehemently argued that the impugned order rejecting the claim of the applicants without considering the ratio laid down in the relied upon case is liable

to be set aside. To substantiate his plea, he argues that once the Hon'ble High Court has directed the respondents to consider the claim of the petitioners therein, the applicants before this court, in terms of the decision given by the Hon'ble High Court to the similarly placed persons, then without considering their claim in terms of the said ratio, the order passed by the respondents which is impugned in this petition, is liable to be set aside. He further argued that the respondents have already been told in the court order that claim of the applicants will not be brushed aside only on the ground of delay. Thus, he submitted that the view taken by the respondents in rejecting their claim on the ground of delay and laches is liable to be set aside and since the respondents have considered their claim on merit, thus, the impugned order be quashed and matter be remitted back to the respondents to reconsider the same afresh. He also draws attention to the pleadings where he has taken a plea that persons junior to the applicant who approached the Hon'ble High Court in SWPs No. 1440-1443/2000 decided on 22.03.2004, have already been granted the benefit. Thus, a plea has been raised that once persons junior to the applicants have already been granted the benefit of Highly Skilled Grade II in the pay scale of Rs. 330-480 w.e.f. 15.10.1984, then the respondents cannot deny the same to them only on the ground of delay.

8. Respondents reiterated what has been stated in the written statement. Apart from that, they have relied upon the judgement of this Tribunal in OA No. 00055/2015 titled **Puran Chand & Ors. Vs. UOI & Ors.** decided on 29.03.2017 wherein a similar claim raised by the applicants herein had been declined by the court on the ground of delay in approaching the court of law.

9. We have given our thoughtful consideration to the entire matter with the able assistance of the learned counsel for the parties. A conjunctive perusal of the pleadings makes it clear that after the decision of the Jurisdictional High Court in case of Manmohan Kumar Bali (supra), it was held that petitioners therein are entitled for the benefit of HSG II in the pay scale of Rs. 330-480 w.e.f. 15.10.1984 on the basis of the recommendations of the anomaly committee and also on the ground of parity with the similarly placed persons. In LPA, the order of the learned Single Bench was upheld, but the actual benefit which was granted from the year 1984, was restricted to three years and two months. Since those petitioners were junior to the applicants before us, therefore, they approached the jurisdictional High Court in the year 2007 by filing different SWPs, leading one being Dev Raj (supra) which was disposed of vide order dated 17.09.2013 with a direction to the respondents to consider the claim of the petitioners therein

(applicants before us), in terms of the decision in SWP No. 1378/2007. In furtherance thereto, the respondents have passed various orders rejecting their claim. When the respondents have not considered the claim of the applicants in true spirit as directed by this court, they approached the Hon'ble High Court with SWP No. 1154/2016 which was transferred to this Tribunal and registered as TA No. 061/0001/2016 which was decided on 20.06.2016 with directions to the respondents to reconsider and decide the claim of the applicants therein and that their claim be not rejected on the ground of delay only. Though the respondents have passed an order on 11.01.2018 which is impugned in this OA, but they have not considered the ratio of the law laid down in the relevant order. They have rejected their claim on the ground of delay and without giving reference to the averment made by the applicants that the persons junior to them have already been considered in terms of the decision in LPA by the jurisdictional High Court and have granted them benefit from the date as directed by the Hon'ble High Court. Therefore, the plea raised by the applicants that since the applicants are senior to the writ petitioners therein, therefore, the respondents ought to have extended the similar benefit to them or they have to spell out the reasons why they are not entitled to that benefit. Since there is no averment of the respondents that no persons

junior to the applicants have been granted the benefit, therefore, this order is non-speaking.

10. We will be failing in our duty if we do not discuss the judgement cited by the respondents in the case of Puran Chand (supra). In that case, for the first time, the applicants served Legal Notice in the year 2015 claiming the benefit of a letter dated 15.10.1984 and the judgement passed in the year 2004. Therefore, the Coordinate Bench, by considering the fact that they approached the court in the year 2015, i.e. almost 30 years after the date and 11 years after the date of judgement passed by the learned Single Judge, has dismissed the petition on the ground of delay and laches, but the facts of the present case are entirely different from that case.

11. In wake of the above noted facts coupled with the orders passed by this court that once this court has already ordained not to reject the claim of the applicants on the ground of delay and decide the claim of the applicants on merits as per the ratio laid down in the case of Dina Nath (supra) and since the respondents have not rebutted the plea that persons junior to the applicants have been granted the benefits expressly, therefore, the impugned order cannot be sustained. We accordingly quash the impugned order dated 11.01.2018 and remit back the matter to the respondents with the specific directions that they will consider the claim of the applicants vis-

à-vis the applicants in the LPA and record a finding that persons junior to the applicants have not been granted the benefit of Highly Skilled Grade II or otherwise as per official record. If persons junior to them have been granted the benefit, then, they have to grant the similar benefit to the applicants before us notionally from 15.10.1984 and restrict the actual payment for three years and two months prior to the date of filing of this case. Otherwise, a reasoned and speaking order be passed and communicated to the applicants. This exercise be carried out within a period of three months from the date of receipt of a certified copy of this order. There shall be no order as to costs.

12. A copy of this order be kept in the other connected cases as well. Pending MAs, if any, are also disposed of accordingly.

(Sanjeev Kaushik)
Member(J)

(P. Gopinath)
Member (A)

Dated:
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